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Amended Regulation Reflects New Law Increasing the Likelihood of “Addback” of Intercompany Management Fees

Erica Horn and Stephen Sherman

On September 11, 2013, the Kentucky Department of Revenue amended regulation 103 KAR 16:230. The amended regulation reflects the new law set forth in 2013 H.B. 440, which tightens the exclusions for the addback of related party management fees. Pursuant to the amended statute and regulation, beginning with taxable years beginning on or after January 1, 2014, to prove entitlement to a deduction for management fees paid to related entities or foreign corporations, entities must disclose that the payment was subject to a net income tax or a franchise tax, measured by net income, in the state or country of commercial domicile of the recipient. If the recipient is a foreign corporation, the foreign nation must have an income tax treaty in force with the United States.

The amended regulation also requires corporations and pass-through entities directly or indirectly paying, accruing or incurring intangible expenses, intangible interest expenses or management fees to a related member or foreign corporation to attach Schedule RPC (Form number 41A720RPC) to their annual return in addition to all other disclosures previously required by the regulation. The Department is anticipating a significant increase in revenues based on the amended statute and regulation.