

## Income/Franchise:

### Illinois Appellate Court Affirms that Affiliate Was Not an 80/20 Company and Must be Included in Combined Return

*Case No. 1-23-0913*, Ill. App. Ct., 1st Dist. (3/19/25). An Illinois Appellate Court (Court) affirmed the Illinois Independent Tax Tribunal's 2021 ruling [see *State Tax Matters*, Issue 2021-16, for more details on the Illinois Independent Tax Tribunal's 2021 ruling in this case], which held that a taxpayer filing Illinois income and replacement tax returns on a combined basis for the prior tax years at issue (*i.e.*, for tax years 2011 through 2013) failed to successfully show it could exclude a certain affiliate from its return as an "80/20 company" that conducted 80% or more of its business outside the United States. In doing so, the Court explained that the taxpayer failed to demonstrate it had exercised "ordinary business care and prudence" when it formed a certain single-member limited liability company (SMLLC) owned by that affiliate and then attempted to qualify the affiliate as an 80/20 company based on the SMLLC's alleged expatriate employees – agreeing with the Illinois Independent Tax Tribunal that the taxpayer's actions in this case constituted an "aggressive tax strategy to create a non-operational shell company" whose sole purpose was generating mostly domestic income that would avoid Illinois income taxation. Note that this Court order was filed under Illinois Supreme Court Rule 23, and therefore, is "not precedent except in the limited circumstances allowed under Rule 23(e)(1)."

**URL:** [https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/ba03a212-8d49-400e-be42-bd8239b91e27/PepsiCo,%20Inc.%20v.%20Illinois%20Department%20of%20Revenue,%202025%20IL%20App%20\(1st\)%20230913-U.pdf](https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/ba03a212-8d49-400e-be42-bd8239b91e27/PepsiCo,%20Inc.%20v.%20Illinois%20Department%20of%20Revenue,%202025%20IL%20App%20(1st)%20230913-U.pdf)

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Additionally, note that an Illinois circuit court recently concluded similarly in a case involving the same taxpayer for different tax years (*i.e.*, for tax years 2016 and 2017) [see *State Tax Matters*, Issue 2025-2, for more details on this 2025 Illinois circuit court ruling]. Please contact us with any questions.

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