STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **ENTERPRISE HOLDINGS, INC.** for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Tax Years Ended July 31, 2020 and July 31, 2021.	:	DETERMINATION DTA NO. 852168

Petitioner, Enterprise Holdings, Inc., filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under article 9-A of the Tax Law for the tax years ended July 31, 2020 and July 31, 2021.

On May 22, 2026, petitioner, by its representative, Abrams Tax Law LLC (Jeremy Abrams, Esq., of counsel), brought a motion seeking summary determination in its favor in the above-referenced matter pursuant to section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. The Division of Taxation, appearing by Amanda Hiller, Esq. (Lydia N. Filewych, Esq., of counsel), filed a response to the motion by the extended due date of July 22, 2026, and cross moved for summary determination in its favor. Petitioner filed its reply by August 21, 2026, which date commenced the 90-day period for the issuance of this determination.

Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Kevin R. Law, Administrative Law Judge, renders the following determination.

ISSUES

I. Whether petitioner properly included receipts from sales of its rental vehicles in its business apportionment factor for corporation franchise tax purposes.

II. Whether the retroactive application of 20 NYCRR 4.2-1 to petitioner's income from vehicle sales in calculation of the business apportionment factor constitutes a due process violation.

FINDINGS OF FACT

1. Petitioner, Enterprise Holdings, Inc., is headquartered in St. Louis, Missouri, and does business throughout the United States.

2. Petitioner's business activities include the daily rental of motor vehicles under the Enterprise Rent-A-Car, Alamo and National Car Rental brands and the long-term leasing of motor vehicles.

3. Petitioner has three major sources of revenue: revenue from the daily rental of vehicles under the Enterprise Rent-A-Car, Alamo and National Car Rental brands; the long-term leasing of vehicles under the Enterprise Fleet Management brand; and the sale of vehicles used in its rental and leasing operations.

4. In filing its New York corporate franchise tax returns, petitioner sourced rental revenues to the various states based on the branch location renting the vehicle to the customer; long-term leasing revenues to the various states based on the location of the customer leasing the vehicle; and vehicle sales revenues to the various states based on the location of the individual purchasing the vehicle.

5. When computing its New York business apportionment factor (BAF) with respect to its vehicle sales, petitioner included gross proceeds from New York sales in the numerator of its

BAF and gross proceeds from everywhere sales in the denominator.[1]

6. On audit, the Division of Taxation (Division) recomputed petitioner's BAF for both tax years by substituting net gains for gross proceeds in both the numerator and the denominator. This adjustment resulted in additional corporation franchise tax and metropolitan transportation business tax surcharge (MTA surcharge) in the amount of $413,529.00. The Division's audit report specifically refers to the Commissioner's regulation at 20 NYCRR 4-2.1 as the authority for such adjustment.

7. On July 18, 2025, the Division issued to petitioner notice of deficiency, notice number L-062221708, asserting additional tax and MTA surcharge in the amount of $413,529.00, plus interest, for the tax years ended July 31, 2020 and July 31, 2021 (notice).

8. On September 30, 2025, petitioner filed a petition with the Division of Tax Appeals contesting the notice.

9. On December 10, 2025, the Division filed its answer to the petition, and on December 29, 2025, petitioner filed a reply.

10. On May 22, 2026, petitioner brought the instant motion seeking summary determination in its favor alleging, inter alia, that 20 NYCRR 4-2.1 as applied to it is irrational and alternatively that said regulation, enacted on December 27, 2023, cannot be applied retroactively to apportion petitioner's income from vehicle sales using a net gains methodology. Included with petitioner's motion papers was the purported affirmation of petitioner's representative, Jeremy Abrams, Esq., dated May 21, 2026, with attached exhibits, including the

[1] With respect to its sales of vehicles used in its rental and leasing operations, petitioner reported such sales on federal form 4797, Sales of Business Property; the net gain from such sales was then included on line 9 of petitioner's federal forms 1120 for the years in issue.

affidavit of Adam Wilsing, a senior tax manager, corporate accounting with petitioner.[2]

11. On July 21, 2026, the Division filed a response in opposition to petitioner's motion for summary determination and moved for summary determination in its favor arguing that the subject regulation is consistent with how income from petitioner's vehicle sales is reported for federal tax purposes and the apportionment scheme in Tax Law § 210-A. Included with the Division's response and cross-motion is the affirmation of Lydia Filewych, Esq., dated July 21, 2026, with attached exhibits, including the affidavit of Kulwinder Hira, a Tax Auditor II with the Division, sworn to on July 10, 2026.

12. At the time petitioner filed its returns for the tax years ended July 31, 2020 and July 31, 2021, there was no publicly available draft, proposed, final or adopted regulation requiring taxpayers to use net gains instead of receipts to source tangible personal property for corporate franchise tax purposes.

13. The Division released four draft regulations addressing the apportionment of income from sales of tangible personal property between September 30, 2016, and November 8, 2019. Each draft was issued before petitioner filed its corporate franchise tax returns for the years at issue.

14. Each of the drafts provided for a receipts-based method of apportioning income from sales of tangible personal property. None of those drafts included any provision requiring or directing the use of a net gains methodology for such income, nor did they include any example applicable to car rental businesses.

15. On July 1, 2022, the Division released a draft regulation that included language

[2] The language contained in the purported affirmation submitted by Mr. Abrams does not comply with the requirements of Civil Practice Law and Rules (CPLR) 2106 and State Administrative Procedure Act § 302 (4) and has been accorded no evidentiary value, except to the extent said facts can be independently ascertained from the contents of the exhibits attached thereto.

addressing net gains from the sale of tangible personal property and an example applicable to car rental businesses.

16. On July 25, 2023, the Division issued proposed regulations that included the net gains language and the car rental business example.

17. On December 11, 2023, the Division adopted the final regulation, 20 NYCRR 4-2.1, which included the net gains language and the car rental business example.

CONCLUSIONS OF LAW

A. A motion for summary determination is properly granted "if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party" (20 NYCRR 3000.9 [b] [1]).

B. Section 3000.9 (c) of the Rules of Practice and Procedure of the Tax Appeals Tribunal provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212. "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853 [1985], citing ***Zuckerman v City of New York***, 49 NY2d 557, 562 [1980]). As summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is "arguable" (***Glick & Dolleck v Tri-Pac Export Corp.***, 22 NY2d 439, 441 [1968]; ***Museums at Stony Brook v Village of Patchogue Fire Dept.***, 146 AD2d 572, 573 [2d Dept 1989]). If material facts are in dispute, or if contrary inferences may be drawn reasonably

from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (***see Gerard v Inglese***, 11 AD2d 381, 382 [2d Dept 1960]). "To defeat a motion for summary judgment, the opponent must . . . produce 'evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim'" (***Whelan v GTE Sylvania***, 182 AD2d 446, 449 [1st Dept 1992], citing ***Zuckerman v City of New York***, 49 NY2d at 562). After careful review of the motion papers submitted by each party, and as acknowledged by the parties, there are no material facts in dispute; instead, it must be determined whether, in computing petitioner's BAF with respect to its income from vehicle sales, net gains are utilized or whether the BAF is computed using petitioner's vehicle sales receipts.

C. Article 9-A of the Tax Law provides that domestic corporations and foreign corporations doing business, employing capital, owning or leasing property, maintaining an office or deriving receipts from activity in New York are subject to the corporation franchise tax unless specifically exempted from the tax or subject to other New York franchise taxes (***see*** Tax Law § 209 [1]). Corporate taxpayers pay tax on the highest of three alternative bases (***see*** Tax Law §§ 210 [1]; 210-C [1] [a]). Taxpayers compute the tax measured by the business income base by multiplying such business income base by the tax rate specified in Tax Law § 210 (1) (a) (***see*** Tax Law § 210-C [1] [a]). The present dispute centers on how a corporate taxpayer apportions its business income to New York, specifically that portion of its business income consisting of net gains from sales of rental vehicles. Petitioner's original filings apportioned income from vehicle sales to New York based upon New York gross proceeds in the numerator and everywhere receipts in the denominator of the BAF. It is petitioner's position that this allocation is consistent with the statute and that the Division's interpretation is irrational.

In this regard, subsection 1 of Tax Law § 210-A provides that:

> "Business income and capital shall be apportioned to the state by the apportionment factor determined pursuant to this section. The apportionment factor is a fraction, determined by including only those receipts, net income, net gains, and other items described in this section that are included in the computation of the taxpayer's business income (determined without regard to the modification provided in subparagraph nineteen of paragraph (a) of subdivision nine of section two hundred eight of this article) for the taxable year. The numerator of the apportionment fraction shall be equal to the sum of all the amounts required to be included in the numerator pursuant to the provisions of this section and the denominator of the apportionment fraction shall be equal to the sum of all the amounts required to be included in the denominator pursuant to the provisions of this section."

Subsection 2 (a) of Tax Law § 210-A directs how income from sales of tangible personal property is to be included in the numerator and denominator of the BAF, as follows:

> "Receipts from sales of tangible personal property where shipments are made to points within the state or the destination of the property is a point in the state shall be included in the numerator of the apportionment fraction. Receipts from sales of tangible personal property where shipments are made to points within and without the state or the destination is within and without the state shall be included in the denominator of the apportionment fraction."

D. Conversely, the Division asserts that the apportionment factor for petitioner's income from sales of motor vehicles is properly computed utilizing the net gains from such sales as net gains are the income stream that is subject to apportionment. At issue is the Division's regulation at 20 NYCRR 4-2.1, which provides in relevant part, as follows:

> "(a) Receipts and net gains (not less than zero) from the sale of tangible personal property are included in New York receipts if paragraph (1), (2), or (3) of this subdivision applies. All receipts and net gains (not less than zero) from the sale of tangible personal property are included in everywhere receipts.
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> (e) Examples.
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> Example 2: Corporation A operates a car rental business in New York State and elsewhere in the United States. To keep its inventory up-to-date

> and make room for newer models, Corporation A sells some of its fleet of cars every year. The net gain (not less than zero) from these sales, which is properly reported as business income, shall be apportioned to New York State to the extent that the final destination of the cars sold is in New York. 100% of the net gains (not less than zero) are included in everywhere receipts. However, the amount included in New York receipts is limited to the amount included in everywhere receipts."

Here, while Example 2 in the regulation is directly on point, the regulation is inconsistent with the plain wording of Tax Law § 210-A (2) (a) and, therefore, is not accorded any deference (***see Matter of Greig***, Tax Appeals Tribunal, September 16, 1999). Section 210-A (2) clearly provides that receipts from New York sales of tangible personal property are included in the numerator of the BAF and everywhere receipts are included in the denominator. The statute does not state net gains are utilized in computing the BAF with respect to sales of tangible personal property, nor does the statute differentiate between tangible personal property that is inventory and tangible personal property that is a capital asset. As pointed out by petitioner, where the Legislature chose to utilize net gains for purposes of the BAF, it specifically did so (***see*** Tax Law § 210-A (2) (d) [income from sales of real property apportioned using net gains]). Thus, the deficiency must be cancelled. Having determined that the regulation is invalid as applied to petitioner, its assertion that application of same is a due process violation has been rendered moot.

E. The motion of Enterprise Holdings, Inc., for summary determination is granted, the petition of Enterprise Holdings, Inc., is granted, the Division of Taxation's cross-motion for summary determination is denied and the notice of deficiency, dated July 18, 2025, is cancelled.

DATED: Albany, New York
November 19, 2026

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE