

## Income/Franchise:

### Virginia Appellate Court Affirms that DOR Unconstitutionally Tried to Tax Company's Income from Non-Unitary LLC

*Case No. 0701-23-2, Va. Ct. of App. (11/12/24).* In a case involving income earned from a company's minority ownership in a limited liability company (LLC) and the Virginia Department of Revenue's (Department) attempt to combine the LLC's apportionment factors with the company's to determine the company's income subject to Virginia corporate income tax, the Virginia Court of Appeals (Court) upheld a trial court decision that such treatment was unconstitutional in violation of the Due Process and Commerce Clauses because the two entities did *not* operate as a unitary business under the facts. Under the facts, the Court agreed with the lower court that functional integration, centralized management, and economies of scale did not exist between the company and the LLC. The Court explained that because the company was not operating as a unitary business with the LLC, the income the company received from the LLC could not constitutionally be apportioned as part of the company's apportionable business income. Specifically, the Court held that the Department's application of the LLC's apportionment factors to the company's out-of-state business activity under Virginia's statutory apportionment method in this case violated the Due Process and Commerce Clauses of the United States Constitution, because the apportioned income tax had no "rational relationship between the tax and the 'values connected with the taxing State'" and subjected the company to "unfairly apportioned taxation." Please contact us with any questions.

**URL:** <https://www.vacourts.gov/static/opinions/opncavwp/0701232.pdf>

— Joe Carr (McLean)  
Managing Director  
Deloitte Tax LLP  
[josecarr@deloitte.com](mailto:josecarr@deloitte.com)

Jennifer Alban Paschall (McLean)  
Principal  
Deloitte Tax LLP  
[jalbanbond@deloitte.com](mailto:jalbanbond@deloitte.com)

Olivia Chatani (Washington, DC)  
Senior Manager  
Deloitte Tax LLP  
[ochatani@deloitte.com](mailto:ochatani@deloitte.com)

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

#### **About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at [www.deloitte.com](http://www.deloitte.com).