

## Income/Franchise:

### North Carolina DOR's Failure to Meet Procedural Deadline Voids Tax Assessment Involving Intercompany Transactions

*Admin. Hearing No. 22 REV 04478, N.C. Off. of Admin. Hrgs. (10/27/23).* In a case involving a corporate income tax audit assessment on a North Carolina taxpayer allegedly engaging in intercompany transactions that lacked economic substance or were not at fair market value, an administrative law judge with the North Carolina Office of Administrative Hearings held that the North Carolina Department of Revenue (Department) did not timely (*i.e.*, within 90 days of the underlying proposed assessment) explain in writing the facts, circumstances, and reasons it objected to the taxpayer's intercompany transactions and the method it proposed to determine the correct net income, and therefore, the Department's subsequent notice of final determination years later was invalidated to the extent that it included an adjustment to the taxpayer's net income. In doing so, the judge explained that the North Carolina General Assembly "purposely drafted N.C. Gen. 105-130.5A" such that the Department's 90-day written explanation deadline following the issuance of a proposed assessment is a mandatory rather than directory requirement designed to protect taxpayer rights and avoid the years long delay evidenced in this matter. Please contact us with any questions.

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