

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. (4/30/25). 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. Similar to its earlier nonprecedential order in this case [see *State Tax Matters*, Issue 2025-11, for details on this earlier order], the Court concluded that the taxpayer unsuccessfully attempted to qualify the affiliate as an 80/20 company based on alleged expatriate employees of a single-member limited liability company (SMLLC) owned by that affiliate – 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.

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Additionally, note that earlier this year an Illinois circuit court 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.

URL: https://dhub.deloitte.com/Newsletters/Tax/2025/STM/250117_2.html

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