

Income/Franchise:

Alabama: “Subject to Tax” Exception to Intercompany Intangible Expense Addback Statute Deemed to Apply

Docket Nos. BIT. 19-890-JP and BIT. 19-1091-JP, Ala. Tax Trib. (2/26/24). In a case involving a multinational manufacturing company filing Alabama separate company business income tax returns for the tax periods at issue, the Alabama Tax Tribunal (Tribunal) held that certain interest and royalty payments the taxpayer made to its parent company, which were then paid to foreign affiliates, were not subject to Alabama’s intercompany intangible expense “addback” statute because the facts showed the payments were indirectly “attributed to” those foreign jurisdictions under state law and thus fell under the “subject-to-tax” statutory exception. Under the facts at hand, the Tribunal concluded that the intercompany intangible expenses at issue were shown to be subject to tax by foreign nations that have income tax treaties with the United States. The Tribunal additionally commented that just because some of the foreign affiliates were allowed to deduct a portion of these intercompany payments in calculating their jurisdictions’ taxable net income did not defeat the taxpayer’s entitlement to Alabama’s subject-to-tax exception. Please contact us with any questions.

URL: <https://www.taxtribunal.alabama.gov/wp-content/uploads/2024/02/OPO-19-890-19-1091.pdf>

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