

## Income/Franchise:

### New York ALJ Holds that Federal ITFA Preempts Taxation of Receipts from Certain Telecom Services

*Determination DTA No. 829240*, N.Y. Div. of Tax App., ALJ Div. (5/4/23). In a case involving a telecommunications company and its New York transportation and transmission corporate franchise tax liability under Tax Law § 184 for the prior audit years at issue (*i.e.*, 2008 through 2011), an administrative law judge (ALJ) with the New York Division of Tax Appeals held that the taxpayer's receipts from certain services constituted receipts from internet access services within the meaning and intent of the federal Internet Tax Freedom Act (ITFA) and, as such, the gross receipts from these services were preempted from taxation. In doing so, the ALJ reasoned that the telecom's services transmit information through the use of wires and fiber optics which are part of the interconnected network that provides consumers with access to the internet and that, without this technology, consumers would be unable to access the internet. By arguing otherwise, the ALJ stated that the New York Division of Taxation (Division) "has not addressed the ever-changing technological innovations that allow Internet access." The ALJ also explained that "technology is always evolving" and this evolution was not contemplated in drafting Tax Law § 184, and that for the Division to rely on language "drafted well before the Internet was conceived and applying such language to the current set of facts" was unpersuasive in this case. The ALJ noted that while Tax Law § 184 provides a full deduction for receipts from sales of interstate telecommunication services sold for ultimate consumption, this deduction did not apply to the receipts at issue because the telecom sold the underlying services to internet service providers (ISPs), which then sold the services to the end-users. Please contact us with any questions.

**URL:** <https://www.dta.ny.gov/pdf/determinations/829240.det.pdf>

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

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

Rick Heller (Morristown)  
Managing Director  
Deloitte Tax LLP  
rickheller@deloitte.com

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

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

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