

## Income/Franchise:

### New York ALJ Says Investment Bank May Source Income from Securities Transactions Using Alternate Method

*Determination DTA Nos. 829218 and 829219*, N.Y. Div. of Tax App., ALJ Div. (8/31/23). In a 100+ page multi-issue ruling involving an investment bank challenging the New York Division of Taxation's (Division) application of a former version of New York's broker-dealer sourcing statute to its own set of facts and specific records to compute the business receipts factor of the business allocation percentage for Article 9-A corporate franchise tax combined filing purposes, an administrative law judge (ALJ) with the New York Division of Tax Appeals held that although it has been determined that the provisions of Tax Law former § 210(3)(a)(9) do not permit the investment bank to source its receipts based upon an approximation of the location of its underlying investors, the Division in this case must apply its statutory discretionary authority to source the receipts in such a manner. That is, rather than source such income to the location of the financial intermediaries and collective investment vehicles (collectively, "institutional intermediaries") themselves, the Division must source such income based on the location of the underlying investors of the institutional intermediaries directing the transactions. In doing so, the ALJ reasoned that the Division's allocation method "was very distortive because the Division's calculation of the receipts allocation factor grossly overstated, by a factor of three or four times, the results reached using an allocation method that reasonably approximates the location of the individual investors" (*i.e.*, the customers), which "results in an unconstitutional distortion of petitioner's income that does not accurately reflect how that income is generated." The reasonable approximation method approved by the ALJ was New York's share of the US Census data during the years at issue (6.48%). The ALJ also upheld the investment tax credits and related employment incentive credits claimed by the taxpayer for the years at issue for leasehold improvements and tangible property used in its investment banking, prime brokerage, and research departments. Please contact us with any questions.

**URL:** <https://www.dta.ny.gov/pdf/determinations/829218.det.pdf>

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