Income/Franchise:

New York: Taxpayer Must Include Royalty Payments Received from Foreign Affiliates in Tax Base

Decision DTA Nos. 827825, 827997 and 827998, N.Y. Tax App. Trib. (3/5/21). Similar to its ruling from last year involving another taxpayer [see *Decision DTA No. 828304*, N.Y. Tax App. Trib. (8/6/20) for details on this 2020 ruling], the New York Tax Appeals Tribunal (Tribunal) affirmed an administrative law judge ruling to hold that while certain payments received by a taxpayer from its foreign affiliates (as "related members" under the statute) constituted royalties, such intercompany royalty payments could not *be* excluded under a former statutory royalty exclusion in effect for the prior tax years at issue in computing the taxpayer's Article 9-A corporation franchise tax combined return "entire net income" (ENI). The taxpayer was thus required to include the royalties in its ENI. The Tribunal ruled that based on the overall statutory scheme of Tax Law former § 208(9)(o), the royalty income exclusion was not available to the taxpayer because the foreign affiliate related members were not subject to New York's corresponding royalty expense add-back provisions. The Tribunal also held that the former statutory royalty exclusion (*i.e.*, under Tax Law former § 208(9)(o)(3)) as applied did not discriminate against the taxpayer in violation of the dormant Commerce Clause. Please contact us with any questions.
URL: https://www.dta.ny.gov/pdf/decisions/827825.dec.pdf
URL: https://www.dta.ny.gov/pdf/decisions/828304.dec.pdf

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