

Income/Franchise:

Federal: DC Circuit Addresses Sale of Partnership Interest by Nonresident Alien

Case No. 23-1142, DC Cir. (7/23/24). In a recent ruling, the US Court of Appeals for the District of Columbia Circuit (“DC Circuit”) applied an entity theory to the sale of a partnership interest by a nonresident alien at a time before the applicability of Internal Revenue Code (IRC) section 864(c)(8), treating it as a disposition of the partnership interest, which is sourced to the residence of the seller, even when IRC section 751(a) applies to treat a portion of the gain as ordinary income. The DC Circuit wrote that “[t]he question we must resolve is whether section 751(a) merely establishes that inventory gain arising from the sale of a partnership interest is taxed as ordinary income rather than capital gain, or whether section 751(a) also deems inventory gain from a partnership-interest sale to be income from a sale of *inventory*.” Acknowledging that if the latter were true “there would be other repercussions...,” the DC Circuit reversed the US Tax Court and held that on the sale of a partnership interest by a nonresident alien, “section 751(a) does not of its own force...change the fact that [the taxpayer] sold a partnership interest, not inventory.” Thus, the gain from the sale is “foreign-source income” as to which the taxpayer “owes no US taxes.”

URL: [https://www.cadc.uscourts.gov/internet/opinions.nsf/A5F31E886008DAF185258B6300507516/\\$file/23-1142-2065953.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/A5F31E886008DAF185258B6300507516/$file/23-1142-2065953.pdf)

While this is a federal income tax decision, there may be some resulting state income tax implications [see forthcoming Multistate Tax Alert for more details on some related state income tax considerations].

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