

## Income/Franchise:

### Texas Supreme Court Denies Petitions for Review in Multiple Cases Involving the Sales Factor Treatment for Sales of Securities

*Case No. 21-0997, Tex. (petition for review denied 11/10/23); Case No. 22-0790, Tex. (petition for review denied 11/10/23).* On November 10, 2023, the Texas Supreme Court (Court) denied two petitions for review where, in both cases, the Texas Court of Appeals previously held that only the net proceeds (as opposed to gross) from the sale of securities were includable in each respective taxpayer's sales factor denominator for Texas franchise tax purposes under Texas Tax Code s. 171.106(f) [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, and see Case No. 03-21-00111-CV, Tex. Ct. App. (8/24/22) and *State Tax Matters*, Issue 2022-34, for more details on the 2022 decision]. Such determination was made notwithstanding:

**URL:** <https://www.txcourts.gov/supreme/orders-opinions/2023/november/november-10-2023/>

**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>

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**URL:** <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=1d1f6201-77c4-41fd-a45c-72892055b56d&coa=coa03&DT=Opinion&MediaID=7e497163-fa18-4676-b25e-a600714920f7>

**URL:** <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=1d1f6201-77c4-41fd-a45c-72892055b56d&coa=coa03&DT=Opinion&MediaID=7e497163-fa18-4676-b25e-a600714920f7>

**URL:** [https://dhub.deloitte.com/Newsletters/Tax/2023/STM/220826\\_5.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/220826_5.html)

1. One of the taxpayers had elected the securities to be treated as inventory using mark-to-market accounting for federal tax purposes under Internal Revenue Code (IRC) sections 475(e) and 475(f), and
2. The other taxpayer's sales involved commodity hedges treated as inventory for federal tax purposes pursuant to IRC section 1221.

Please contact us with any questions.

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