

Income/Franchise:

North Carolina: Trial Court Reverses ALJ Holding that Disallowing Related-Party Deductions was Unconstitutional

Case No. 22 CVS 1162, N.C. Super. Ct. (5/3/23). A North Carolina superior court judge (Court) reversed an administrative law judge's (ALJ) ruling from 2021 in a North Carolina Office of Administrative Hearings (OAH) case involving a taxpayer's North Carolina corporate franchise tax liability computed under the capital stock base wherein the ALJ held that denying the taxpayer deductions for certain intercompany loan receivables owed by its affiliates not doing business in North Carolina would constitute a violation of the dormant Commerce Clause as applied to the taxpayer [see *State Tax Matters*, Issue 2022-4, for details on the ALJ's 2021 ruling]. The Court then remanded the matter to the OAH with instructions to dismiss the case for lack of subject matter jurisdiction. In doing so, the Court agreed with the North Carolina Department of Revenue and explained that determinations regarding the constitutionality of the tax statute at issue are "the province of the judiciary" under North Carolina law. Responding to the taxpayer's attempt to distinguish between "as-applied" constitutional challenges versus facial constitutional challenges, the Court explained that it does not see a relevant distinction for purposes of the OAH's lack of subject matter jurisdiction and that even if it did, "this case presents a facial constitutional challenge, not an as-applied one." Please contact us with any questions.

URL:
<https://www.nccourts.gov/assets/documents/opinions/2023%20NCBC%2033.pdf?VersionId=WPDYN8PpDQKi9Bbe44RD POTUPIIyeJW3>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220128_5.html

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