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Income/Franchise:
Alabama Tax Tribunal Holds that Dividends Received from REIT Subsidiary Qualify for DRD for Financial Institution Excise Tax Purposes

Ameris Bank v. Dep't of Rev., Ala. Tax Trib. (2/9/17). The Alabama Tax Tribunal recently held that a banking corporation was entitled to a dividends received deduction (DRD) for Alabama financial institution excise tax purposes, because the real estate investment trust (REIT) subsidiary from which the dividends were received was considered a "corporation" organized and existing under Alabama law for the tax years at issue. The Alabama Department of Revenue had initially disallowed the deduction, claiming that the subsidiary could not be a real estate investment trust and also a "corporation" under Alabama law. However, the judge reasoned that because the REIT subsidiary at issue was organized under Alabama law in 1999, and was existing under Alabama law during the years in issue, "the deduction clearly applies by the plain language of the statute." In doing so, the judge explained that just because the subsidiary elected to operate and be taxed as real estate investment trust for federal and Alabama income tax purposes – and derived certain favorable tax treatment as a result – was "irrelevant" in determining whether the

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dividends received deduction under statute applied to the recipient banking corporation, commenting that "it is the role of the Alabama Legislature to amend a statute, not the courts."

Note that this Alabama Tax Tribunal order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m). Please contact us with any related questions.

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Income/Franchise:
Colorado Trial Court Holds IP Holding Company Has Substantial Nexus, But Disallows Department's Proposed Alternative Apportionment Method

Target Brands, Inc. v. Dep't of Revenue, Colo. Dist. Ct. (1/27/17). A Colorado district court recently held that an out-of-state holding company that licensed the use of its intellectual property (i.e., trademarks, tradenames, patents, copyrights, etc.) to its affiliate retailer nationwide, including within Colorado, was "doing business" in Colorado for state corporate income tax purposes. Such taxation was deemed permissible under the Commerce Clause because the holding company had substantial nexus with Colorado through its in-state licensing activities despite its lack of an in-state physical presence.

However, in determining how to apportion the holding company's income to Colorado, the trial court denied the Colorado Department of Revenue's (Department) utilization of a single-sales factor method based solely on a percentage of its affiliate retailer's in-state sales under the Department's discretionary authority to impose an alternative apportionment method – reasoning that while the standard statutory three-factor apportionment formula in effect during some prior tax years at issue may not fairly represent the extent of the holding company's in-state business activity under the statute's "costs of performance" sales factor sourcing mechanism, utilization of an alternate apportionment method must include the holding company's payroll and property. The trial court explained that in failing to consider the holding company's breadth of business activities – such as its substantial brand compliance, training, monitoring, management and protection efforts, including employees and property that helped create, enhance, and preserve the income that the Department seeks to tax – the Department's proposed alternative apportionment formula was *not* "reasonable." In doing so, the court concluded that including the holding company's payroll and property in any alternative apportionment formula was "necessary."

The court has now ordered the parties to "confer regarding the proper recalculation" of the assessments in accordance with this decision, requiring them to report back in 21 days, "following which time the court will enter final judgment." Please contact us with any questions.

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Income/Franchise:
Florida Department of Revenue Holds that Reinsurer Does Not Have Corporate Income Tax Nexus

Technical Assistance Advisements, TAA 17C1-001, Fla. Dept. of Rev. (1/13/17). The Florida Department of Revenue (Department) recently issued a technical assistance advisement (TAA) explaining that an out-of-state reinsurance company whose in-state parent company's location housed non-management staff employees of the reinsurance company's affiliate insurance companies did *not* have state corporate income tax nexus and thus did *not* have to file a Florida corporate income tax return, because the reinsurance company was not an approved reinsurer under Florida law and was not registered with the Florida Office of Insurance Regulation. Also, while the reinsurance company did reinsure some policies covering Florida risks of its affiliate insurance companies, none of these affiliates were domiciled or commercially domiciled in Florida, and it had used unrelated external reinsurers to set the pricing and terms of the coverage it provided for the affiliates. The Department additionally held that based on the provided facts and using the plain meaning of the applicable terms, none of the affiliate insurance companies was deemed to have a regional home office in Florida or was resident in Florida. Under the facts, the reinsurance company had neither property nor employees in Florida. A variety of functions were performed by the reinsurer's affiliate insurance companies at the parent company's Florida office location, including selling insurance; approval or rejection of coverage, within limitations; issuing insurance; and acting as a service center for policy holders. However, less than 5% of the affiliate insurance companies' underwriters were located in Florida, and they, like all of the other underwriters located outside Florida, could work on a Florida policy or a non-Florida policy based on the due date for completion of the underwriting activity.
URL: https://revenuelaw.floridarevenue.com/LawLibraryDocuments/2017/01/TAA-120906_17C1-001%20Redacted%20Summary.pdf

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Indirect/Sales/Use:
Arkansas: New Law Taxes Defined Specified Digital Products and Digital Codes

H.B. 1162, signed by gov. 2/7/17. Effective for tax years beginning on and after January 1, 2018, new law adds "specified digital products" and "digital codes" to those types of products and services subject to Arkansas sales and use tax. "Specified digital products" include digital audio works, digital audio-visual works, and digital books that are transferred electronically. More specifically, such taxation under this new law applies to specified digital products sold:
URL: http://www.arkleg.state.ar.us/assembly/2017/2017R/Acts/Act141.pdf

1. To a purchaser who is an end user; and
2. With the right of permanent use or less than permanent use granted by the seller regardless of whether the use is conditioned on continued payment by the purchaser;

As well as to digital codes defined as codes that:

1. Provide a purchaser with a right to obtain one or more specified digital products; and
2. May be obtained by any means, including email or tangible means, regardless of their designation as a song code, video code, or book code.

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Multistate Tax Alerts

What's new in the States? Our Multistate Tax Alerts highlight selected state tax developments relevant to taxpayers, tax professionals, and other interested persons. Read our more recent alerts below or visit the archive for ones you may have missed.

No new alerts were issued this period. Be sure to refer to the archives to ensure that you are up to date on the most recent releases.

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