



This Week in State Tax (TWIST)

September 8, 2025



Minnesota: State Supreme Court holds alternative apportionment correctly applied to hedging transactions

The Minnesota Supreme Court recently addressed whether the Commissioner of Revenue (Commissioner) correctly applied an alternative apportionment method for a taxpayer's receipts from forward exchange contracts (FECs), which were a hedging technique used by the taxpayer to protect outstanding balances from foreign currency exchange risks.

The taxpayer was a multinational company conducting business in various foreign countries, as well as in Minnesota. While most of the taxpayer's sales were generated outside the U.S., all operations of the taxpayer were unitary. Due to its foreign operations, the taxpayer regularly had balances on its books that were denominated in foreign currencies that ultimately needed to be converted into U.S. dollars. These outstanding balances were subject to foreign currency fluctuation risks based on the volatility of the foreign currency exchange market. To mitigate that risk, the taxpayer engaged in FEC transactions, which were legally binding contracts whereby one party agreed to sell a currency in exchange for a different currency at an agreed future date at a fixed, negotiated exchange rate. On the date the FEC expired, the taxpayer paid the other party a set amount of currency in exchange for a set amount of dollars according to the contracted exchange rate. To satisfy the FEC, the taxpayer bought the foreign currency it owed from a third party at the daily market rate, which can result in either a loss or a gain for any particular transaction.

In filing its returns, the taxpayer included the gross receipts from all FEC transactions in the sales factor for apportionment purposes. The taxpayer was audited and assessed tax as the result of an adjustment in which the Commissioner used an alternative apportionment formula that included only the net receipts, rather than the gross receipts, from the FEC transactions in the sales factor. The taxpayer appealed to the Minnesota Tax Court, which affirmed the use of the alternative apportionment method. The taxpayer then appealed to the Minnesota Supreme Court.

Minnesota applies a singles sales factor apportionment method; the sales factor includes "all sales, gross earnings, or receipts received in the ordinary course of the business" with certain enumerated exceptions. Minnesota law permits the Commissioner to deviate (or for the taxpayer to request to deviate) from the general apportionment method if it does not "fairly reflect all or any part of taxable net income allocable to this state." The court noted that even though the FEC transaction receipts were earned in the ordinary course of the taxpayer's business, the FEC transactions and the taxpayer's other business activities were qualitatively different from

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each other. In the court's view, the FEC transactions supported the taxpayer's access to foreign markets in which it conducted its primary science, technology and related businesses. The taxpayer was not a hedge fund or financial institution, and receipts from FECs were qualitatively different from those arising from its principal businesses. Additionally, the court held that the Commissioner met his burden of proof in applying alternative apportionment. Here, the court focused on the fact that if the taxpayer included all gross receipts in the denominator of the sales factor, as the taxpayer had filed, it would result in an "...extraordinary volume of gross receipts from FEC transactions in the Everywhere Sales denominator..." which would produce a "quantitative distortion." The FEC transactions often amounted to more than 70 percent of the taxpayer's gross receipts but less than five percent of its profits. Finding that the inclusion of the gross receipts from FEC transactions diluted the taxpayer's Minnesota tax liability and did not show the full extent to which the taxpayer operated within the state, the Supreme Court affirmed the Tax Court decision in favor of the Commissioner. Contact [Dale Busacker](#) with questions about [E. I. duPont de Nemours & Co. v. Commissioner of Revenue](#).

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