

Income/Franchise:

New York: Telecom's Combined Group Fails to Establish it is a Qualified Emerging Technology Company

Determination DTA No. 829691, N.Y. Div. of Tax App., ALJ Division (12/1/22). In a case involving a telecommunications company and its affiliates filing Article 9-A New York combined returns for the 2012, 2013, and 2014 tax years at issue and reporting corporation franchise tax due on the entire net income base, an administrative law judge (ALJ) with the New York Division of Tax Appeals held that the combined group failed to show it was a "qualified emerging technology company" (QETC) under New York's Public Authorities Law and thereby eligible to utilize the reduced tax rate for qualified New York manufacturers (which included QETCs by definition for the years at issue). In doing so, the ALJ reasoned that applicable state statutes refer to a singular "company" for the proper application of the "qualified emerging technology company" test and do *not* articulate that a combined group's characteristics be aggregated and used together to meet the qualifications of that test as was argued by the taxpayer. ALJ determinations are not precedential or binding on other taxpayers and may be appealed to the New York State Tax Appeals Tribunal. Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/determinations/829691.det.pdf>

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