

Income/Franchise:

South Carolina: Information Letter Explains New Law on Alternative Apportionment and Forced Combination

Information Letter 24-16, S.C. Dept. of Rev. (10/7/24). The South Carolina Department of Revenue (Department) issued an information letter summarizing recently enacted state tax legislation, including legislation that “supplements the process for the Department and taxpayers to accurately determine net income when the standard allocation and apportionment provisions do not fairly represent the extent of the taxpayer’s business activity in South Carolina” and mandates additional standards and procedures for the Department to “effectuate an equitable allocation and apportionment” of a corporate taxpayer’s South Carolina income (*e.g.*, forced combination) [see S.B. 298, signed by gov. 3/11/24, and previously issued Multistate Tax Alert for more details on this new law]. Regarding combined returns, the information letter provides:

URL: <https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL24-16.pdf>

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

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-south-carolina-limits-department-of-revenue-use-of-combined-reporting-as-alternative-apportionment-method.pdf>

“If the Department finds that a combined return is required, it may send a notice requiring the taxpayer to submit the combined return within 90 days of the date of the notice. The submission of the combined return is not deemed to be a return or construed as an agreement that an assessment based on the combined return is correct or that additional tax is due. The Department or the taxpayer may propose a combination of fewer than all members of the unitary group, but the Department will not require a combination of fewer than all members of the group without the consent of the taxpayer. The Department may require a combined return regardless of whether the members of the affiliated group are all doing business in the state.”

The information letter also explains that when the Department “has reason to believe a taxpayer employs intercompany transactions that lack economic substance or are not at fair market value between members of an affiliated group, the Department will notify the taxpayer and request any information reasonably necessary to determine whether the taxpayer’s intercompany transactions have economic substance and are at fair market value” – and the taxpayer, in turn, must provide the requested information within 90 days. Please contact us with any questions.

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