

Income/Franchise:

New York ALJ Holds for Broker-Dealer on Sourcing Certain Receipts from Marketing Fees

Determination DTA No. 829523, N.Y. Div. of Tax App., ALJ Division (4/28/22). An administrative law judge (ALJ) with the New York Division of Tax Appeals held that for Article 9-A business corporation franchise tax purposes, an online broker-dealer must source certain amounts denominated as a marketing fee (or aggregate fee) within and without New York based on the location of the banks that were required to pay the fee rather than based upon the location of its brokerage clients. Specifically, the ALJ held that certain fees that New Jersey-based banks paid to the broker-dealer for the use of large amounts of money and for various recordkeeping services should *not* be sourced to New York under Article 9-A broker-dealer sourcing rules, because the New Jersey-based banks constituted the “customers” rather than its brokerage clients. Under the facts, certain funds deposited by brokerage clients in a brokerage account with the broker-dealer were, at the end of each business day, automatically invested or deposited into a default “sweep vehicle” option known as an Insured Deposit Account (IDA), which moved the brokerage accounts’ cash to the New Jersey-based banks. After careful review of the factual record, the ALJ determined that the brokerage clients in these situations did *not* pay the broker-dealer the IDA fee and were not the “customers” for sourcing purposes. Accordingly, the ALJ granted the broker-dealer’s petition (except for unrelated penalties) and modified the underlying notice of deficiency. Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/determinations/829523.det.pdf>

— Don Roveto (New York)
Partner
Deloitte Tax LLP
droveto@deloitte.com

Mary Jo Brady (Jericho)
Senior Manager
Deloitte Tax LLP
mabrady@deloitte.com

Joshua Ridiker (New York)
Senior Manager
Deloitte Tax LLP
jridiker@deloitte.com

Jack Trachtenberg (New York)
Principal
Deloitte Tax LLP
jtrachtenberg@deloitte.com

Ken Jewell (Parsippany)
Managing Director
Deloitte Tax LLP
kjewell@deloitte.com

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