

Income/Franchise:

Texas Court of Appeals Upholds Personal Property Apportionment Regulation

Case No. 03-21-00669-CV, Tex. Ct. App. (12/21/23). In a case challenging the apportionment of sales from certain types of fuel delivered to oceangoing foreign vessels, the Texas Third Court of Appeals (Austin) (“Court of Appeals”) affirmed the district court’s ruling and held the “place of transfer” or “location of delivery” regulation (*i.e.*, 34 Tex. Admin. Code section 3.591) as adopted by the Texas Comptroller of Public Accounts (“Comptroller”) was consistent with the corresponding Texas apportionment statute (*i.e.*, Texas Tax Code section 171.103). Specifically, the taxpayer argued the statute applies the franchise tax on the sale of personal property only where *the buyer is located in Texas* whereas the regulation applies the franchise tax on transactions where the seller ships or delivers the property to a buyer in Texas, *regardless of whether the buyer is located in state or out of state*. Ultimately, the Court of Appeals held the taxpayer failed to overcome the presumption that the Comptroller’s regulation was facially valid and constitutional. Please contact us with any questions.

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