

COA Opinion: Subsidiaries required to consolidate gross receipts with the business activity of parent, a tax exempt entity, for purposes of determining eligibility for small business tax credit

7. April 2010

On April 6, 2010, the Court of Appeals published a per curiam opinion in the consolidated cases of *One's Travel Ltd v Dep't of Treasury*, No. 287254 and *Data Tech Services Inc*, No. 287255. Plaintiffs are for profit Michigan corporations that are subject to taxation under the Single Business Tax Act (SBTA), MCL § 208.1 *et seq.* Plaintiffs are subsidiaries of a state chartered credit union that is exempt from taxation under the SBTA. The SBTA has a small business tax credit that reduces the single business tax liability of an entity whose "gross receipts" do not exceed a certain threshold amount.

For an entity that is part of (1) an affiliated group, (2) a controlled group of corporations, or (3) an entity under common control, the individual entity qualifies for the tax credit only if the aggregated "business activities" of all the entities in the group does not exceed the threshold amount. The Court of Appeals concluded that the subsidiaries and the tax exempt credit union formed an "affiliated group". The Court of Appeals also determined that the credit union has business activity because it transfers property and performs services within Michigan with the object of benefit to others. Because the consolidated gross receipts exceed the threshold amount, the subsidiaries do not qualify for the tax credit. The Court of Appeals affirmed the court of claims' ruling in favor of the Michigan Department of Treasury.