

Income/Franchise:

Wisconsin: Appellate Court Agrees that Parent Failed to Show Intercompany Royalties Had Business Purpose and Economic Substance

Appeal No. 2024AP957, Wis. Ct. App. (6/4/25). In a recently posted unpublished Wisconsin corporate franchise tax opinion involving a parent company and its created wholly-owned intellectual property (IP) subsidiary that licensed transferred IP back to the parent in exchange for royalties, a Wisconsin Court of Appeals (Court) affirmed [see *State Tax Matters*, Issue 2023-9, for details on the Wisconsin Tax Appeals Commission's 2023 ruling in this case] that the parent failed to show it had a valid nontax business purpose for entering into the licensing transactions and that the transactions had economic substance. In doing so, the Court rejected the parent company's claim that the Wisconsin Tax Appeals Commission (Commission) misapplied the "sham transaction" doctrine in disallowing the deductions as it failed to show the Commission erred in its application of the sham transaction doctrine. Specifically, the Court explained that the "Hormel test" governed the transactions at issue in this case, requiring the parent to prove that the transactions had "practical economic effects other than the creation of income tax losses, such as a business purpose and economic substance" – which the parent failed to do, and thus the licensing transactions must be disregarded for state corporate franchise tax purposes. Please contact us with any questions.

URL: <https://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=965316>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230303_6.html

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