

Income/Franchise:

New York: Single-Purpose Investment Entity is Excludable from Affiliates' Combined Return

Determination DTA No. 829540, N.Y. Div. of Tax App., ALJ Div. (7/27/23). An administrative law judge (ALJ) with the New York Division of Tax Appeals held that an Article 9-A corporate franchise tax combined filing group (the “taxpayer”) could exclude an affiliated single-purpose investment entity (the “subsidiary”) that was formed to hold only one asset (*i.e.*, a 50% partnership interest in a Pennsylvania partnership that owned a mall in Pennsylvania) from its combined return because during the prior tax years at issue (*i.e.*, the tax years ended June 30, 2008, and June 30, 2009), the facts showed:

URL: <https://www.dta.ny.gov/pdf/determinations/829540.det.pdf>

- There were not any substantial intercorporate transactions between the taxpayer and the subsidiary;
- The taxpayer and the subsidiary were not engaged in a unitary business; and
- Inclusion of the subsidiary in the taxpayer’s New York combined reports would result in distortion.

Accordingly, the ALJ held that the taxpayer correctly excluded the subsidiary from the New York combined reports that it filed for the tax years ended June 30, 2008, and June 30, 2009, and the New York Division of Taxation’s determination to include the subsidiary in the taxpayer’s combined returns for such years was improper. Please contact us with any questions.

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

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

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.