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

Determination DTA No. 828091, N.Y. Div. of Tax App., ALJ Division (4/7/22). Referencing state caselaw on the subject, including New York Tax Tribunal rulings from 2020 and 2021 [see Decision DTA No. 828304, N.Y. Tax App. Trib. (8/6/20) and Decision DTA Nos. 827825, 827997 and 827998, N.Y. Tax App. Trib. (3/5/21) for more details on these two rulings], an administrative law judge with the New York Division of Tax Appeals held that certain royalty payments received by a taxpayer from its foreign affiliates (as "related members" under the statute) 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). Similarly, the judge also concluded 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. In doing so, the judge explained that based on the overall statutory scheme of Tax Law former § 208 (9)(o), the royalty income exclusion provision of one related member is conditioned on the application of the royalty add back by another related member, and that because the foreign affiliate related members were not subject to New York's corresponding royalty expense add-back provisions, the royalty exclusion provision was not available to the taxpayer. Lastly, the judge held that because the royalty payments at issue cannot be excluded from the taxpayer's federal taxable income in computing its entire net income, they may be included in the denominator of the receipts factor of its business allocation percentage. Please contact us with any questions.

URL: https://www.dta.ny.gov/pdf/determinations/828091.det.pdf
URL: https://www.dta.ny.gov/pdf/decisions/828304.dec.pdf
URL: https://www.dta.ny.gov/pdf/decisions/827825.dec.pdf

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