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NEW YORK TAX INSIGHTS

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MORRISON FOERSTER

TRIBUNAL REVERSES ALJ AND PERMITS COMBINATION BASED ON UNITARY BUSINESS AND DISTORTION

By Irwin M. Slomka

Beginning in 2015, corporate tax reform has resulted in full unitary combination in New York State and City, which is intended to limit controversies over combination. However, for tax years beginning before 2015, there continues to be considerable controversy as to what taxpayers must show in order to achieve combination in the absence of substantial intercorporate transactions. A recent decision by the Tax Appeals Tribunal may turn out to be important precedent regarding combination, particularly for the ongoing unitary business standard for combination after corporate tax reform. *Matter of SunGard Capital Corp. and Subsidiaries, et al.*, DTA Nos. 823631, *et al.* (N.Y.S. Tax App. Trib., May 19, 2015). In *SunGard*, the Tribunal, reversing an ALJ decision that rejected combination sought by the taxpayer, held that the taxpayer could file on a combined basis with certain affiliates based on a showing of a unitary business relationship and proof of actual distortion. The decision is also noteworthy inasmuch as, while unitary business determinations are particularly fact intensive, the taxpayer prevailed based on a stipulated evidentiary record, without witness testimony.

Facts. The SunGard group of corporations ("SunGard Group") is engaged in providing information technology sales and services. It principally provides data processing and software services to the financial services industry, public sector entities, and colleges and universities, as well as other services for customers in various sectors of the economy.

During the first of the two tax years at issue (August 13, 2005 through December 31, 2005), SunGard Data Systems, Inc. ("SDS") was the parent corporation for the SunGard Group. SunGard Capital Corp. ("SCC") was the parent for the second tax year (calendar year 2006). SDS incurred more than $65 million of costs each year to provide various centralized corporate-level functions and services for all entities within the group. This included operation of a centralized cash management system, debt management, preparation of SEC and other public filings, and a host of other services. With certain limited exceptions, none of the costs for these services were charged out to the affiliated entities in the group.

In August 2005, the SunGard Group was acquired in a leveraged buyout ("LBO") by a consortium of private equity funds. SDS financed the LBO

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through credit agreements and receivables securitizations. This resulted in, among other things, the consolidation of purchasing, marketing and human resources and other services in SDS. SDS paid a quarterly management fee to the LBO investors, which was not charged out to its affiliates.

Several entities within the SunGard Group having nexus with New York State originally filed their Article 9-A returns on a separate company basis. Subsequently, amended Article 9-A returns were filed on a combined basis, claiming refunds in excess of $2.5 million. The Department denied the refunds, and SunGard filed a petition challenging the refund denial.

ALJ Decision. The ALJ sustained the Department's refusal to permit combination, finding that SunGard was not engaged in a unitary business despite the fact that the group members were all engaged in the business of technology sales and services. The ALJ concluded that SunGard did not adequately quantify the costs of the various intercompany services and, in particular, did not prove that the parent had the necessary *operational* expertise in the subsidiaries' businesses. The ALJ also held that SunGard failed to meet the distortion requirement, in part finding that the unreimbursed expenses were not shown to be substantial or distortive. SunGard filed an appeal with the Tax Appeals Tribunal.

Tribunal Decision. Based on a *de novo* review of the stipulated record, the Tribunal reversed the ALJ decision, holding that SunGard was entitled to file combined Article 9-A returns because the entities (with certain exceptions) were engaged in a unitary business, and because SunGard proved that it met the distortion requirements for combination despite the lack of substantial intercorporate transactions.

The Tribunal decision goes into considerable detail in identifying the evidence of a unitary business, consistent with the unitary business factors set out in the Article 9-A regulations. 20 NYCRR § 6-2.3(e). Despite the absence of testimony, the Tribunal identified various facts supporting a unitary business determination, including that the entities were engaged in similar and related lines of business, and because, even if they were different lines of business, they were "complementary businesses," both internally (by providing products and services to affiliates) and externally (by permitting cross-selling opportunities). The Tribunal noted that in *Matter of Heidelberg Eastern, Inc.*, DTA Nos. 806890 & 807829 (N.Y.S. Tax App. Trib., May 5, 1994), it had concluded that complementary businesses were part of a unitary group.

The Tribunal also found evidence of "centralized management," in part through the parent's cash management system, with the interest-free component also resulting in a "flow of value" between the entities, yet further indicia of a unitary business. The Tribunal noted that SDS was responsible for all budgetary matters, management of the group's debt and various central office functions, purchasing services, marketing services and technology services, all factors found to support a unitary business determination in both *Heidelberg* and *IT USA, Inc.*, DTA Nos. 823780 & 823781 (N.Y.S. Tax App. Trib. Apr. 16, 2014). Centralized management was also evidenced by the overlap of corporate officers among the entities who performed their functions as part of a single business enterprise.

With regard to "flows of value," the Tribunal noted that various non-arm's-length transactions—specifically, services provided without charge—were "an obvious flow of value," as were the centralized purchasing services which resulted in reduced costs. Moreover, most of the group's affiliates guaranteed the LBO debt incurred, which was further evidence of a unitary relationship. One important exception was the Tribunal's conclusion that certain holding companies in the SunGard Group were not unitary because there was no showing of their function or role within the group and no flows of value.

[T]he *SunGard* decision makes clear that while the unitary business and distortion combination factors are separate tests, certain elements of a unitary relationship may also be indicative of distortion, particularly with respect to the unitary "flows of value" concept.

In evaluating the "distortion" criteria for combination, the Tribunal again cited *Heidelberg* for the proposition that the same factors indicative of a unitary business may also give rise to distortion. It noted that, under *Matter of Silver King Broadcasting of N.J.*, DTA No. 812589 (N.Y.S. Tax App. Trib., May 9, 1996), it is necessary for the party seeking combination to "identify with particularity" the distortion allegedly present. The Tribunal concluded that SunGard had sufficiently identified the instances of distortion "which, taken together, give rise to a level of distortion sufficient to permit combined filing." Among the distortive activities cited was the performance of services without any charge, which the Tribunal noted constituted greater distortion than it found to exist in both *IT USA* and *Matter of Mohasco Corp.*, DTA Nos. 808901 & 808956 (N.Y.S Tax App. Trib., Nov. 10, 1994). The reduced costs

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resulting from the consolidation of certain functions were also found to be distortive because those savings would otherwise not have been realized without the centralized functions. Further evidence of distortion was the operation of a cash management system on an interest-free basis.

Additional Insights

The *SunGard* decision reflects a comprehensive unitary business analysis by the Tribunal. Many of the Tribunal combination decisions over the years have principally focused only on the distortion factor. For tax years beginning prior to 2015, the *SunGard* decision makes clear that while the unitary business and distortion combination factors are separate tests, certain elements of a unitary relationship may also be indicative of distortion, particularly with respect to the unitary "flows of value" concept. This may benefit parties seeking combination, whether the party is a taxpayer or the Department.

While the most immediate impact of *SunGard* will likely be for taxpayers seeking combination for years beginning prior to 2015, before corporate tax reform took effect, its most significant impact may be going forward, where the principal test for combination under corporate tax reform is whether the affiliated entities are engaged in a unitary business.

"FLAT SUM SETTLEMENT" WITH IRS HELD NOT TO CONSTITUTE REPORTABLE FEDERAL CHANGE

By Amy F. Nogid

A New York State Administrative Law Judge held that an individual taxpayer's "flat sum settlement" with the Internal Revenue Service of his federal income tax liabilities did not constitute a change in the taxpayer's federal taxable income that was required to be reported to New York State under Tax Law § 659. *Matter of Bentley Blum*, DTA No. 824107 (N.Y.S. Div. of Tax App., Apr. 16, 2015).

Background. Bentley Blum was a promoter of oil and gas partnerships that were examined by the IRS. The IRS also examined the returns of the individual investors in the partnerships, and corporations controlled directly or indirectly by Mr. Blum that were involved in the sale or operation of the oil and gas interests. On February 24, 2000, the IRS issued an Examination Report for the years 1994 through 1997, proposing adjustments to Mr. Bentley's income. The proposed adjustments were challenged by Mr. Bentley, and a settlement was eventually reached that resulted in "a flat sum settlement of $510,000 in a tax deficiency for [Mr. Blum] for the 1996 year" to resolve 1994 through 1996 proposed adjustments; adjustments were also made to Mr. Blum's 1997 net operating loss carry-forward amounts.

Mr. Blum timely filed his State and City personal income tax return for 1996, the only year at issue in this proceeding. Accordingly, under the standard three-year statute of limitations, the Department would have had until April 15, 2000 to assess a deficiency. The Department issued a Notice of Deficiency for State and City personal income taxes for 1996 on May 22, 2012, relying on the income base that resulted in the $510,000 in federal tax paid to the IRS in settlement. The Department took the position that, because Mr. Blum had failed to report the federal settlement to New York State, the assessment was timely under the extended statute of limitations period of Tax Law § 683(c)(3), which applies when taxpayers fail to report federal changes.

ALJ Decision. The ALJ held that a "flat sum settlement" is not included in the list of federal changes required to be reported under Tax Law § 659, because such settlement does not constitute a change in Mr. Blum's taxable income. Accordingly, the Department was bound by the standard three-year statute of limitations, and could not rely on the extended statute of limitations period of Tax Law § 683(c)(3) applicable when taxpayers fail to report their federal changes. Since the Notice of Deficiency was issued after the three-year limitation period, the notice was cancelled.

Additional Insights

In computing the amount of a New York resident's adjusted gross income for personal income tax purposes, New York, like many states, starts with federal adjusted gross income, in accordance with Tax Law § 612(a), and conforms to federal definitions, unless a contrary definition or context otherwise provides. Tax Law § 607. This federal conformity simplifies compliance for taxpayers and administration by states. One of the benefits to states is the ability to follow federal audit adjustments. States routinely require that federal changes be reported, but usually allow a taxpayer to contest its correctness or applicability. Tax Law § 659; 20 NYCRR § 159.4.

In *Blum*, the IRS had unquestionably proposed adjustments to Mr. Blum's federal taxable income in its original Examination Report. It also seems clear, as the Department argued, that Mr. Blum would not owe additional tax if there had been no changes to his federal taxable income. Stated simply, the issue is whether a taxpayer must report a final determination of a Revenue Agent's Report ("RAR") that had proposed changes to a taxpayer's income when the settlement does not explicitly reflect a change in federal taxable income. Although flat

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sum settlements, as the ALJ noted, are not uncommon, the question of whether they must be reported to New York State appears to be an issue of first impression.

The ALJ's narrow view of the federal change reporting requirement of Tax Law § 659 is somewhat surprising and, if upheld, may reduce the need to report settlements with the IRS to New York State and to New York City. The decision may also impact a corporate taxpayer's obligations to report both federal and State changes to New York City.

The ALJ did not address whether the "flat sum settlement" or related documents constituted a closing agreement under IRC § 7121, which is deemed a "final determination" under New York's regulations, 20 NYCRR § 159.5(a). Arguably, Tax Law § 659 can be read to include within its reporting requirements final determinations of changes to a taxpayer's taxable income proposed in an RAR, even if the final determination itself is couched as a "flat sum settlement."

The ALJ decision in *Blum* is not precedential, and as of this writing there is no public indication that an appeal has yet been filed.

TRIBUNAL HOLDS NYS DECOUPLING FROM FEDERAL NOL PERMISSIBLE

By [Hollis L. Hyans]

The New York State Tax Appeals Tribunal, sustaining the decision of an Administrative Law Judge, rejected—as it has many times before—a challenge to the New York State system of limiting net operating loss deductions to the amounts taken for federal income tax purposes for the same year, and arising from the same source year as the federal deduction. *Matter of Five Star Equipment, Inc.*, DTA Nos. 824861 and 825006 (N.Y.S. Tax App. Trib., Apr. 15, 2015).

Facts. For the years 2004 through 2010, including 2007, 2008 and 2010, which were the years at issue in this proceeding, Five Star filed New York State corporation franchise tax returns, and claimed NOL deductions, in large part carried forward from previous years in which those deductions were not used for New York purposes. On audit, the Department disallowed the deductions because they did not correspond to the source years and amounts of petitioner's federal NOL deductions for the same years: in 2007, the New York NOL deduction claimed by Five Star was from a different source year than the federal NOL deduction claimed for that year; in 2008, the New York NOL deduction exceeded the amount of the federal NOL deduction because there was no federal NOL deduction at all for 2008; and in 2010, the claimed NOL deduction was from different source years and exceeded the amount of the federal NOL deduction claimed for that year.

These variations in amounts were generally attributable to the differences between the amounts of depreciation allowable as business deductions at the federal level–which permits certain accelerated and bonus depreciation–compared to the amounts allowable under New York law, which generally does not adopt the federal methods and uses straight-line calculations. This decoupling resulted, as it often does, in Five Star reporting different amounts of net income for federal and New York State purposes, and therefore in different amounts of NOL deductions available. Five Star challenged these differences as unconstitutional under the Supremacy Clause, claiming that the decoupling conflicted with the congressional purposes behind adopting accelerated and bonus deprecation, and also as violating the Commerce Clause, the Privileges and Immunities Clause and the Equal Protection Clause.

ALJ Decision. The Administrative Law Judge had upheld the assessments, finding, first, that the Tax Appeals Tribunal and the Court of Appeals have repeatedly upheld New York's limitations on NOL deductions. *See, e.g.*, *Matter of Refco Properties, Inc.*, DTA No. 812292 (N.Y.S. Tax App. Trib., July 11, 1996); *Matter of Royal Indem. Co. v. Tax Appeals Trib.*, 75 N.Y.2d 75 (1989). The ALJ noted that there are many other situations where deductions are available at the federal level but not the state level, and since the Legislature affirmatively acted to decouple New York from federal depreciation rules in 2003—after the cases dealing with various challenges to New York's NOL provisions—it presumably knew and approved of the results. The ALJ also rejected the company's constitutional challenges, finding that the Division of Tax Appeals has no ability to consider a claim that a statute is unconstitutional on its face, and rejecting claims that the statute was being applied unconstitutionally. The ALJ found no merit to Five Star's argument under the Supremacy Clause that New York's decoupling conflicted with the congressional motivations in adopting accelerated and bonus depreciation, finding no evidence that Congress had intended to bind the states to the federal rules. Finally, the ALJ also rejected the contention that the limitations violated the Commerce Clause or the Equal Protection Clause, finding that entities operating exclusively within New York and those operating within and without New York were treated the same, and that there was no showing of unequal treatment.

Tribunal Decision. The Tribunal agreed with the ALJ, finding, first, that the previous decisions upholding the amount and source limitations of the New York

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NOL deductions were binding, and rejecting Five Star's argument that the interplay between the deduction rules and decoupling change the situation and require a different result.

> **The Tribunal found no preemption that would invalidate New York's system under the Supremacy Clause . . . [and] found no burden on interstate commerce . . . .**

The Tribunal also rejected all of Five Star's constitutional arguments. The Tribunal found no preemption that would invalidate New York's system under the Supremacy Clause because the federal and state tax systems may and often do treat items differently, particularly deductions, which have been held to "exist solely due to legislative grace." *Matter of Grace v. State Tax Comm'n*, 37 N.Y.2d 193 (1975). It found no burden on interstate commerce, agreeing that businesses operating both inside and outside New York faced the same rules, and rejected challenges based on the Equal Protection and Privileges and Immunities Clauses. No discriminatory impact was demonstrated and the Tribunal found no legal support for the proposition that a state tax system unconstitutionally burdened interstate commerce by disallowing a deduction that might be allowed by other states.

Additional Insights

The earlier cases, such as *Refco* and *Royal Indemnity*, relied upon by the ALJ and the Tribunal, did indeed conclude that New York's statute limited NOL deductions to those actually taken on the taxpayers' federal returns for the years at issue, and rejected arguments that the statutes should be interpreted as permitting deductions up to the amounts *available* for those years, whether or not such amounts were actually deducted. However, those decisions were based on analyses of the statutes in question, and no constitutional arguments were addressed, leaving an avenue of argument not previously considered. However, since the Tribunal found no evidence of preemption by federal legislation—in that Congress had addressed only federal rules—and found that the impact of New York's decoupling falls on both in-state based companies and out-of-state based companies, the challenge that the statutes were being applied unconstitutionally was rejected. Although the ALJ and the Tax Appeals Tribunal cannot declare statutes unconstitutional on their face—only a court can do that—the lack of discriminatory result may preclude such a facial unconstitutionality argument as well.

TRIBUNAL UPHOLDS TAX ON TOBACCO PRODUCTS BUT STRIKES FRAUD PENALTIES

By Hollis L. Hyans

The New York State Tax Appeals Tribunal has upheld the imposition of cigarette tax and failure to pay penalty on cigarettes and other tobacco products sold by a wholesaler, but overturned the imposition of a fraud penalty, finding that the necessary fraudulent intent was not unequivocally established by the Department. *Matter of Jay's Distributors, Inc.*, DTA No. 824052 (N.Y.S. Tax App. Trib., Apr. 15, 2015).

Facts. Jay's Distributors, Inc. ("Jay's") was a cigarette and tobacco wholesaler and tobacco distributor licensed in New York and operating from a warehouse in Jersey City, along with two other companies, Vikisha, Inc. and Jaydeen Corporation. Jay's sold cigarettes, tobacco products and accessories, as well as non-tobacco products such as food and nonalcoholic beverages, to retail outlets in the greater New York metropolitan area and on Long Island. Vikasha was a New Jersey wholesaler of cigarette and cigar products that did business solely in New Jersey, and Jaydeen was a wholesaler of soft drinks and candy in both New York and New Jersey. One individual, Kaushik Shay, owned 100% of Jay's and 100% of Vikisha, and his spouse owned 100% of Jaydeen.

On audit of its tobacco tax returns, the Department requested all records from Jay's, but the records that were provided were not complete. Jay's and Vikisha both purchased tobacco products from third-party suppliers and stored them in the same Jersey City warehouse, and there was complete commingling of inventory between Vikisha and Jay's, with no record of a physical inventory ever having been performed. Missing purchase invoices and gaps in sales invoice numbers were also found, and computerized records were not produced on audit because Jay's determined that the records reflected only the combined totals for all the companies in the group. In an attempt to confirm quantities of product bought, the auditor sent letters to suppliers and the responses confirmed the auditor's opinion that the purchase records received from Jay's and Vikisha were not complete.

The Department chose 2005 as a test period and, after a detailed audit, found a large discrepancy between products purchased by Jay's and its sales, including "unaccounted for" purchases for which no purchase invoices were provided, leading the Department to conclude that Jay's was selling products that it had never purchased, which were presumably purchased by Vikisha. The suppliers' responses also made clear that Jay's and Vikisha were purchasing far more products than they reported selling.

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Based on the auditor's experience with the shelf life of tobacco products, the auditor made assumptions about the amounts of products being sold based on the purchases. The Department then made a determination of purchases from Jay's records and third-party information, subtracted sales that were reported in either New York or New Jersey, and determined the remainder to be excess inventory, to which the Department applied an average price.

The Department also found instances where one distributor paid Jaydeen for products purchased from Vikisha, even though Jaydeen was not licensed to sell tobacco products, and instances where a distributor purchased inventory from Vikisha and then sold it back for the same price, a trail of events that the experienced tobacco tax auditor had never seen before and for which he could identify no business purpose. During the course of the audit, Jay's was also notified by an attorney with the Office of Tax Enforcement that it was being investigated for fraud.

The State of New Jersey had audited Vikisha for the period October 2002 through September 2006, examining a three-month sample of sales records but no purchase records, and accepted Vikisha's tobacco tax returns as filed. The Department took the position that all purchases that exceeded the total of New Jersey and New York reported sales were excess inventory that must have been imported or sold in New York because New Jersey had already accepted reported sales.

The Department assessed additional tobacco tax due of over $3 million, and asserted both late payment penalties and fraud penalties. Although the decision is not clear on whether the fraud penalty was raised in the notice of determination, the assertion of a fraud penalty was made clear in the Department's amended answer to the petition.

ALJ Decision. The ALJ upheld the assessment in full, finding that the use of a test period was appropriate due to the inadequacy of Jay's records, and that Jay's had failed to prove error in the audit method or result, noting particularly the commingling of inventory and the auditor's testimony about the perishable nature of tobacco products. The ALJ sustained the fraud penalty, relying again on the commingling of inventory, the circular transactions, the poor record keeping, and the substantial underreporting of liability. The ALJ also denied Jay's motion to reopen the record to introduce what it claimed was newly discovered evidence, including Vikisha's federal tax returns and an Inspector General's report concerning the Department's involvement with certain cigarette operations, and also claiming "fraud, misrepresentation or other misconduct" by the Department. He also rejected Jay's claims that it was entitled to a default determination because it had not been provided with an expedited hearing, which is required under Tax Law § 2008(2)(a) when fraud penalties are asserted.

Tribunal Decision. The Tribunal agreed that the Department had properly used an indirect audit method due to the absence of reliable records, and due to the various discrepancies that appeared from the review of third-party information, which the Department is entitled to inspect even where a taxpayer is able to produce complete records. The Tribunal found the Department's audit method was reasonable, including its decision to deem all unaccounted-for purchases by both Jay's and Vikisha to have been sold in New York, given the common ownership, the commingled inventory, and the selling of products by Jay's that had been purchased by Vikisha, and the fact that transfers between the entities were not properly documented. Tax, interest and late payment penalty—which is based on a finding of willful neglect—were sustained. The Tribunal also upheld the ALJ's refusal to reopen the record, finding that the proffered documents lacked relevance and that there was no evidence of fraud, misrepresentation or other misconduct by the Department.

The Tribunal found a lack of the "'clear, definite and unmistakable'" evidence that is required to sustain a fraud penalty.

However, with regard to the fraud penalty, while noting that some facts might support its imposition, the Tribunal found a lack of the "'clear, definite and unmistakable'" evidence that is required to sustain a fraud penalty. While recognizing the shared space and record-keeping deficiencies, the Tribunal noted that there had been no attempt to conceal the shared warehouse and commingling of inventory, and that a diagram of the shared facility had actually been provided to the Department as part of a licensing application. It also found that, while the transactions in which products were purchased from a vendor and then re-sold to that same vendor may have been, as the Department claimed, highly unusual, there was insufficient evidence to conclude that they were actually fraudulent.

Finally, the Tribunal found that, although the hearing did not take place within the expedited period required when a fraud penalty is asserted, not only did both parties contribute to the delay, "both parties plainly sought to avoid an expedited hearing process," and therefore a default determination was improper. However, the Tribunal did acknowledge that the decision had not been timely issued, and said that both it and the Division of Tax Appeals "will make every effort to comply with the expedited hearing process . . . in the future."

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Additional Insights

As the Tribunal itself noted, the very same evidence that was found sufficient to sustain the assessment of tax was found insufficient to establish the fraud penalty. The Tribunal described this not as an inconsistency, but as a result of the shifting in the burden of proof when fraud is asserted. Generally, a taxpayer bears the burden of proof to show that an assessment is improper. However, when a fraud penalty is asserted, the burden under New York law, which follows federal case law, is on the Department to establish by clear and convincing evidence "unmistakable" evidence of fraud. While the Tribunal was willing to rely on the Department's presumption that all unaccounted-for purchases were sold in New York, and on the lack of evidence of purchases by Jay's and Vikisha for purposes of determining that tax was due, such evidence was not sufficient to meet the heightened burden of proof that falls on the Department when it seeks to establish fraud. This case is therefore a rather unusual example of how the burden of proof—generally a doctrine that only lawyers are interested in debating—can have a real impact on the ultimate decision.

INSIGHTS IN BRIEF

City ALJ Upholds City's Application of Step Transaction Doctrine Under Real Property Transfer Tax

In an issue of first impression under the New York City real property transfer tax, an Administrative Law Judge has upheld the taxation of a transfer of a 45% membership interest in a limited liability company ("LLC") owning real property that followed the transfer of a fee owner's 45% fee interest in the realty to the LLC in exchange for a 45% LLC interest. *Matter of GKK 2 Herald LLC*, TAT(H) 13-25 (RP) (N.Y.C. Tax App. Trib., Admin. Law Judge Div., Apr. 1, 2015). Upholding application of the "step transaction" doctrine, more typically invoked in income tax cases, the ALJ held that the doctrine overcame both a "mere change in form" exemption for the first step (the transfer of a 45% fee interest to the newly formed LLC) and the less than controlling interest transfer in the LLC constituting the second step (the transfer of a 45% LLC interest). An exception has been filed by the taxpayer with the New York City Tax Appeals Tribunal.

Tax Department Issues New Corporate Tax Reform FAQs

The New York State Department of Taxation & Finance has added updates to its Corporate Tax Reform FAQs, which appear on its website, to provide general guidance regarding corporate tax reform under Article 9-A. Among the newly added FAQs are how the economic nexus rules will apply to S corporations, whether the receipts of unitary affiliates that are protected from tax under Public Law 86-272 must be considered for purposes of the annual $1 million economic nexus threshold, and when a fiscal year Article 32 filer may still be required to file an Article 32 return for fiscal years that begin before January 1, 2015. http://www.tax.ny.gov/bus/ct/corp_tax_reform_faqs.htm

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