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TaxNewsFlash

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New York State: Qualified emerging technology company determination does not apply at combined group level

An Administrative Law Judge (ALJ) for the New York Division of Tax Appeals addressed whether certain taxpayers were "qualified emerging technology companies" (QETCs) so that they were able to use the 6.5% corporate rate applicable to qualified New York manufacturers for the 2012-2014 tax years at issue.

Background

The taxpayer, an affiliated group of companies providing video, high-speed data, and digital voice services to both residential and business customers, filed its New York combined returns using the 6.5% rate applicable to QETCs. After an audit, the Division determined that the group was not a QETC and applied the regular 7.1% rate.

Under New York law for the tax years at issue, a "qualified emerging technology company" was a "qualified New York manufacturer" eligible for the reduced tax rates. There were two separate methods by which a party could be classified as a qualified New York manufacturer.

- Method One, specifically measured a combined group's activities
- Method Two, which was applicable to QETCs, did not specifically state that the combined group's attributes must be considered together

The taxpayer argued that the attributes of combined group members must be aggregated and considered together to meet the criteria of being a QETC. Not doing so, the taxpayer argued, was antithetical to the concept of combined reporting, which treats a unitary business as a single taxpayer.

ALJ decision

After first determining that the statutory provision at issue in this case was to be construed most strongly against the government and in favor of the taxpayer, the ALJ noted that the matter was governed by the rules of statutory construction. Notably, the two methods utilized to classify a taxpayer as a "qualified New York

manufacturer" were in the same section of the tax law. The statutory text for Method One clearly and unambiguously articulated that a combined group may qualify as a "qualified New York manufacturer" and the test for that method was applied based on the combined group's entire gross income aggregated across all members of the group.

In contrast, the Method Two language did not articulate that a combined group's attributes, in particular all of its various component entity physical locations, must be used to meet the required criteria. Instead, the location of each individual entity needed to be considered. In the ALJ's view, the legislature's failure to include language similar to that in Method One in the statutory section describing Method Two was deliberate.

Furthermore, the ALJ noted that other statutes addressing the criteria in Method Two referred to a singular "company" for the proper application of the QETC test and likewise did not articulate that a combined group's characteristics must be used to meet the qualifications of that test. Having reached this conclusion, the ALJ rejected the taxpayer's alternative argument that if the combined group did not qualify as a QETC, then the Division must be required to calculate the application of the QETC beneficial rate for the individual entities of petitioners' combined group that separately qualify as a QETC and provide the taxpayers the amount of those benefits. In the ALJ's view, separately breaking out individual component companies of a combined taxpayer would appear to create distortion.

KPMG observation

As an ALJ determination, this decision is not precedential. However, an exception to the determination may be filed with the Tax Appeals Tribunal and the outcome of that appeal would be precedential.

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