

## Income/Franchise:

### California OTA Addresses Treasury Function Receipts and Vendor Allowances in Sales Factor

OTA Case No. 18011340, Cal. Off. of Tax App. (3/17/22). In a recently published nonprecedential opinion involving a multinational retailer, the California Office of Tax Appeals (OTA) held that:

**URL:** [https://ota.ca.gov/wp-content/uploads/sites/54/2022/04/18011340\\_Bed-Bath-and-Beyond-Inc.\\_Opinion\\_031722wm.pdf](https://ota.ca.gov/wp-content/uploads/sites/54/2022/04/18011340_Bed-Bath-and-Beyond-Inc._Opinion_031722wm.pdf)

1. The company's receipts from its internal treasury function activities are not includible in the sales factor of its apportionment formula for the taxable years at issue; and
2. While some vendor allowances in this case may have constituted sales and thus been includable in the company's sales factor, the company failed to sufficiently document and substantiate the amount and types of allowances for each taxable year at issue.

Regarding the treasury function receipts, the OTA explained that the company failed to prove by clear and convincing evidence that excluding such receipts from the sales factor denominator would be distortive, and that its proposed alternative of including the treasury function receipts in the sales factor denominator was reasonable. In this respect, the company was deemed subject to the standard apportionment method of excluding the treasury function receipts from the sales factor pursuant to California Code of Regulations, title 18, (CCR) section 25137(c)(1)(D), "which was validly adopted." The OTA additionally acknowledged that while some vendor allowances at issue may have constituted additional compensation paid to the company for its unitary business of selling its vendors' tangible personal property (inventory/products) to its retail customers, "there may be some vendor allowances, such as for advertising, that might merit treatment as a sale of an intangible." According to the OTA, the "record is not sufficiently developed for us to make that determination here," and therefore it also denied the company's refund claim pertaining to vendor allowances. Please contact us with any questions.

— Christopher Campbell (Los Angeles)  
Principal  
Deloitte Tax LLP  
cwcampbell@deloitte.com

Kathy Freeman (Sacramento)  
Managing Director  
Deloitte Tax LLP  
katfreeman@deloitte.com

Shirley Wei (Los Angeles)  
Senior Manager  
Deloitte Tax LLP  
shiwei@deloitte.com

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