

SALT INSIGHTS

Jurisdiction: Minnesota
Tax Type: Income Tax
Issue: Minnesota Application Of Alternative Apportionment On LLC's
Date: July 6, 2018

SYNOPSIS:

The Minnesota Supreme Court recently held In *Associated Bank, N.A. and Affiliates v. Commissioner of Revenue, Minn.*, that the revenue commissioner could apply an alternative apportionment method under Minn. Stat. § 290.20, Subdivision 1, to include the interest from two affiliated limited liability companies (“LLCs”) loans in the sales factor, as well as the pro rata basis and the value of the two LLCs' loans in the property factor.

The Court concluded that the commissioner demonstrated through substantial evidence that the apportionment method applied by the taxpayer did not fairly reflect a part of the taxpayer's taxable net income apportionable to Minnesota. Central to the court's decision was the fact that gross receipts related to interest income earned entirely in Minnesota was excluded from the apportionment factor. Accordingly, the Court concluded that applying the general apportionment formula at the LLC level did not fairly reflect the taxpayer's activities in Minnesota.

In apportioning the taxpayer's income under the alternative method, the commissioner included each LLC member's pro rata share of its LLC's receipts and intangible property in the taxpayer's apportionment calculation on the premise that the “alternative” method more clearly reflected taxpayer's income derived from the LLCs' Minnesota business activities.

INSIGHT:

The Court's decision in *Associated Bank*, highlights the potential ability of taxpayers to aggressively structure (or restructure) their businesses for tax savings. However, while taxpayers can structure their business to allow for tax savings, most important is that taxpayer's structure fairly represents its business in the state as Minnesota may assert alternative apportionment methods. Contact SimekScott to discuss.

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