

Income/Franchise:

South Carolina ALJ Says Bank's Various Income Streams Must be Sourced Based on Borrower Location and Gain from Stock Sale is Apportionable

Docket No. 20-ALJ-17-0168-CC, S.C. Admin. Law Ct. (6/25/24). In a case involving a bank that engaged in banking business in South Carolina, as well as other states, and was subject to South Carolina's bank tax, an administrative law judge with the South Carolina Administrative Law Court (Court) sided with the South Carolina Department of Revenue in concluding that applicable South Carolina sourcing law required the taxpayer to source its loan interest, credit card interest and fees, and credit card interchange fees (merchant fees) to South Carolina based upon the location of the bank's South Carolina borrowers. Moreover, the Court concluded that the bank must include the gain on its sale of certain credit card company stock – which was considered held in direct connection to its banking business – in its calculation of apportionable income, and the stock constituted intangible personal property. The Court explained that the bank must include the income from mortgage loan interest and mortgage loan servicing fees from South Carolina borrowers in its gross receipts from within South Carolina under applicable state sourcing provisions, as it constituted income from intangibles rather than services. The Court also explained that income generated from the bank's sales of certain South Carolina mortgages at issue must be included in its gross receipts from within South Carolina, because the mortgages were tied to real estate in South Carolina. Please contact us with any questions.

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