

Income/Franchise:

New York: Taxpayers Ask US Supreme Court to Review Whether Royalty Payments from Foreign Affiliates Must be Included in Tax Base

Docket No. 24-333, US (petition for cert. filed 9/20/24); *Docket No. 24-332*, US (petition for cert. filed 9/19/24). In two separately filed petitions, two separate taxpayers are asking the US Supreme Court (Court) to review the New York Court of Appeals' recent decisions [see 2024 NY Slip Op 02127 (No. 34 and No. 35), N.Y. (4/23/24) and *State Tax Matters*, Issue 2024-17, for more details on the two earlier decisions] affirming that while certain payments received by the taxpayers from their respective foreign affiliates constituted royalties, such royalty payments could *not* be excluded under a former statutory royalty exclusion in effect for the prior tax years at issue in computing their respective Article 9-A corporation franchise tax combined return entire net income. In one filed petition, the taxpayer is asking the Court whether "a state tax law that on its face treats royalty income derived from corporate affiliates less favorably if the affiliates do not subject themselves to the state's jurisdiction facially discriminates against interstate and foreign commerce." In the other filed petition, the taxpayer is asking if a state may impose a "heads I win, tails you lose" regime that "taxes either side of an interstate or foreign transaction, depending on which side has a nexus to the state, even though such a regime would inherently disadvantage interstate and foreign commerce if it were replicated by every jurisdiction." Please contact us with any questions.

URL: <https://www.supremecourt.gov/Search.aspx?FileName=/docket/docketfiles/html/public\24-333.html>

URL: <https://www.supremecourt.gov/Search.aspx?FileName=/docket/docketfiles/html/public\24-332.html>

URL: https://nycourts.gov/reporter/3dseries/2024/2024_02127.htm

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240426_3.html

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