

## Income/Franchise:

### New York: Receipts from Certain Buy/Sell Arrangements Cannot be Included in Receipts Factor

*Determination DTA No. 829399*, N.Y. Div. of Tax App., ALJ Div. (5/4/23). An administrative law judge (ALJ) with the New York Division of Tax Appeals rejected an oil and gas company's attempt to "gross up" its receipts factor in a case involving whether pursuant to Tax Law former §§ 210 (3) (a) or 210 (8), gross amounts attributable to the sale side of certain buy/sell arrangements entered into to acquire inventory or to reduce transportation costs may be included in the receipts factor of the company's business allocation percentage for purposes of New York's Article 9-A corporate franchise tax for tax years 2007 through 2010. In doing so, the ALJ concluded that the taxpayer's "sale side of the buy/sale transactions were not sales of tangible personal property constituting business receipts," and that the buy/sell transactions constituted an "exchange of inventory and not a sale of tangible personal property." Under the facts, for financial reporting purposes, any gain or loss on these buy/sell arrangements was considered to be an adjustment to the company's costs of goods sold rather than a "federal return line 1" receipt. The ALJ also noted that just because the sale side of the buy/sale transactions is included in entire net income (ENI) through a deduction for costs of goods sold, does not mean they are business receipts. Please contact us with any questions.

**URL:** <https://www.dta.ny.gov/pdf/determinations/829399.det.pdf>

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