

Income/Franchise:

Virginia Department of Taxation Issues Ruling on Exceptions to Intangible Expense “Addback” Statute

Public Document No. 24-80, Va. Dept. of Tax. (8/21/24). The Virginia Department of Taxation (Department) issued a ruling addressing statutory exceptions to Virginia’s intercompany intangible expense addback statute, concluding that the taxpayer:

URL: <https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/24-80>

1. Must calculate the “subject to tax” exception on a post-apportionment basis;
2. Did not follow proper procedure to claim a valid business purpose exception; and
3. Failed to show that Virginia’s addback statute violates the Due Process and Commerce Clauses of the United States Constitution.

Regarding Virginia’s “subject to tax” exception, the Department noted that while it is “aware that some taxpayers have reached agreements with states that allow for an alternative or special method of apportionment for intangible income or expenses,” pursuant to Virginia law (*i.e.*, Virginia Code section § 58.1-402 B 8 a 1), “the amount of intangible income or expenses eligible for the exception will be limited to the apportionment percentage reported on the subject state’s return.” Moreover, citing a 2018 Virginia Supreme Court decision, the Department explained that the Court already examined Virginia’s “subject to tax” exception with reference to constitutional principles of fair apportionment and upheld the Department’s interpretation of the statute. Accordingly, the Department declined to consider whether any portion of the taxpayer’s assessments should be abated on the basis that Virginia’s addback statute violates the United States Constitution – concluding that it “will continue to administer the statute consistent with the Court’s decision.” Please contact us with any questions.

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