

Income/Franchise:

New York: Combined Group Fails to Establish that it Qualified for Reduced Corporate Income Tax Rate

Determination DTA Nos. 829739 and 829740, N.Y. Div. of Tax App., ALJ Division (3/16/23). In a case involving a multinational manufacturing company and its affiliates (Taxpayer) filing Article 9-A New York combined returns for the 2010 through 2015 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 State Division of Tax Appeals (Division) held that the combined group was not a qualified New York manufacturer (QNYM) or a qualified emerging technology company (QETC), which through tax year 2013 was treated as a QNYM and used the same income tax rate as a QNYM; therefore, the Taxpayer could not utilize the reduced corporate income tax rate applicable to QNYMs. While the Taxpayer did not dispute the fact that it did not satisfy the property requirement under the statute to qualify as a QNYM, it contended that it met the alternative definition of QNYM because it was a QETC. However, the ALJ ruled that pursuant to applicable state statutes and other relevant guidance, each member of a combined group must meet the definition of a QETC in a separate capacity for the entire combined group to qualify. The ALJ reasoned that because each member of the combined group at issue did not qualify as a QETC in a separate capacity, the combined group was not eligible to file as a QETC for the 2010-2013 years at issue. The ALJ also sustained penalties imposed for substantial understatement of tax on the deficiency for the 2013, 2014 and 2015 tax years (the 2010-2012 tax years involved refund claims), holding that reasonable cause does not exist where a taxpayer chooses to ignore the mandates of the statute (for the 2014 and 2015 tax years) and previously released New York Department of Taxation and Finance guidance (for the 2013 year). The Taxpayer also raised Constitutional arguments regarding the QNYM in-state property requirement, but the ALJ did not address these as the Division lacks jurisdiction to consider facial validity challenges of statutes. Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/determinations/829739and829740.det.pdf>

— Don Roveto (New York)
Partner
Deloitte Tax LLP
droveto@deloitte.com

Jack Trachtenberg (New York)
Principal
Deloitte Tax LLP
jtrachtenberg@deloitte.com

Mary Jo Brady (Jericho)
Senior Manager
Deloitte Tax LLP
mabrady@deloitte.com

Ken Jewell (New York)
Managing Director
Deloitte Tax LLP
kjewell@deloitte.com

Jeremy Sharp (Washington, DC)
Senior Manager
Deloitte Tax LLP
jesharp@deloitte.com

Josh Ridiker (New York)
Senior Manager
Deloitte Tax LLP
jridiker@deloitte.com

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