State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 23, 2026 CV-25-0480

In the Matter of SUNOCO, INC. (R&M) COMBINED AFFILIATES, Now Known as SUNOCO (R&M), LLC, et al.,
Petitioner,
v

TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK et al.,
Respondents.

MEMORANDUM AND JUDGMENT

Calendar Date: June 1, 2026

Before: Clark, J.P., Fisher, Powers, Mackey and Corcoran, JJ.

Reed Smith LLP, New York City (*Aaron M. Young* of counsel), for petitioner.

Letitia James, Attorney General, Albany (*Frederick A. Brodie* of counsel), for Commissioner of Taxation and Finance, respondent.

Fisher, J.

Proceeding pursuant to CPLR article 78 (initiated in this Court pursuant to Tax Law § 2016) to review a determination of respondent Tax Appeals Tribunal denying petitioner's request for a refund of corporate franchise tax imposed under Tax Law article 9-A.

Petitioner is principally engaged in the business of petroleum refining and marketing, and chemical manufacturing, with a headquarters in Pennsylvania. Through its related entities, part of petitioner's business includes transporting, storing, buying and selling petroleum products, and managing thousands of miles of oil pipelines and related facilities. During the years 2007 through 2010 (hereinafter the years at issue), petitioner engaged in "buy/sell transactions" in order to reduce transportation costs or acquire a grade and volume of oil that matched its customer's needs in a location where it did not otherwise have a ready supply. In a typical buy/sell transaction, petitioner bought oil from a third-party petroleum dealer, with delivery at a location near petitioner's customer. Concurrently, the third-party petroleum dealer ordered the same volume and grade of oil from petitioner, with delivery at a location desired by that dealer. The oil that petitioner purchased from the third-party petroleum dealer did not remain in inventory and was immediately sold to the customer, at a price set by petitioner. These buy/sell transactions were reduced to written agreements, which included a "net-out" provision, under which petitioner and the third-party petroleum dealer agreed to pay the other the net difference between the value of the oil sold or received within a given month.

Under the taxation scheme in effect during the years at issue, a corporation's annual franchise tax would be reported based on one of four alternative bases, including, as relevant here, the "entire net income" (hereinafter ENI) allocated to New York (Tax Law former § 210 [1] [a]). The portion of a corporation's ENI that was taxable in New York was determined using the business allocation percentage (hereinafter BAP) (*see* Tax Law former § 210 [3] [a]). The BAP was calculated by, among other things, using a formula that was comprised of a fraction, comparing a numerator equal to a taxpayer's business receipts derived from doing business in New York with a denominator equal to a taxpayer's total business receipts from its business both within and without New York (*see* Tax Law former § 210 [3] [a]; 20 NYCRR former 4-4.1 [a]).

On its respective franchise tax returns for the years at issue, petitioner originally calculated its BAP by *excluding* the amounts attributed to the sell side of petitioner's buy/sell transactions from both the numerator and denominator of the receipts factor (i.e., the oil that petitioner sold to third-party petroleum dealers in the buy/sell transactions), and only including the profits derived from petitioner's resale to its end customers (i.e., the oil that petitioner bought from third-party petroleum dealers and resold). Based on this approach, the original BAP for each year at issue ranged from approximately 10% to 13%. Thereafter, petitioner filed amended state tax returns for each of the years at issue, this time *including* the amounts attributed to the sell side of the buy/sell transactions in both the numerator and denominator, as well as the profits yielded from the resale to end customers. Since most of these transactions occurred outside of New York and therefore had the effect of increasing the denominator, petitioner's amended BAP ranged from approximately 8% to 9%. As a result, petitioner's amended tax returns for the years at issue sought a total refund of approximately $2.6 million, plus statutory interest.

Following an audit, the Department of Taxation and Finance (hereinafter the Department) denied petitioner's refund requests. Petitioner filed petitions for redetermination with the Division of Tax Appeals (hereinafter the Division). For each year at issue, an Administrative Law Judge (hereinafter ALJ) determined that, when considering the buy/sell transactions in their entirety, the buy/sell agreements that petitioner engaged in were exchanges of inventory and not receipts from sales of tangible personal property, and therefore the sell side amounts could not be included as business receipts when computing petitioner's BAP. Thus, the ALJ sustained the denial of the petitions for redetermination. Petitioner filed exceptions with respondent Tax Appeals Tribunal, which affirmed the ALJ's determination. One commissioner dissented, viewing the sell side of the buy/sell transactions as constituting actual sales and not inventory exchanges, which he opined were properly included as business receipts in petitioner's BAP. This CPLR article 78 proceeding ensued, and we now confirm.

Judicial review of tax proceedings is limited, thus the Tribunal's determination will be upheld "if it has a rational basis and is supported by substantial evidence, even if the record could reasonably support another result" (*Matter of Apple, Inc. v Tax Appeals Trib. of the State of N.Y.*, 204 AD3d 1173, 1175 [3d Dept 2022] [internal quotation marks and citation omitted]). When "[a]pplying the substantial evidence standard, the question is not whether the reviewing court finds the proof convincing, but whether the agency could do so" (*Matter of Black v New York State Tax Appeals Trib.*, 41 NY3d 131, 144 [2023] [internal quotation marks, ellipses, brackets and citations omitted]). The taxpayer bears the burden of establishing its entitlement to a tax refund or credit (*see* Tax Law § 1089 [e]; 20 NYCRR 3000.15 [d] [5]; *Matter of Ciardullo v McDonnell*, 241 AD3d 45, 48 [3d Dept 2025]; *Matter of We Care Transp. v Tax Appeals Trib. of State of N.Y.*, 298 AD2d 717, 719 [3d Dept 2002]).

Corporations conducting "business in New York must pay an annual franchise tax" (*Matter of Walt Disney Co. & Consol. Subsidiaries v Tax Appeals Trib. of the State of N.Y.*, 42 NY3d 538, 544 [2024], *cert denied* ___ US ___, ___, 145 S Ct 1125 [2025], citing Tax Law art 9-A). During the years at issue, the annual franchise tax was generally based on a corporation's ENI, which was presumed to be the same as its federal ENI (*see* Tax Law former § 208 [9]; *Matter of Stewart's Shops Corp. v New York State Tax

Appeals Trib., 172 AD3d 1789, 1790 [3d Dept 2019]). Where, like here, a corporation's BAP was calculated using a receipts factor, which compared business receipts attributable to New York divided by the company's total business receipts from all sources (*see* Tax Law former § 210 [3] [a] [2]), the term "business receipts" was defined as "gross income received in the regular course of the taxpayer's business, provided such receipts are includible in the computation of the taxpayer's [ENI] for the taxable year" (20 NYCRR former 4-4.1 [a]). The Department has the discretion to exclude a factor or make adjustments to expenses, purchases or contract values if it determines that the resulting BAP does not properly reflect the taxpayer's activity, business, income or capital in New York (*see* Tax Law former § 210 [8]). In doing so, the Department may look beyond the specific form that a given transaction takes and consider the overall plan or purpose of the taxpayer, thus "treat[ing] the steps in a series of separate but related transactions involving the transfer of property as a single transaction, if all the steps are substantially linked" (*GKK 2 Herald LLC v City of N.Y. Tax Appeals Trib.*, 154 AD3d 213, 222 [1st Dept 2017] [internal quotation marks and citation omitted] [analyzing the application of the step transaction doctrine in New York decisional law], *lv denied* 32 NY3d 905 [2018]; *see Matter of Brooks v Tax Appeals Trib. of State of N.Y.*, 196 AD2d 140, 143-144 [3d Dept 1994]; *see generally Barnes Group, Inc. & Subsidiaries v Commissioner of Internal Revenue*, 593 Fed Appx 7, 9 [2d Cir 2014]; *True v United States*, 190 F3d 1165, 1174-1175 [10th Cir 1999]).

Here, petitioner contends that the Tribunal erred in determining that the buy/sell transactions were inventory exchanges and that the sell side did not constitute "sales" within the meaning of Tax Law former § 210 (3) (a) (2) (A), and, therefore, were not includible in its BAP calculations. We are not persuaded. In response to an inquiry by the tax auditor reviewing the subject tax refund petitions, petitioner's controller and chief accounting officer described the buy/sell transactions as "exchange agreements" under which petitioner's "physical crude [was] exchanged with third parties" and "viewed as exchanges under the book accounting rules." This is further consistent with the unambiguous terms of the buy/sell agreements, which created a reciprocal agreement between petitioner and the third-party petroleum dealer. Although petitioner claims that each side of the buy/sell transactions were recorded in petitioner's books as separate transactions – i.e., one sale and one purchase – petitioner ultimately treated the receivables from the purported sales as "negative costs of goods sold" and reported them as "cost of goods sold" on its federal tax form 1065, as opposed to "gross receipts or sales." Given that any value derived from the purported sales was zeroed out at the end of each month – either because an equivalent value in oil was exchanged or due to a net-out agreement – inclusion of the zeroed-out value from the buy/sell transactions on petitioner's federal tax documents does not render the sell side of the transactions business receipts includible in petitioner's ENI for the relevant tax years (*see* 20 NYCRR former 4-4.1 [a]). As further recognized by the auditor, this practice is consistent with how petitioner had previously reported buy/sell transactions in their apportionment calculations on their corporate tax returns in two other states – including in Texas, an industrial leader in oil and gas law in the United States (*see Bullock v Marathon Oil Co.*, 798 SW2d 353, 357 [Tex Ct of Appeals, Austin 1990] [rejecting challenge to long-standing interpretation that excluded oil exchanges between oil companies from gross receipts]).

A different outcome is not required under the Tribunal's determination in *Matter of CS Integrated, LLC* (2003 WL 22827169, *10-11, 2003 NY Tax LEXIS 295, *26-28 [NY St Div of Tax Appeals DTA No. 817548, Nov. 20, 2003], *confirmed* 19 AD3d 886 [3d Dept 2005]). Although petitioner is correct that some of the factors used in evaluating whether a sale had occurred under *Matter of CS Integrated* also exist in this case, the transactions at issue are materially different. Unlike here, *Matter of CS Integrated* did not include a reciprocal exchange of inventory between the taxpayer and the other company, but rather consisted of one company disgorging its entire inventory to the taxpayer. While there was an agreement that the company would exclusively purchase the inventory back at cost plus a carrying charge, the taxpayer was free to sell the inventory to third parties. Whereas here, the buy/sell agreements mandated that a purchase by petitioner result in an equal purchase by the third-party petroleum dealer. The other provisions of the buy/sell agreements further ensured a monthly balancing between petitioner and the third-party dealer in terms of both the volume and cost (i.e., the net-out provision) – such guaranteed conditions which did not exist in *Matter of CS Integrated*.

Even if we were to accept petitioner's contention that the challenged transactions constituted independent "sales" and should have been included in the receipts factor computation of its BAP, this does not resolve the issue that counting both the sell side and the end sale to the customer becomes an inaccurate reflection of petitioner's economic activity in New York (*see* Tax Law former § 210 [8]). Petitioner's explanation that counting both sales is an accurate reflection and not "double-counting" because the transactions involve different property (i.e., oil), different parties (i.e., third-party petroleum dealer and end customer) and independent consideration, simply justifies the Tribunal's determination that the purpose of the series of steps in the buy/sell transactions was to serve the overall plan of fulfilling orders to its end customer – not generally sales between petroleum dealers. Contrary to petitioner's contention, courts in New York have accepted the Tribunal's authority to invoke the step transaction doctrine (*see GKK 2*

Herald LLC v City of N.Y. Tax Appeals Trib., 154 AD3d at 223), and have otherwise "look[ed] beyond the specific form that a given transaction takes to determine whether a sale consisting of several [transactions] is in reality a single gains tax transaction" (*Matter of Brooks v Tax Appeals Trib. of State of N.Y.*, 196 AD2d at 143; *see Matter of Von-Mar Realty Co. v Tax Appeals Trib. of State of N.Y.*, 191 AD2d 753, 755 [3d Dept 1993], *lv denied* 82 NY2d 655 [1993]; *Matter of Exchange Plaza Partners v City of New York*, 159 AD2d 333, 334 [1st Dept 1990], *lv denied* 76 NY2d 702 [1990]). When looking at the entirety of the transactions through the lens of the step transaction doctrine, particularly considering the characterization of petitioner's controller and chief accounting officer, the language of the buy/sell agreements and the overarching purpose to reduce transportation costs by acquiring oil near the end customer, we conclude that the Tribunal's determination that petitioner had failed to meet its burden of proving entitlement to the claimed refunds is rational and supported by substantial evidence in the record (*see Matter of Global Cos. LLC v New York State Tax Appeals Trib.*, 227 AD3d 1197, 1202 [3d Dept 2024], *lv denied* 43 NY3d 904 [2025]; *Matter of Strata Skin Sciences, Inc. v New York State Tax Appeals Trib.*, 225 AD3d 953, 955 [3d Dept 2024], *lv denied* 42 NY3d 906 [2024]; *see also GKK 2 Herald LLC v City of N.Y. Tax Appeals Trib.*, 154 AD3d at 225). Accordingly, we discern no basis with which to disturb the Tribunal's determination. We have considered the parties' remaining contentions and have found them to be without merit or rendered academic.

Clark, J.P., Powers, Mackey and Corcoran, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:

Robert D. Mayberger

Robert D. Mayberger
Clerk of the Court