



MULTISTATE INCOME/FRANCHISE TAX

South Carolina limits Department of Revenue use of combined reporting as alternative apportionment method Tax Alert

Overview

On March 11, 2024, South Carolina Senate Bill 298 ([S.B. 298](#)) was signed into law. S.B. 298 is effective immediately and applicable to all open tax periods, except assessments currently under judicial review. This legislation revises South Carolina law to define the process for when the South Carolina Department of Revenue (“Department”) may require a taxpayer to file a combined return as an alternative method to allocate and apportion income.

This Tax Alert summarizes the relevant provisions in S.B. 298.

Process for when the Department may require a combined return

- S.B. 298 requires the Department to request that a taxpayer furnish information reasonably necessary to determine whether income attributable to the taxpayer’s activities in the state is accurately represented given its intercompany transactions. A taxpayer must respond within 90 days of the date of the notice from the Department requesting the information.
- Following the review of the information requested from the taxpayer, S.B. 298 permits the Department to redetermine the state net income of the taxpayer if it determines that the taxpayer’s intercompany transactions lack economic substance or are not at fair market value. The Department may add back, eliminate, or adjust the intercompany transactions, or if these adjustments are inadequate to redetermine state net income, require the taxpayer to file a combined return including all members of its affiliated group that comprise a unitary business.

- The taxpayer's combined return is not deemed to be a return or construed as an agreement by the taxpayer that an assessment based on the return is correct or that additional tax is due. Additionally, either the Department or taxpayer may propose a combination of fewer than all unitary group members. However, the Department may not require a combination of fewer than all unitary group members without the taxpayer's consent.
- Alternatively, S.B. 298 allows the Department and the taxpayer to jointly determine and agree to an alternative filing methodology that fairly represents state net income. When doing so, the Department is not required to find that the taxpayer's intercompany transactions lack economic substance or are not at fair market value.
- When determining whether intercompany transactions of the taxpayer are at fair market value, S.B. 298 requires the Department to apply the standards contained in the regulations adopted under Internal Revenue Code ("IRC") section 482.
- S.B. 298 provides that when the Department requires the taxpayer to file a combined return, the taxpayer and members of the affiliated group must apportion their combined state net income using an apportionment formula that fairly represents the extent of their business activity in the state and which fairly reflects statutorily applicable apportionment formulas under South Carolina law.
- S.B. 298 prohibits the inclusion of the following entities in a combined return: (1) taxpayers not required to file a federal income tax return; (2) insurance companies other than captive insurance companies; (3) taxpayers exempt from taxation under IRC section 501; (4) foreign taxpayers (as defined under IRC section 7701), other than domestic branches; (5) taxpayers with at least 80% of their gross income from all sources for the tax year from active foreign business income as defined by the version of IRC section 861(c)(1)(B) in effect as of July 1, 2021; and, (6) entities not subject to tax under South Carolina law.

Other provisions

- S.B. 298 provides that a transaction or the series of transactions of which the transaction it is a part has economic substance if it has one or more reasonable business purposes other than the creation of state income tax benefits and has economic effects beyond the creation of state income tax benefits.
- The legislation requires the Department to issue a proposed assessment or refund upon making any redetermination following any adjustments to the taxpayer's state net income or requiring a combined return.
- The legislation provides that a taxpayer is subject to penalties if the taxpayer does not timely submit a combined return required by the Department.
- S.B. 298 allows a taxpayer to request in writing from the Department specific advice regarding whether a redetermination of their state net income or a combined return would be required under certain facts and circumstances. The Department must provide the specific advice within 120 days of the taxpayer's request.
- S.B. 298 provides a taxpayer with the right to appeal the Department's final determination to the South Carolina Administrative Law Court.

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