

Income/Franchise:

New York: Appellate Court Affirms Inclusion of Royalty Payments from Foreign Affiliates in Tax Base

Case No. 533572, N.Y. App. Div., 3d Dep't (3/16/23). The New York Supreme Court, Appellate Division, Third Department (Court) affirmed the New York Tax Appeals Tribunal's (Tribunal) ruling from 2021 [see Decision DTA Nos. 827825, 827997 and 827998, N.Y. Tax App. Trib. (3/5/21) and *State Tax Matters*, 2021-12, for more details on this earlier ruling], which held that certain royalty payments received by a taxpayer from its foreign affiliates could *not* be excluded for the tax years at issue under a royalty income exclusion provision in effect under prior law in computing the taxpayer's Article 9-A corporation franchise tax combined return "entire net income" (ENI). In doing so, the Court referenced its 2022 ruling involving another taxpayer with a similar royalty income issue [see *Case No. 532479*, N.Y. App. Div., 3d Dep't (10/20/22) and *State Tax Matters*, Issue 2022-43, for more details on this 2022 ruling], holding that it found "no reason to depart from our recent holding on this issue." Moreover, the Court rejected the taxpayer's argument that the Tribunal's interpretation of the royalty income exclusion (Tax Law § 208 [former (9) (o) (3)]) and the royalty expense addback (Tax Law § 208 [former (9) (o) (2)]) failed *Complete Auto's* internal and external consistency tests based on the combined impact of the royalty income exclusion and the royalty expense addback – holding that the overall taxation scheme passes both tests and does not offend the dormant Commerce Clause or foreign Commerce Clause. Please contact us with any questions.

URL: https://www.nycourts.gov/reporter/3dseries/2023/2023_01326.htm

URL: <https://www.dta.ny.gov/pdf/decisions/827825.dec.pdf>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210326_9.html

URL: https://www.nycourts.gov/reporter/3dseries/2022/2022_05898.htm

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/221028_3.html

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