



This Week in State Tax (TWIST)

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Missouri: REIT Dividends Deductible in Determining Bank's Taxable Income

The Missouri Administrative Hearing Commission recently concluded that dividends received from a Missouri REIT were deductible in determining Missouri taxable income. The corporate taxpayer at issue was a bank that deducted distributions from a REIT on its Missouri consolidated corporate income tax returns. As part of an audit, the Missouri Department of Revenue removed the distributions from the calculation of the taxpayer's Missouri dividends received deduction on the basis that they were REIT dividends. The taxpayer protested, and the matter eventually came before the Commission.

Under Missouri law, a corporation is entitled to a subtraction for "to the extent included in federal taxable income, corporate dividends from sources within Missouri." There is no Missouri statutory definition of "dividends" or "corporate dividends," but Missouri law provides that terms used in the state statutes are to be given the same meaning as under federal law unless a different meaning is clearly required. The Commission noted that IRC section 316 defines dividends; this definition captured REIT dividends. IRC section 243, on the other hand, determines the circumstances under which a corporation may deduct dividends received. REIT dividends are not treated as dividends for purposes of IRC section 243. In an earlier Missouri Supreme Court case, *Dow Chemical*, the state's high court had held that it was the treatment of income as dividends that determined whether they were deductible. However, the Commission noted that the instant matter was not governed by *Dow*. In *Dow*, the issue around treatment was related to whether certain types of undistributed income that were not dividends should nevertheless be treated as dividends. In contrast, the REIT dividends were dividends under federal law; they simply were not deductible for federal purposes. Because the Missouri statute allows a deduction for corporate dividends not deductible under federal law, the Commission concluded that the statute was intended to capture dividends, like the REIT dividends, that could not be deducted from federal income. Please contact Derek Love with questions.

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