

Income/Franchise:

Texas Appellate Court Holds Only Net Proceeds from Selling Commodity Futures Includable in Sales Factor

Case No. 03-21-00111-CV, Tex. Ct. App. (8/24/22). A Texas appellate court (Court) affirmed a lower court ruling that only the net proceeds – not gross – from sales of commodity futures contracts and related options were includable in the taxpayer’s apportionment factor denominator for Texas franchise tax purposes, and, thus, the taxpayer was not entitled to a refund of taxes paid. Citing a previous ruling that involved a taxpayer with a similar issue now pending before the Texas Supreme Court [see Case No. 03-21-00011-CV, Tex. Ct. App. (10/14/21) and previously issued Multistate Tax Alert for more details on the earlier case], the Court explained that because the securities at issue were not treated as inventory of the taxpayer for federal income tax purposes, the receipts from selling the securities did *not* fall within the scope of Texas Tax Code section 171.106(f) (requiring gross proceeds from the sale of a loan or security treated as inventory for federal income tax purposes to be included for apportionment purposes). Therefore, according to the Court, only the net proceeds from the sale of those securities should be included for Texas apportionment factor purposes. Please contact us with any questions.

URL: <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=1d1f6201-77c4-41fd-a45c-72892055b56d&coa=coa03&DT=Opinion&MediaID=7e497163-fa18-4676-b25e-a600714920f7>

URL: <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=36216e3f-5f52-4110-8057-6ae353cade0f&MediaID=23b69909-ceca-437f-aaf2-d02142ce5a95&coa=%22%20+%20this.CurrentWebState.CurrentCourt%20+%20@%22&DT=Opinion>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-texas-court-appeals-affirms-net-proceeds-hedging-transaction-included-sales-factor.pdf>

— Robert Topp (Houston)
Managing Director
Deloitte Tax LLP
rtopp@deloitte.com

Grace Taylor (Houston)
Senior Manager
Deloitte Tax LLP
grtaylor@deloitte.com

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.