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MoFo New York Tax Insights

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Taxpayer's Testimony Fails to Establish Non-Residency

By Irwin M. Slomka

In yet another reminder of the hurdles that individuals face in New York statutory residency audits, a New York State administrative law judge has held that a Connecticut domiciliary with an apartment in New York City, who worked in Manhattan, failed to prove that he was not present in New York City for more than 183 days, and was therefore a New York State and City statutory resident. *Matter of Thomas P. and Kathleen H. Puccio*, DTA No. 822476 (N.Y.S. Div. of Tax App., Jan. 27, 2011).

The petitioner and his wife were domiciled in Weston, Connecticut. They also owned a cooperative apartment in Manhattan. The petitioner worked as a lawyer in Manhattan. For the 2003 tax year, he filed a New York State non-resident return reporting that he was present in New York State for 115 days, and paying New York State tax on his New York source income (there is no New York City tax on non-resident individuals). The Department audited the return and concluded that he was a statutory resident of both New York State and City.

The parties agreed that the petitioner was present in New York City for 111 days, and outside for 80 days, leaving 174 days in dispute. At the administrative hearing held in 2010, the petitioner testified regarding his whereabouts on each of those 174 days, aided principally by credit card charges and, to a lesser extent, by

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E-ZPass statements. Among the more complicating facts that the petitioner had to overcome were:

- There were various credit card charges in New York City on days the petitioner testified he was outside New York and that he testified were charges made by others.
- E-ZPass statements covering four E-ZPass tags for the petitioner's account that showed travel into and out of New York City on certain days when the petitioner testified that he was not in the vehicle and that the travel involved his driver or his former law partner.
- There were several FedEx shipments from the petitioner's Manhattan law office on days that he testified he was not in the office.

In addition to the petitioner's testimony, several affidavits were submitted into evidence. One was from the general manager of a restaurant at the Manhattan club that the petitioner belonged to, stating that restaurant credit card charges on particular days did not necessarily mean the member was at the restaurant that day. Affidavits from a pharmacy, hardware store and liquor store in Connecticut provided details about particular days. An affidavit from a Manhattan video store owner stated that, to the best of his recollection, the petitioner never made in-person payments at the store, rebutting in-City credit card charges made by the petitioner at that store.

The ALJ found that the petitioner proved he was outside New York State and City on only 65 of the 174 days in dispute. As a result, there remained 109 undocumented days which, when added to the 111 days the petitioner admitted to being in the City, necessarily meant he was present in the State and City for 220 days during the year, in excess of the 183-day threshold, and was therefore a statutory resident of New York State and City.

THE FACT THAT THE PETITIONER HAD CREDIT CARD CHARGES IN CONNECTICUT "[DID] NOT NECESSARILY MEAN THAT [HE] COULD NOT HAVE ALSO BEEN IN NEW YORK CITY THE SAME DAY."

In weighing the facts, the ALJ observed:

- Notwithstanding that the petitioner's pattern of conduct was to stay in Connecticut on weekends, based on the proximity of his home in Connecticut to his New York City office and co-op apartment, the fact that the petitioner had credit card charges in Connecticut "[did] not necessarily mean that [he] could not have also been in New York City the same day." This conclusion relates to apparent discrepancies in which there were charges in both Connecticut and New York City on the same day.
- The ALJ gave little probative value to affidavits that did not provide a basis for certain conclusory statements regarding particular dates. The ALJ even gave reduced weight to an affidavit that contained typical language that it was made "to the best of [the affiant's] recollection." The ALJ also noted the absence of testimony or an affidavit of the petitioner's law office assistant, who had notarized other affidavits in evidence.
- As for the E-ZPass records, the ALJ found that the absence of third party testimony or affidavits explaining why the New York City bridge and tunnel toll charges made on four different E-ZPass tags were not made by the petitioner compelled him to conclude that the petitioner was present in the vehicle on every day on which a New York City charge appeared.

As to the weight given to the petitioner's testimony, the ALJ concluded:

> [The facts discussed above,] along with the proximity of petitioner's Connecticut home to the cooperative apartment and law office in New York City and the frequent travel between his Connecticut residence and New York City, diminish the weight to be given to petitioner's testimony, especially where it contrasts with the documentary evidence.

Additional Insights. This is the first ALJ decision involving a petitioner's burden of proof on the day-count issue since the Tax Appeals Tribunal's decision in *Matter of Julian H. Robertson*, DTA No. 822004 (N.Y.S. Tax App. Trib., Sept. 23, 2010). In *Robertson*, the Tribunal held that there need not be a definitive document establishing one's whereabouts on every day, and that the evidence should be evaluated based on a combination of testimony in light of surrounding events which aid the person in recalling the events on a particular date. One hurdle in *Puccio* was the sheer number of apparent conflicts between the documentary evidence and the petitioner's truthful, but sometimes unspecific, testimony. Moreover, while *Robertson* involved only a handful of disputed days, in *Puccio* there were 174 disputed days. This necessarily imposes a much greater burden on a petitioner when testifying about his or her whereabouts on specific days several years earlier.

The *Puccio* decision may yet be appealed to the Tax Appeals Tribunal.

New Unit in A.G.'s Office to Pursue Tax Claims Under False Claims Act

By Hollis L. Hyans

New York State's new Attorney General, Eric T. Schneiderman, who took office on January 1, 2011, recently announced the formation of a Taxpayer Protection Unit ("TPU"), which will target corrupt contractors, pension con-artists, and "large-scale tax cheats." A.G. Schneiderman announced that he expects the new TPU to "leverage" the increased powers – and the huge financial incentives offered to private "whistleblowers" – provided by the 2010 amendment to the state's False Claims Act, which added to the arsenal of the Attorney General the power to "crack down on large-scale, multi-state corporate tax fraud schemes."

New York's False Claims Act, in existence only since 2007, allows the Attorney General to recover treble damages, plus penalties, attorneys' fees and costs, from anyone found to have submitted a "false claim" for money or property to state government. A "false claim" is "any request or demand … for money or property … made to any … agent of the state or a local government …" which is "false or fraudulent." State Finance Law §§ 188(1) and (2). While the statute originally barred claims based on violations of the tax laws, the 2010 amendment removed that bar, and the statute now covers claims under both state and local tax law if the person or entity pursued has annual "net income or sales" of at least $1 million, and the "damages pleaded" by the plaintiff exceed $350,000. State Finance Law § 189(4).

The law also allows private citizens to bring actions. State Finance Law § 190(2). These are referred to as *qui tam* suits, based on a Latin phrase often translated as "who as well for the king as for himself sues in this matter." Any person may bring such an action, although a plaintiff is required to first serve the complaint and all material evidence on the Attorney General. The complaint and evidence are sealed for a minimum of 60 days, to allow the State Attorney General to investigate, and to provide a copy to the local government if a violation of local tax law is also alleged. The Attorney General must then investigate and consult with the Commissioner of Taxation, and the local official if a local claim is raised, and can then decide to take over the action by filing a complaint, or can intervene in the action, or can decline to participate, in which case the *qui tam* action proceeds as between two private parties – the whistleblower and the accused. While a *qui tam* action cannot proceed if it is based on allegations that are already the subject of a pending administrative action, the statute provides that the Attorney General may pursue other remedies, including administrative proceedings, which would appear to authorize actions to proceed in the Division of Tax Appeals even if a *qui tam* action was already proceeding in court. State Finance Law §§ 190(5)(c), (9)(a). It is also important to note that the statute of limitations for initiating a *qui tam* action is 10 years, meaning that an action must be brought no later than 10 years after the date on which the challenged act was committed. State Finance Law § 192(1).

THE ATTORNEY GENERAL EXPECTS THE NEW TPU TO "LEVERAGE" THE INCREASED POWERS -- AND THE HUGE FINANCIAL INCENTIVES OFFERED TO PRIVATE "WHISTLEBLOWERS" -- [UNDER THE AMENDED] FALSE CLAIMS ACT

The statute holds out the possibility of dramatic financial rewards to the *qui tam* plaintiff, who stands to receive a percentage of the amount for which a defendant is ultimately held liable. That amount is not simply the unpaid tax, since a defendant found to have committed a violation can be held liable for three times the amount of damages sustained, plus penalty of between $6,000 and $12,000 for each violation. State Finance Law § 189(1). Out of this trebled amount, the whistleblower may receive between 10 and 25 percent of the proceeds if the Attorney General converts the *qui tam* action into an Attorney General enforcement action or elects to intervene, and between 25 and 30 percent of the proceeds if the action goes forward without the State or local government as a party. State Finance Law § 190(6). The court may also award costs, expenses, disbursements and attorneys' fees to a prevailing government or private party, over and above the proceeds.

Additional Insights. It is entirely possible that the expanded False Claims Act will lumber along without any noticeable activity for many years. It is also possible, given the $10 billion deficit faced by the State, and the financial rewards to whistleblowers, that it will result, quite soon and quite dramatically, in a barrage of claims and high-profile lawsuits. By forming the new TPU, the Attorney General has signaled that he intends to devote resources to investigating and pursuing such claims. The standard for invoking the law – a defendant with $1 million in sales, and potential damages of over $350,000 – is a modest threshold and one sure to be met by virtually any medium-sized company on most state tax issues. The ability of *qui tam* plaintiffs to obtain cash rewards of as much as 30 percent of the full amounts paid,

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including treble damages and penalties, is a strong incentive that may induce lawsuits involving many state tax issues that otherwise may never have seen the light of day, possibly arising from claims by disgruntled former employees who have been downsized out of jobs. Remarkably, even if the court finds that the person who brings the action was involved in planning or *initiating* the violation, that person may still receive a financial reward, unless convicted of criminal conduct, although the court "*may*" (not "must") reduce that person's share of the proceeds "to the extent the court considers appropriate." State Finance Law § 190(8). Plaintiffs' law firms' websites already invite contacts from those with knowledge of "tax fraud," mentioning as possible grounds for suit such scenarios as concealing off-shore accounts, claiming improper exemptions, failing to remit sales taxes that have been collected, or hiring workers off the books, and at least one firm provides a form for potential plaintiffs to fill out and send back electronically.

There are many unanswered questions regarding how this new broadened law will apply to taxpayers who have filed tax returns claiming particular positions. For example, there is no requirement that a specific intent to defraud be proved, only that the person acted "knowingly" in filing the alleged false claim. While mistake and "mere negligence" are excluded (State Finance Law § 188(3)(b)), the reach and applicability of state tax statutes is often a highly disputed issue. Will companies be found to have filed false claims "knowingly" if they are aware, at the time they take a position on a return, that the Department of Taxation and Finance takes a contrary position on an issue? Will it matter if there is full disclosure? Does this mean a taxpayer that seeks to challenge a regulation – which can be set aside by the courts if it exceeds the scope of a statute – could face a claim that it "knowingly" violated the law if it loses? Would a taxpayer be better off not even requesting formal guidance in an unclear area, and proceeding with its position in the absence of any rules, in order to avoid a claim later that it acted "knowingly" if it receives adverse guidance that it believes is incorrect? And if so, is that really good tax policy?

EVEN IF THE COURT FINDS THAT THE PERSON WHO BRINGS THE ACTION WAS INVOLVED IN PLANNING OR *INITIATING* THE VIOLATION, THAT PERSON MAY STILL RECEIVE A FINANCIAL REWARD

Another of the many open questions involves the 10-year statute of limitations, which runs from the date of the alleged violation. That time period is much longer than the ordinary statute of limitations in New York, which is generally three years, with the possibility of extension to six years if there has been a substantial understatement. By the time a *qui tam* claim surfaces, records may well have been destroyed in the ordinary course of business, and any provision for a potential assessment may have been removed from a company's financial statements as the standard statute of limitations closed.

The possibility of such suits also raises a disturbing question about privacy. New York's tax law contains strict protections for taxpayer secrecy. For example, hearings on tax matters held at the Division of Tax Appeals are closed to the public, and there is no public record that a case is even being litigated unless and until an Administrative Law Judge decision is entered. Here, once a complaint has been unsealed, which may be as soon as 60 days after filing, it will presumably be publicly available, giving *qui tam* plaintiffs another potential threat to hold over the heads of potential defendants.

According to information provided by the Attorney General's office, the 2007 version of the statute, which did not apply to tax claims, gave rise to recovery of "hundreds of millions of dollars," primarily involving Medicaid claims. While the new expansion of the statute to cover tax claims may well result in a similar barrage of lawsuits, it will be some time before we know whether the complicated nature of state tax filings, the lack of clarity in tax provisions, and the many procedural questions lead to a different, and perhaps less straightforward, result in the tax area.

ALJ Vacates Demand for Bill of Particulars

By Hollis L. Hyans and Rebecca M. Ulich

In *Matter of Aquifer Drilling & Testing, Inc. and Rexrode, Jr.*, DTA Nos. 823592 & 823593 (N.Y.S. Div. of Tax App., Jan. 27, 2011), a New York State Administrative Law Judge vacated in full the petitioners' demand for a bill of particulars, after finding that the only party that must provide particulars is the party that must prove those matters at trial, and here, as in nearly every tax case, the petitioners bear the burden of proof.

The petitioners in *Aquifer Drilling* were assessed over $4 million in sales tax. The petitioners provide information

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ALJ Vacates Demand for Bill of Particulars

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regarding real property to engineers, and the engineers then use the information to perform engineering services for the real property owners. In their petition, the petitioners described their services as nontaxable information services and argue that their services do not involve taxable servicing of real property, since neither the petitioners nor the engineers own the property, and allege that even if they are found to be servicing real property, their services would be nontaxable sales for resale because the engineers sell petitioners' services to the real property owners. In its answer, the Department alleged that petitioners service real property and, therefore, are subject to sales tax. In response to the Department's answer, the petitioners served a demand for a bill of particulars, asking the Department to specify "the factual and legal basis" for its allegation that the petitioners' business "'made sales of tangible personal property and/or enumerated services that were subject to tax….'" (Citation omitted.) The Department filed a motion to vacate the demand as overly broad.

BILLS OF PARTICULARS ARE INTENDED TO CLARIFY ISSUES AND *NOT* TO OBTAIN EVIDENCE OR INFORMATION ABOUT A PARTY'S LEGAL INTERPRETATIONS OF THE CASE

In vacating the demand in full, the ALJ did not address the Department's claim that the demand was overly broad. Instead, the ALJ began by noting that bills of particulars are permitted in Division of Tax Appeals proceedings to prevent surprise at hearings and to limit the scope of proof. Therefore, bills of particulars are intended to clarify issues and *not* to obtain evidence or information about a party's legal interpretations of the case. The ALJ then observed that generally a party only needs to particularize the matters that it must prove and, since in DTA proceedings there is a presumption that a notice of determination is correct, when challenging a determination, the petitioner bears the burden of proof. Further, the ALJ noted that, even if the Department were required to respond to the demand, the Department had already specified the basis of the assessment and the detail and clarity of the petitioners' petitions established that they fully comprehend the Department's position. Therefore, the ALJ found that there was no question that petitioners had sufficient information to prepare a defense to the assessed deficiencies and would not be surprised or disadvantaged at a hearing without the requested particulars.

Additional Insights. Bills of particulars can serve as useful tools in obtaining necessary facts that strengthen a party's case. However, since the petitioner usually bears the burden of proof in tax appeals proceedings, a petitioner is generally not in a position to compel the Department to respond, unless the Department has raised affirmative defenses as to which it bears the burden of proof. In *Aquifer Drilling*, the ALJ found that a bill of particulars was not necessary where the Department has laid out its basis for its assessment in its answer.

Parties should also be aware of the short 20 or 30 day deadlines associated with demands for bills of particulars. Although the ALJ did not analyze the issue, the petitioners argued that the Department should be precluded from presenting evidence on the matters raised in the bill of particulars demand because the petitioners argued that the Department did not respond to the demand within the applicable time limits. Despite the petitioners' proof that they had mailed their demand within the required time period, the Department claimed not to have received it. Because the ALJ found that the Department was not required to serve the bill of particulars, he simply rejected the petitioners' argument that the Department's motion to vacate the demand was untimely.

Non-Profit's 99-Year Lease Insufficient for Property Tax Exemption

By Kara M. Kraman

The Appellate Division, Second Department, affirming a New York City Tax Commission decision, has held that a not-for-profit organization with a 99-year lease on real property is not eligible for the property tax exemption available to non-profits under Real Property Tax Law ("RPTL") § 420-a. *Matter of Al-Ber, Inc. v. New York City Dep't of Finance*, No. 2009-11875 (2d Dep't, Jan. 25, 2011).

Petitioner Al-Ber, Inc. is a not-for-profit organization exempt from federal income taxation that operates an Islamic school on real property located in New York City. In 2001, Petitioner entered into a 99-year lease for the property, under which it was responsible for all real estate taxes on the property. Petitioner also had an exclusive option to purchase the property through 2016.

In 2005, Petitioner applied to the City Department of Finance for a real estate tax exemption available under RPTL § 420-a.

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Non-Profit's 99-Year Lease Insufficient for Property Tax Exemption

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Under that provision: "Real property *owned* by a corporation or association organized or conducted exclusively for religious, charitable, hospital, [or] educational . . . purposes . . . and used exclusively for carrying out thereupon one or more of such purposes . . . shall be exempt from taxation. . . ." (Emphasis added.) Petitioner claimed that it was entitled to the exemption by reason of the 99-year lease and the exclusive option to purchase the property, the exercise of which would give it legal title to the property. The Department, and later the New York City Tax Commission, denied the exemption.

On appeal, the Appellate Division first noted that tax exemptions are strictly construed against taxpayers, and that a taxpayer must demonstrate that its interpretation of the statute is "'the only reasonable construction.'" (Citation omitted.) The Court held that the petitioner did not prove it was entitled to the exemption since it did not own the real property, as required under the law, notwithstanding the length of the lease and that the petitioner was required to bear the tax.

The court's ruling, while unsurprising, is a reminder that for a non-profit organization to qualify for exemption from property tax, it must hold *legal title* to the property. While a 99-year lease with an option to purchase may be tantamount to ownership, it does not satisfy the unambiguous ownership requirement under RPTL § 420-a.

Budget Bill Would Reduce Dormancy Periods for Unclaimed Property

By Amy F. Nogid

Governor Andrew Cuomo campaigned on a "no new tax" platform and his recently proposed Executive Budget upholds his promise. However, while keeping his pledge to hold the line on taxes, included in the "Revenue Actions" section of the Governor's proposed budget is a provision that would shorten various dormancy periods on several property types covered by New York's Abandoned Property Law ("APL") from five or six years to three years. These changes are estimated to raise $55 million and $70 million in revenue, respectively, during the next two fiscal years. 2011-12 New York State Executive Budget, Revenue Article VII Legislation, Part A.

Abandoned property laws, sometimes referred to as "escheat" laws, exist in every state. These laws are generally custodial in nature and are intended to ensure that property that owners have forgotten about – that has become "dormant" or "abandoned" – is protected by the states and is available to be claimed by owners. In those situations where the property has *truly* been abandoned, a state would be entitled to retain the unclaimed property for the use of the general populace.

The reduction to three years from the current five year dormancy period would apply to bank deposits, gift certificates, and court funds. Although the two-year reduction in these dormancy periods is arguably modest, the fact that the modification appears to be driven solely by a desire to increase revenue may make it vulnerable to constitutional challenges, particularly since the proposed shortened dormancy periods seem to bear no connection to any demonstrable change in actual abandonment.

In 1943, when the APL was adopted, the dormancy period was 15 years for bank accounts, 20 years for property deposited into court, and 10 years for child or spousal support payments paid into court. Laws of 1943, ch. 697. Prior to enactment of the APL, the law provided a 22-year dormancy period. Gift certificates were not subject to escheat until 1983. Without evidence of any change in the expectations of depositors and other owners, there seems to be no basis for the decrease in the length of dormancy periods.

The sole purpose cited in the memorandum in support for the Governor's recent proposal is revenue generation. While the APL does provide that the policy reasons for escheating abandoned property to the state is to use that property "for the benefit of all the people of the state," the State also retains the "main responsibility," after property has been presumed abandoned and delivered into its hands, "to act on behalf of the property owners by protecting their property and their rights to it." Office of the New York State Comptroller, Unclaimed Funds (Feb. 2006) at 3, *available at* http://www.osc.state.ny.us/reports/other/unclaimedfunds.pdf. Declaring property "abandoned" without evidence that it is truly abandoned by its owner, solely to raise revenue, may violate various constitutional provisions, including the Takings and Contracts Clauses of the U.S. Constitution.

Keeping track of property deemed "abandoned" by the State can impose a practical and administrative burden on both owners and holders. The new, shortened dormancy periods will place an additional burden on owners to search for unclaimed property for themselves and their family members, and then, if

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Budget Bill Would Reduce Dormancy Periods for Unclaimed Property

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necessary, to go through the process required of any owner of unclaimed property seeking the return of property placed in the custody of the State.

Moreover, despite the custodial nature of the APL, property owners who discover their property has been escheated and who then come forward to claim their property will only receive interest, for the time the property was in the State's hands, on certain property types and at a rate that is 1% less than the overpayment rate as provided by Tax Law § 697(j), for a period of 5 years. Abandoned Property Law § 1405. Based on the current 2% overpayment rate, interest at a 1% rate would be earned. By shortening the dormancy period, some owners of property deemed escheated and deposited with the Comptroller may actually suffer financial harm as a direct result of the escheat, if the funds had previously been invested in an account bearing interest of more than 1%.

THE NEW, SHORTENED DORMANCY PERIODS WILL PLACE AN ADDITIONAL BURDEN ON OWNERS TO SEARCH FOR UNCLAIMED PROPERTY FOR THEMSELVES AND THEIR FAMILY MEMBERS

Additional Insights. The reduction of the gift certificate dormancy period to three years would be particularly troubling to retailers because, in addition to losing income from the investment of the unused balances for an additional two years, and the negative impact on customer relations that are likely to occur when cardholders attempt to redeem "abandoned" gift certificates, retailers lose the profit element on such unused gift certificate balances.

Unlike some other states, New York includes gift cards redeemable only for merchandise as escheatable property and does not allow issuers of gift certificates to retain any portion of the unredeemed balances to compensate them for their lost profit. While not directly relevant to the shortening of dormancy periods, we note that the federal District Court in New Jersey recently enjoined New Jersey from implementing the portion of its new legislation which retroactively included stored value cards as escheatable property, insofar as the cards were only redeemable for merchandise or services. *Am. Express Travel Related Servs. Co. v. Sidamon-Eristoff*, Civ. No. 10-4890 (FLW), 2010 U.S. Dist. LEXIS 120153 (D.N.J. Nov. 13, 2010), *appeal filed*, No. 10-4328 (3rd Cir. Nov. 14, 2010). The court recognized that the holders had "demonstrated a likelihood of success on their Contract Clause claim," since "the issuer is deprived of its right to earn a profit in connection with the gift card sale and redemption." *Id.* Likewise, the court concluded that escheat of stored value cards that are not redeemable for cash "could conceivably effect a taking of the gift card issuer's profits" under the Fifth Amendment's Takings Clause, which prohibits governments from taking private property for public use without just compensation. *Id.* It may also be that holders and owners of property in New York could be found to have property rights entitled to protection under the Contract Clause and Takings Clause that would be impacted by shortened dormancy periods.

Shortened dormancy periods impose additional costs on holders of potentially unclaimed property. One business group that might stand to *benefit* from the Governor's proposal is bounty hunters specializing in finding owners of unclaimed property, who are permitted by statute to charge fees up to 15% of the value of recoverable property.

Given the possibility that reduced dormancy periods could lead to constitutional challenges under the Takings Clause, the Contract Clause or even the Due Process Clause, this proposed revenue measure could end up embroiling the State in litigation.

Insights in Brief

Taxpayer Bound to Prior Agreement to Follow Outcome of Earlier Case

A catering business filed a petition with the Division of Tax Appeals to contest a sales tax assessment, and its then-counsel agreed the petitioner would be bound by the eventual outcome of an earlier-filed petition on the same issues on which the Tax Appeals Tribunal had ruled against the same taxpayer, but where an Article 78 petition had been filed. The taxpayer never perfected the Article 78 appeal, and its earlier action was dismissed. In light of the petitioner's agreement to be bound by the outcome of the earlier case, which it did not pursue, a New York State ALJ issued an order denying the petition in the later case. *Matter of Elegant Affairs, Inc, et al.*, DTA Nos. 821874 & 821875 (N.Y.S. Div. of Tax App., Jan. 20, 2011).

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Insights in Brief

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New York State Invites Taxpayers with Undisclosed PFICs to Participate in its Voluntary Disclosure Program

New York State Department of Taxation and Finance has announced on its website that taxpayers with undisclosed investments in Passive Foreign Investment Companies ("PFICs") can come forward and make disclosures under the Department's online Voluntary Disclosure and Compliance Program. That program offers limited look-backs, the waiver of penalties, and protection from criminal prosecution. Recently, the IRS announced an alternative resolution initiative for taxpayers with PFIC investments under its Offshore Voluntary Disclosure Program.

N.Y.C. Announces Electronic Filing Requirements

Effective for filings made on or after January 1, 2011, New York City has added a new section to its filing rules, Section 17-04, mandating that general corporation tax and unincorporated business tax returns must be filed electronically by preparers who prepared more than 100 tax documents during any calendar year beginning on or after January 1, 2009, and who prepared one or more such documents using tax software in any succeeding year; and by taxpayers who do not use preparers but use tax software to prepare their returns. The affected returns are the NYC GCT Forms NYC-4S, NYC-4SEZ and NYC-3L; NYC Unincorporated Business Tax Forms NYC-204 and NYC-204EZ; and Form NYC-EXT, when used to request an extension for filing any of the other listed forms. Tax preparers who meet the criteria are not permitted to opt out; any taxpayer that wants to opt out will have to apply for a "hardship waiver" on the Department of Finance website (which seems to raise a question if the reason for requesting the waiver is lack of reliable access to the Internet).

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Nabisco v. Oregon
National Med, Inc. v. Modesto
Nerac, Inc. v. NYS Division of Taxation
NewChannels Corp. v. New York
OfficeMax v. New York
Osram v. Pennsylvania
Panhandle Eastern Pipeline Co. v. Kansas
Pier 39 v. San Francisco
Reynolds Metals Company v. Michigan Department of Treasury
Reynolds Metals Company v. New York
R.J. Reynolds Tobacco Co. v. New York
San Francisco Giants v. San Francisco
Science Applications International Corporation v. Maryland
Sears, Roebuck and Co. v. New York
Shell Oil Company v. California
Sherwin-Williams v. Massachusetts
Sparks Nuggett v. Nevada
Sprint/Boost v. Los Angeles
Tate & Lyle v. Alabama
Toys "R" Us-NYTEX, Inc. v. New York
Union Carbide Corp. v. North Carolina
United States Tobacco v. California
USV Pharmaceutical Corp. v. New York
USX Corp. v. Kentucky
Verizon Yellow Pages v. New York
W.R. Grace & Co.—Conn. v. Massachusetts
W.R. Grace & Co. v. Michigan
W.R. Grace & Co. v. New York
W.R. Grace & Co. v. Wisconsin

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