

## Income/Franchise:

### New York: Tribunal Affirms that Single-Purpose Investment Entity is Excludable from Affiliates' Combined Return

*Decision No. 829540*, N.Y. Tax App. Trib. (1/23/25). Affirming a 2023 administrative law judge (ALJ) ruling [see *Determination DTA No. 829540*, N.Y. Div. of Tax App., ALJ Div. (7/27/23), and *State Tax Matters*, Issue 2023-32, for more details on the 2023 ALJ ruling in this case], the New York State Tax Appeals Tribunal (Tribunal) held that an Article 9-A corporate franchise tax combined filing group (the “taxpayer”) could exclude an affiliated single-purpose investment entity (the “subsidiary”) from its combined return during the prior tax years at issue (*i.e.*, for the tax years ended June 30, 2008, and June 30, 2009), because the facts showed:

URL: <https://www.dta.ny.gov/pdf/decisions/829540.dec.pdf>

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

URL: [https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230811\\_6.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230811_6.html)

1. A lack of substantial intercorporate transactions between the taxpayer and subsidiary;
2. The taxpayer and subsidiary were not engaged in a unitary business; and
3. The subsidiary's inclusion would result in distortion.

Under the facts, the subsidiary was formed to hold only one asset (*i.e.*, a 50% partnership interest in a Pennsylvania partnership that owned a Pennsylvania shopping mall) and was neither a New York business nor did it do business in New York. Furthermore, all other parties related to the Pennsylvania shopping mall were located and acted outside New York. The Tribunal also noted that any oversight exercised by members of the taxpayer's group over the subsidiary was minimal and “the occasional oversight that a parent gives to any investment in a subsidiary does not support a finding of a unitary business.” Accordingly, the Tribunal agreed that the New York Division of Taxation's determination to include the subsidiary in the taxpayer's combined returns for the years at issue was improper. Please contact us with any questions.

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

Don Roveto (New York)  
Partner  
Deloitte Tax LLP  
[droveto@deloitte.com](mailto:droveto@deloitte.com)

Mary Jo Brady (Jericho)  
Senior Manager  
Deloitte Tax LLP  
[mabrady@deloitte.com](mailto:mabrady@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](http://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](http://www.deloitte.com).