

## Georgia court issues final order in subtraction modification case

July 22, 2015

### Overview

The Georgia Tax Tribunal (Tribunal) recently issued a Final Consent Order (Order) in *Rosenberg v. Riley*, a case that addressed certain issues related to a subtraction modification from federal adjusted gross income (AGI) for individual residents that receive income from a flow-through entity subject to a state entity-level tax based on income.<sup>1</sup> As stated in the Tribunal's Order, the taxpayer and the Georgia Department of Revenue (Department) have agreed not to appeal the earlier summary judgment ruling, which held that the Texas Franchise Tax is a tax "on or measured by income."<sup>2</sup> The parties also have agreed on the method for calculating the subtraction with respect to the District of Columbia Franchise Tax and the Texas Franchise Tax.<sup>3</sup>

In this Tax Alert we summarize the Tribunal's Order and offer some considerations for taxpayers.

### Tribunal Order

The Tribunal's Order details the methodology agreed upon by the taxpayer and the Department to arrive at the subtraction from AGI permitted under Ga. Code Ann. § 48-7-27(d)(1). The statute allows an individual resident who is a partner in a partnership, a member of a limited liability company (LLC), or the single member of an LLC disregarded for federal income tax purposes to "make an adjustment to federal adjusted gross income for the entity's income taxed in another state that imposes on the entity a tax on or measured by income."<sup>4</sup> In the Order, the Tribunal provided that the individual owner's subtraction should be calculated by:

1. Determining the Georgia taxable net income before apportionment of the flow-through entity,
2. Multiplying that amount by the flow-through entity's apportionment ratio in Texas and the District of Columbia for the tax year, and then
3. Multiplying the apportioned income for each jurisdiction by the individual owner's distributive share percentage of the owner's interest in the flow-through entity.<sup>5</sup>

Those amounts are then aggregated to arrive at the total subtraction amount.

### Considerations

Georgia individual resident taxpayers that currently or previously owned interests in flow-through entities subject to entity-level income taxes in other states should discuss the *Rosenberg* decision with their tax adviser, including the implications of the case on their current and prior Georgia returns. Taxpayers wishing to amend Georgia income tax returns to claim the subtraction must file their amended returns prior to the expiration of the applicable statute of limitations.

While the Order specifically addresses the application of the subtraction to the Texas Franchise Tax and the District of Columbia Franchise Tax, the subtraction may also potentially apply to other state entity-level income taxes. However, taxpayers should keep in mind that the Department has not provided guidance concerning which other

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<sup>1</sup> *Rosenberg v. Riley*, No. 1414626, Final Consent Order (Ga. Tax Trib. Jul. 13, 2015). For more information regarding the decision in *Rosenberg*, see our Tax Alert issued on February 11, 2015, available [here](#).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Ga. Code Ann. § 48-7-27(d)(1)(C). A similar adjustment applies to Georgia resident shareholders of Subchapter S Corporations where another state does not recognize an S Corporation. Ga. Code Ann. § 48-7-27(d)(1)(B). Note, however, that Ga. Code Ann. § 48-7-27(d)(1)(B) was not at issue in the Tribunal's decision in *Rosenberg*.

<sup>5</sup> *Rosenberg*, No. 1414626, Final Consent Order 3-4 (Ga. Tax Trib. Jul. 13, 2015).

flow-through, entity-level taxes it considers to be “on or measured by income” and could potentially challenge any portion of a subtraction modification related to an underlying tax regime not addressed in the Order.

## Contacts

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