

## Income/Franchise:

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

*Determination DTA No. 828259*, N.Y. Div. of Tax App., ALJ Div. (4/15/21). Referencing New York Tax Appeals Tribunal rulings from 2021 [see Decision DTA Nos. 827825, 827997 and 827998, N.Y. Tax App. Trib. (3/5/21) and *State Tax Matters*, Issue 2021-12, for details on the 2021 ruling] and 2020 [see Decision DTA No. 828304, N.Y. Tax App. Trib. (8/6/20) for details on the 2020 ruling] addressing similar circumstances and issues with other taxpayers, an administrative law judge (ALJ) recently concluded 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. On a related side matter, the judge noted that the taxpayer in this case properly accounted for certain prepaid royalties at issue in the year they were received, although this conclusion had no impact on the tax amounts finally determined. Please contact us with any questions.

**URL:** <https://www.dta.ny.gov/pdf/determinations/828259.det.pdf>

**URL:** <https://www.dta.ny.gov/pdf/decisions/827825.dec.pdf>

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210326\\_9.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210326_9.html)

**URL:** <https://www.dta.ny.gov/pdf/decisions/828304.dec.pdf>

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