

Income/Franchise:

New York Appellate Division Limits Application of Broker-Dealer Sourcing Rules to Certain Receipts

Case No. 531667, N.Y. App. Div. (3/10/22). The New York Appellate Division (Third Department) recently affirmed a 2020 New York Tax Appeals Tribunal decision denying the taxpayer's underlying Article 9-A Business Corporation Franchise Tax refund claim [see Decision DTA No. 827577, N.Y. Tax App. Trib. (3/24/20) for details on the 2020 ruling] to hold that a corporation, the sole member of two single member limited liability companies, only one of which was a registered broker-dealer, could *not* use New York's special broker-dealer customer-based sourcing rules in computing its business allocation percentage to source receipts from the other limited liability company that operated as an investment adviser and was not a registered broker-dealer. The corporation unsuccessfully had argued that because the broker-dealer limited liability company is disregarded and deemed a division under the federal "check-the-box" regulations (i.e., Treas. Reg. Secs. 301.7701-1 to 301.7701-3), the corporation could be deemed a registered broker-dealer and thus eligible to use the broker-dealer sourcing rules not only for its broker-dealer limited liability company but also for its investment adviser limited liability company.

URL: https://www.nycourts.gov/reporter/3dseries/2022/2022_01490.htm

URL: <https://www.dta.ny.gov/pdf/decisions/827577.dec.pdf>

See forthcoming Multistate Tax Alert for more details on this ruling, including some related taxpayer considerations.

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