

Income/Franchise:

South Carolina ALJ Says Bank's Various Income Streams Must be Sourced Based on Borrower Location and Gain from Stock Sale is Not Apportionable

Docket No. 20-ALJ-17-0168-CC, S.C. Admin. Law Ct. (8/19/24). 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) continued to side with the South Carolina Department of Revenue in an amended order [see *State Tax Matters*, Issue 2024-26, for details on the original order] – 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. 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.

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Amending its original opinion in this case, the Court also held that a preponderance of the evidence indicated that the bank's possession of certain credit card company stock was a "unique circumstance caused by the affairs of its parent company and for the benefit of its parent." In this respect, the Court concluded that the credit card company stock was *not* connected to the bank's trade or business and thus its gain on the sale of the stock was *not* apportionable income. Please contact us with any questions.

— Art Tilley (Charlotte)
Managing Director
Deloitte Tax LLP
atilley@deloitte.com

Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

Meredith Morgan (Charlotte)
Senior Manager
Deloitte Tax LLP
mmorgan@deloitte.com

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