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.

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