

## Income/Franchise:

### South Carolina: New Law Addresses Alternative Apportionment and Includes Arm's Length Standards on Forced Combination

S.B. 298, signed by gov. 3/11/24. Effective immediately and applicable to “all open tax periods excluding assessments under judicial review by the South Carolina Administrative Law Court, Court of Appeals, or Supreme Court as of the date of the Governor’s approval,” new law revises state law that permits the South Carolina Department of Revenue (Department) to require corporate taxpayers to employ an alternative method to allocate and apportion income (*e.g.*, forced combination) if the Department determines that the methods used by a company do not fairly represent the extent of its in-state business activity by mandating newer standards and procedures to “effectuate an equitable allocation and apportionment” of a corporate taxpayer’s South Carolina income – including meeting a new burden of proof that has a “significantly higher bar” than South Carolina’s previous Department audit standard. Moreover, in determining whether transactions between members of an affiliated group are not at fair market value, the new law requires the Department to apply the standards contained in the regulations adopted under Internal Revenue Code section 482.

**URL:** <https://www.scstatehouse.gov/billsearch.php?billnumbers=298&session125&summary=B>

Under the new law, when the Department has reason to believe that a taxpayer conducts its trade or business in a manner as to “fail to fairly represent the extent of” its in-state business activity through the use of transactions that lack economic substance or are not at fair market value between members of an affiliated group of entities, it may “upon written notice to the taxpayer,” require any information reasonably necessary to determine whether the taxpayer’s intercompany transactions have economic substance and are at fair market value and for the accurate computation of the taxpayer’s South Carolina net income properly attributable to its in-state business activity. Under this new provision, the taxpayer must provide the requested information within 90 days of such notice. The legislation includes some definitions and explanations of important underlying terms and phrases such as “economic substance” and “reasonable business purpose,” as well as outlines entities that may not be included in a South Carolina combined return and procedures for taxpayers to file a South Carolina combined return.

See forthcoming Multistate Tax Alert for more details on these new provisions, including some related taxpayer considerations, and please contact us with any questions in the meantime.

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