

Income/Franchise:

North Carolina DOR Explains Corporate Tax Treatment of CFC In Light of Federal TCJA Changes

CPLR 2023-01, N.C. Dept. of Rev. (3/8/23). Responding to a parent company's private letter ruling request regarding the North Carolina corporate income and franchise tax treatment of its controlled foreign corporation (CFC) with in-state activity due to a single member limited liability company (SMLCC) in a situation where the parent had changed the legal and physical flow of its inventory and how imported product is sold in the United States in response to certain law changes contained within the federal Tax Cuts and Jobs Act (*i.e.*, P.L. 115-97 or "TCJA"), the North Carolina Department of Revenue (Department) concluded the following:

URL: <https://www.ncdor.gov/cplr-2023-01-controlled-foreign-corporation/open>

1. Because North Carolina has not decoupled from the changes made to Internal Revenue Code (IRC) section 863(b) made by the TCJA, the CFC's starting point for purposes of its North Carolina income tax return will be its effectively connected income (ECI) as calculated and reported on federal Form 1120-F pursuant to IRC section 863; however, any sourcing modification pursuant to a comprehensive income tax treaty with the United States would not apply for North Carolina purposes;
2. For purposes of calculating the CFC's North Carolina corporate income tax sales factor, sales should include all gross receipts unless excluded according to N.C. Gen. Stat. § 105-130.4, and because the CFC's sales of inventory are not considered when calculating ECI under IRC section 863(b) under the provided facts, the receipts derived from these sales must be excluded from the calculation of the North Carolina sales factor under state law;
3. Pursuant to N.C. Gen. Stat. § 105-122(c1)(1), a multistate corporation that is subject to the North Carolina franchise tax must apportion its franchise net worth base utilizing the same apportionment percentage that it computed for North Carolina corporate income tax purposes; and
4. Regarding whether the CFC must use its worldwide balance sheet or the balance sheet of its US branch for purposes of calculating its North Carolina franchise tax base, because the CFC is a foreign entity that is filing a federal income tax return, it must only use the value of assets that are deemed to be based in the United States to compute its net worth base for North Carolina franchise tax purposes.

Please contact us with any questions.

— Art Tilley (Charlotte)
Managing Director
Deloitte Tax LLP
atilley@deloitte.com

Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at www.deloitte.com.