

## **Important Notice: Corporate Tax – Secretary Announces That New Statute Abrogated Prior Final Agency Decision**

On April 21, 2011, the North Carolina Department of Revenue issued Final Agency Decision No. 09 REV 5669, ruling that the gain from the sale of an out-of-state taxpayer's minority limited partnership interest was nonapportionable income that was allocable to the taxpayer's state of commercial domicile and therefore not subject to North Carolina's corporate income tax. The ruling held that the taxpayers' involvement with the limited partnership was one of a passive investor and that the taxpayer was not involved in the partnership's day-to-day operation nor was the income derived from the taxpayer's unitary business. Thus, under the then-governing North Carolina regulation, the gain was nonapportionable income allocable to the taxpayer's state of commercial domicile.

On August 11, 2017, Governor Roy Cooper signed into law Senate Bill 628 (S.L. 2017-204). Section 1.5(a) of the bill amended N.C. Gen. Stat. §105-130.4(a) to clarify that the definition of "apportionable income" means all income under the U.S. Constitution, including income that arises from transactions and activities in the regular course of business, or tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business.

As a result of the law change clarifying the definition of "apportionable income," the Department has determined that the Final Agency Decision issued in April 2011 is no longer the correct application of N.C. Gen. Stat. § 105-130.4. Accordingly, the Department will no longer follow Decision No. 09 REV 5669 for transactions occurring after the date of this Important Notice, but will apply N.C. Gen. Stat. § 105-130.4, as amended by S.L. 2017-204, to evaluate what items constitute apportionable income.

### **Assistance**

If you have any questions about this notice, you may call the North Carolina Department of Revenue Customer Interaction Center at 1-877-252-3052 (8:00 am until 5:00 pm EST, Monday through Friday), or write the Department at PO Box 1168, Raleigh, NC 27602.

*To the extent there is any change to a statute or regulation, or new case law subsequent to the date of this notice, the provisions in this notice may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance regarding the subject of this notice and issued prior to this notice conflict with this notice, the provisions contained in this important notice supersede the previous guidance.*