

Income/Franchise:

Pennsylvania DOR Addresses Implementation of Law Changes Involving Intercompany Intangible Expense Addback

Guidance for Related Party Income Election, Pa. Dept. of Rev. (10/24). The Pennsylvania Department of Revenue (Department) issued guidance addressing the implementation of recently enacted legislation that adds an election under Pennsylvania’s intercompany intangible expense “addback” statute [see S.B. 654, signed by gov. 7/11/24, and *State Tax Matters*, Issue 2024-29, for more details on this recently enacted legislation], which effective beginning with tax year 2023, allows certain corporate taxpayers to make an election on their originally filed Pennsylvania “Form RCT-101 Corporate Tax Reports” to exclude specific types of income that were added back to a related entity’s Pennsylvania corporate net income tax (CNIT) base for the same tax year. The Department states that because the legislation was not enacted until July 2024, “some entities potentially impacted by this legislation may have already filed their original return for the 2023 tax year.” Because taxpayers impacted by this legislation that have already filed their 2023 Form RCT-101 “cannot amend their reports to make this election,” the Department states that the related entity should add back the intangible expense or cost and/or the interest expense or cost on its 2023 Form RCT-101 and then claim the existing statutory credit found at 72 P.S. § 7401(3)1.(t)(1) for tax paid by the entity reporting the amounts in question in its taxable income. The Department also notes that “in the unusual situation where the related entity believes it is not made whole by the existing statutory credit,” it has the right to file an appeal with the Pennsylvania Board of Appeals (Board) requesting relief “which, assuming the appeal is timely, will be considered by the Board on a case-by-case basis.”

URL: <https://www.revenue.pa.gov/TaxTypes/Corporation%20Taxes/CNI/Pages/Guidance-for-Related-Party-Income-Election-.aspx>

URL: https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2023&ind=0&body=S&type=B&bn=654

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240719_5.html

For those corporate taxpayers impacted by this legislation that have *not* already filed their 2023 Form RCT-101, the Department explains that they may make the election on their originally filed return. To make the election, the taxpayer must enter the amount it is electing to exclude as an “Other Deduction” on “page 2, Section C Line 2D of the PA Corporate Net Income Tax calculation and provide additional details on REV-860, Schedule OD – Other Deductions.” Additionally, the taxpayer must list each related entity separately on the Schedule OD and include the related entity’s name and Federal EIN in the “Description” column of Schedule OD, and the corresponding amount of income being excluded must be listed in the associated “Amount” column. The guidance states that “failure to provide these details will result in the disallowance of the deduction.” Please contact us with any questions.

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