

Sales/Use/Indirect:

New York: Assets Procured from Acquired Company Deemed Taxable TPP Not Intangible Equity Interests

Determination DTA No. 828467, N.Y. Div. Tax App., ALJ Div. (2/4/21). An administrative law judge recently held that an online provider of financial market news and information that acquired another financial news media company owed state sales tax on the tangible personal property (consisting of tangible property and equipment) it obtained in the reorganization transaction as taxable purchases of assets. Under the facts, the underlying agreement generally provided that “all such equity interests and all assets” of the acquired company “are to be transferred” to the purchasing company. The taxpayer unsuccessfully claimed that the form and intent of its acquisition of the news media company was a transfer of the intangible equity interests of a limited liability company and therefore it merely had acquired nontaxable intangible equity interests rather than purchased the media company’s tangible assets. The judge rejected these taxpayer arguments for lack of clear and convincing evidence showing otherwise; however, the judge did concede in the taxpayer’s favor that some assets obtained in the acquisition – namely, certain custom software and leasehold improvements – were exempt or excluded from state sales taxation. Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/determinations/828467.det.pdf>

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