

Income/Franchise:

Texas Supreme Court Reinstates Petition for Review in Sales Factor Case Involving Hedging Transactions

Case No. 21-0997, Tex. (denial of petition for review on 9/30/22, withdrawn; petition reinstated 4/21/23). The Texas Supreme Court (Court) has withdrawn its earlier order denying the taxpayer's petition for review while granting a taxpayer's motion for rehearing related to a previously filed petition for review concerning a Texas Court of Appeals decision from 2021, which held that only the net proceeds, not gross proceeds, from a taxpayer's sales of commodity futures were includable in its apportionment factor denominator for Texas franchise tax purposes [see Case No. 03-21-00011-CV, Tex. Ct. App. (10/14/21) and previously issued Multistate Tax Alert for more details on the 2021 decision]. The taxpayer's motion for rehearing (as filed on 11/16/22) asserts the Texas Court of Appeals' opinion was inconsistent with Texas Supreme Court precedent and gave too much deference to the Texas Comptroller. The Court has ordered briefing on the merits with an initial due date for the petitioner's brief on May 22, 2023. However, the Court has not yet granted review of the case; thus, the Court may still ultimately decline to grant taxpayer's petition for review following full briefing. We will continue to monitor this case's movement going forward. Please contact us with any questions.

URL: <https://www.txcourts.gov/supreme/orders-opinions/2023/april/april-21-2023/>

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 communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

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.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at www.deloitte.com.