Income/Franchise:
New York: Mandatory S Corp Elections Triggered and Results in Gains from IRC § 338(h)(10) Elections

DTA Nos. 828035, 828036, 828037 and 828038, N.Y. Tax App. Trib. (5/17/21). The New York Tax Appeals Tribunal (Tribunal) recently affirmed a New York Division of Tax Appeal ruling from 2019 involving Article 22 personal income taxes [see *Determination DTA Nos. 828035, 828036, 828037 and 828038*, N.Y. Div. of Tax App. (12/19/19) for more details on this 2019 ruling], which held that for the tax year at issue, S corporations owned by individual taxpayers (who had not made New York S corporation elections for such entities and so such entities were treated as C corporations for New York purposes) were required to file as New York S corporations because of the mandatory New York S corporation election under New York Tax Law § 660(i). This mandated election was triggered as the federal tax gains on deemed asset sales made in connection with Internal Revenue Code section 338(h)(10) elections were treated as "investment income" under the statute. Consequently, under the facts, the taxpayers were required to include the gain from the deemed sale of assets as income from a New York source, as applicable. The Tribunal therefore sustained the taxpayers' underlying Article 22 personal income tax notices of deficiency. Please contact us with any questions.
URL: https://www.dta.ny.gov/pdf/decisions/828035.dec.pdf
URL: https://www.dta.ny.gov/pdf/determinations/828035.det.pdf

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