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2016 State Tax Update

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Circular 230

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Summary of Tax Provisions in SFY 2016-17 Budget Bill

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Business Taxes & Related Technical Corrections

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Corporation Franchise Tax - Overview

- Generally: A C corporation's franchise tax liability is the greatest of the amount imposed on the corporation's:
  - Business Income Base Tax (replaced entire net income base as of January 1, 2015).
  - Capital Base Tax - The capital base tax is being phased out over a period of six years starting with tax years beginning on or after January 1, 2016.
  - Minimum Taxable Income - Was eliminated effective January 1, 2015.

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Corporation Franchise Tax – Overview (con't.)

- Fixed Dollar Minimum - Based on the taxpayer's New York receipts (tax ranges from $25 to $200,000).
- New York S corporations are subject to a fixed dollar minimum tax, also based on the taxpayer's New York receipts (tax ranges from $25 to $4,500).

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Qualified Financial Instruments and Other Exempt Income (Technical Correction)

- Amended the definition of a qualified financial instrument (QFI) to clarify that stock that generates “*other exempt income,”* and is **not** marked to market under Internal Revenue Code (IRC) Section 475 or 1256, is not a QFI with respect to such other exempt income (even if other stocks are marked to market in the tax year).
- The term “business income” means entire net income minus investment income and other exempt income.
- These changes apply to tax years beginning on or after January 1, 2015.

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Qualified Financial Instruments and Other Exempt Income (con't.)

- This amendment does not change the treatment of gains or losses from the sale of stock that generates or could generate other exempt income. Such gains and losses are always included in business income. All stock that generates or could generate other exempt income continues to be considered business capital and is subject to the capital base tax.
- Section 210-A.5(a) of the Tax Law.

Special Additional Mortgage Recording Tax Credit (Technical Correction)

- Makes the special additional mortgage recording tax credit under Article 9-A refundable for certain residential mortgages.
  - Prior to corporate tax reform, refundability of the credit pertaining to these mortgages was limited to general business corporations in Article 9-A.
  - The credit was not refundable for Article 32 banking corporations.
  - When the two articles were merged in the 2014 reform legislation, refundability was eliminated.
  - Section 210-B.9(b) of the Tax Law.

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Treatment of Leased Assets (with regard to ENI Modifications for Banks)

- Provides that for purposes of the asset tests under the entire net income subtraction modifications for qualified residential loan portfolios and community banks and small thrifts, total assets include leased real property that is not properly reflected on a balance sheet.
  - Leased real property that is not properly reflected on the balance sheet is valued at the annual lease payment multiplied by eight.
- These changes apply to tax years beginning on or after January 1, 2015.
- Sections 208.9(r) and 208.9(s) of the Tax Law.

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Personal Income Taxes

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Rate Reduction for Middle Income Taxpayers

- Provides a marginal income tax rate reduction for certain middle-income taxpayers with taxable incomes not over $300,000.
  - The reduction will be phased in beginning in tax year 2018 and ending in tax year 2025, after which point the new rates will be made permanent.
  - i.e. Married taxpayers.
    - $40k-$150k bracket - 6.33% in 2018, 5.5% in 2025. *(now 6.45%)*
    - $150k-$300k bracket - 6.57% in 2018, 6% in 2025. *(now 6.65%)*
    - $300k-$2.0M bracket - rate will remain the same at 6.85%.

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Rate Reduction for Middle Income Taxpayers (con't.)

- When fully phased in:
  - Taxpayers with taxable incomes between $26,000 and $150,000 ($13,000 and $75,000 for single filers) will see their marginal rates reduced to 5.50%; and
  - Taxpayers with taxable incomes between $150,000 and $300,000 ($75,000 and $200,000 for singles) will see their rates reduced to 6.00%.
- The tax benefit recapture provisions will become permanent effective tax year 2018 and will be adjusted annually to reflect the reduced rates.

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Conversion of STAR Exemption Benefit into an Income Tax Credit

- Results in the gradual conversion of the school tax relief (STAR) program from a real property tax exemption benefit into a personal income tax credit.
- Beginning with the assessment rolls used to levy school taxes for the 2016-2017 school year, the current STAR exemption program will be closed to new applicants.
- Current recipients of STAR exemptions may keep those exemptions as long as they continue to own their current homes, but once their homes are transferred to new owners, the new owners would transfer to the new income tax credit.

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Conversion of STAR Exemption Benefit into an Income Tax Credit (con't.)

- Current STAR recipients will also have the option of giving up their STAR exemptions if they wish to receive the income tax credit instead, but they will be under no obligation to do so.
- The eligibility requirements for the new STAR income tax credit will be identical to those of the existing STAR exemption.
- Same eligibility applies to those of existing STAR program.
- The value of the STAR credit within each school district will be the same as the value of the tax savings under the STAR exemption.
- By September 15th of each year, the Tax Commissioner will determine eligibility for the STAR credit and will mail an advance payment of the credit by September 30th, or as soon as practicable.

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Conversion of STAR Exemption Benefit into an Income Tax Credit (con't.)

- New owners must apply to the Tax Department by July 1st in order to receive advance payment the following Fall. Taxpayers who qualify for the credit, but do not apply for an advance payment by July 1st may apply at a later time.
- For taxpayers who itemize deductions on their New York State returns and claim the deduction for real property taxes paid, the amount of the deduction is to be reduced by the amount of the STAR income tax credit.
- These provisions become effective immediately and apply to tax years beginning on or after January 1, 2016.

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Extension of E-File Mandates

- Current provisions required a preparer to e-file if they prepared prepares authorized tax documents for more than 10 different taxpayers.
- These provisions were extended for a three-year period through December 31, 2019.

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Extension of Tax Shelter Reporting Provisions

- Extends the expiration date for the current tax shelter disclosure and penalty provisions in the Tax Law to July 1, 2019.
- These provisions had been scheduled to expire on July 1, 2015.
- Legislation in 2005 created reporting requirements and related administrative provisions concerning disclosing certain Federal and NYS reportable transactions and related information relating to transactions that present the potential for tax avoidance (tax shelters).

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Extension of Tax Shelter Reporting Provisions (con't.)

- The prior legislation also imposed penalties for nondisclosure and the underpayment of taxes due to participation in these transactions, extended the statute of limitations for assessments relating to these transactions, and created a voluntary compliance initiative to allow taxpayers to report and pay underreported tax liabilities and interest attributable to these transactions with a waiver of penalties.

Permanent Extension of the Noncustodial Parent Earned Income Tax Credit

- Makes the enhanced earned income tax credit (EITC) for certain noncustodial parents permanent.
- The current credit was scheduled to expire on December 31, 2016. The new law makes the credit permanent.
  - To qualify for the enhanced EITC, claimants must:
    - Be a resident taxpayer;
    - Be age 18 and over; and
    - Have a minor child with whom they do not reside.
- Claimants must have a child support order in effect for at least half the tax year and have made their required support payments.

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Real Property Taxes

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Hardship Exception - Late Filing of Enhanced STAR and Senior Citizen Renewal Applications

- Allows a taxpayer who receives the enhanced STAR exemption, and who fails to timely file the renewal application for the exemption, to file a request for an extension and an application for renewal of such exemption with the Commissioner up until the last day for paying school taxes without incurring interest or penalty.
  - Where such late filing was due to hardship or for good cause.
- Also allows municipalities to exercise similar authority where a taxpayer who receives the locally funded senior citizens exemption and fails to timely file a renewal application for the exemption.

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Direct DTF Payment of STAR Tax Savings to Property Owners in Certain Cases

- Allows the Commissioner to directly reimburse a STAR-eligible property owner when the property owner did not receive the STAR tax savings to which he or she was entitled, due to an administrative error.
- This provision takes effect immediately.
- Section 425(16) of the Real Property Tax Law.

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STAR Recoupment Timing Clarification

- Relates to the recoupment of erroneously granted STAR exemptions that was added in last year's budget.
- It clarifies that the look-back period authorized relates to school years rather than to the concept of assessment roll years that was used.
- Specifically, this provision requires recoupment notification be mailed to affected taxpayers no later than three years after conclusion of the school year in question.
- While the timing of assessment roll dates varies throughout the state, the timing of school years is uniform and therefore, the notification requirements will likewise be uniform under this amendment.
- Transition: With respect to the 2012-2013 school year, this provision allows until no later than September 30, 2016 for the mailing of such notification.

Extender of SCRIE/DRIE Exemption Income Limits

- Extends temporary increases in the qualifying income limits, pursuant to RPTL Section 467-b for property tax abatements under the senior citizen rent increase exemption (SCRIE) and the disabled rent increase exemption (DRIE) programs.
- The 2014-2015 budget included a temporary increase in the allowable income limit to $50,000, and provided state reimbursement of related increased program costs to New York City.

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Extender of SCRIE/DRIE Exemption Income Limits (con't.)

- This provision extends the increase in the qualifying income limit that was set to expire July 1, 2016 for an additional four years through June 30, 2020, and also limits the amount of state reimbursement of program costs associated with that income limit increase in New York City to no more than $1.2 million.
- This provision takes effect immediately.

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Federal Conformity Provisions

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Tax Return Due Date Changes

- Amends certain New York State tax filing deadlines to conform to the recent changes made to Federal filing deadlines.
- Partnerships, LLC's, and LLP's.
  - Partnerships generally must file tax returns (Form IT-204 and attachments) on or before the 15th day of the third month following the close of each taxable year, which is March 15th for calendar-year filers. *(was April 15th)*
    - This change applies to partnership returns for tax years beginning on or after January 1, 2016.

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Tax Return Due Date Changes (con't.)

- Partnerships, limited liability companies, and limited liability partnerships must remit the annual filing fee *(<u>Form IT-204-LL</u>)* on or before the 15th day of the third month following the close of their taxable year.
  - This change is effective immediately.
  - Now coincides with the return due date.
  - Prior due date was 60 days after the last day of your tax year.

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Tax Return Due Date Changes (con't.)

- New York C Corporations.
  - Generally must file returns on or before the 15th day of the fourth month following the close of each taxable year, which is April 15th for calendar-year filers. *(was March 15th)*
  - Although the return deadline has been moved back to April 15th for C corporations, these entities are still required to remit the mandatory first installment (MFI) of estimated tax on or before the 15th day of the third month following the close of each taxable year, which is March 15th for calendar year filers.

Tax Return Due Date Changes (con't.)

- The amount of the MFI will now be a percentage of the tax from two tax years prior, instead of the preceding year's tax.
    - For taxpayers with a prior year tax liability of over $100,000 is 40% of the second preceding year's tax.
    - For Taxpayers with a prior year tax liability between $1,000 and $100,000 are required to pay 25% of the second preceding year's tax for the first installment.
- The changes to the MFI computation apply to payments due on or after March 15, 2017 for Article 9 (Transportation and Transmission Corporations), Article 9-A (General Business Corporations), and Article 33 (Insurance Corporations).

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Tax Return Due Date Changes (con't.)

- New York S corporations.
  - New York S corporations will continue to file returns on or before the 15th day of the third month following the close of the taxable year.
  - As the return deadline did not change for New York S corporations, there are no changes to the MFI computation for these entities.
    - S corporations will continue to remit the MFI payment with the filing of a return or extension and it will continue to be based upon the tax shown on the return or request for extension for the preceding year.

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Tax Return Due Date Changes (Cont.)

- Similar conforming changes were made to the filing deadlines for New York City for C Corporations and unincorporated businesses, including sole proprietorships reporting on a Federal Schedule C that are subject to New York City's Unincorporated Business Tax.

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State Conformity with Federal Aviation Administration

- Ensures compliance with Federal law governing the use of monies collected from taxes on aviation fuel by amending the State Finance Law and Tax Law.
  - These amendments segregate and dedicate the petroleum business tax revenues from the sale of aviation fuels into a new aviation purpose account to fund airport improvement projects.
- The legislation exempts fuel used in commercial and general aviation aircraft from local sales tax and the prepaid sales tax on motor fuels.
- The petroleum business tax revenue changes take effect on April 1, 2017, and the sales tax exemptions take effect December 1, 2017.

Tax Credits

Developments with Regard to Certain Tax Credits

- Low-Income Housing Credit.
  - Amends the low-income housing credit.
    - Increases the statewide limitations for the aggregate dollar amount of credit the Commissioner of DHCR may allocate to eligible low-income buildings.
    - The limitation is immediately increased from $64 million to $72 million.

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Developments with Regard to Certain Tax Credits (con't.)

- Hire a Veteran Credit.
  - Extends the expiration date of the hire a veteran credit from January 1, 2017 to January 1, 2019.
  - The period of eligible employment for qualified veterans is also extended from January 1, 2016 to January 1, 2018.
- Commercial Production Credit.
  - Extends the expiration date of the commercial production credit from January 1, 2017 to January 1, 2019.

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Developments with Regard to Certain Tax Credits (con't.)

- Credit for Companies That Provide Transportation to People with Disabilities.
  - Extends the expiration date of the credit for companies who provide transportation to people with disabilities from December 31, 2016 to December 31, 2022.
  - The amendments also prohibit any carryover of the credit to a tax year after this date.
  - Taxpayers providing taxicab or livery service may claim a credit equal to the incremental cost associated with upgrading a vehicle so that it is accessible to individuals with disabilities.

Developments with Regard to Certain Tax Credits (con't.)

- Clean Heating Fuel Credit.
  - Modifies and extends the clean heating fuel credit. The clean heating fuel credit is a refundable tax credit available for the purchase of bioheat, when used for space heating or hot water production for residential purposes within New York State.
  - The Tax Law is amended to modify the minimum biodiesel fuel thresholds for bioheat for the corporate and personal income tax credits to at least six percent biodiesel per gallon of bioheat.

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Developments with Regard to Certain Tax Credits (con’t.)

- Excelsior Jobs Program Tax Credit.
  - Amends the excelsior jobs program to address awarding unused allocation, benefit periods, and overall credit allocation total.
  - Empire State Development (ESD) may award 100% of any unallocated tax credits remaining at the end of 2024, which was formerly the end date of the program, in taxable years 2025 and 2026.
    - This is to ensure that companies entering the program in 2016 and 2017 can realize the full ten-year benefit period.

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Developments with Regard to Certain Tax Credits (con't.)

- Alcohol Beverage Production Credit.
  - Expands the beer production credit available under the corporate franchise tax and the personal income tax to include wine, liquor, and cider.
  - Specifically, the credit will be available to taxpayers registered as a distributor in New York State that produce:
    - 60 million gallons or less of beer or cider;
    - 20 million gallons or less of wine; or
    - 800,000 gallons or less of liquor in New York State.

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Developments with Regard to Certain Tax Credits (con't.)

- The amended credit is renamed the alcohol beverage production credit.
- The expansion of the beer production credit to include wine, liquor, and cider applies to taxable years beginning on or after January 1, 2016.

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Developments with Regard to Certain Tax Credits (con't.)

- Real Property Tax Credit for Manufacturers.
  - An Article 9-A taxpayer principally engaged in the production of goods by farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing, can claim the real property tax credit for manufacturers based on eligible real property taxes paid on property leased from a related or unrelated third party, provided:
    - The taxpayer as lessee paid the taxes pursuant to explicit requirements in a written lease; and

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Developments with Regard to Certain Tax Credits (con't.)

- The taxpayer as lessee paid such taxes directly to the taxing authority and received a written receipt from the taxing authority.

- Prior to this change, real property tax paid on real property leased from a related third party did not qualify for this credit under Article 9-A.
- This change is effective for tax years beginning on or after January 1, 2014.

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Developments with Regard to Certain Tax Credits (con't.)

- Farm Workforce Retention Credit.
  - New law creates the farm workforce retention credit. The refundable credit is available to farm employers equal to a fixed amount per eligible farm employee.
    - A farm employer is a corporation, including a New York S corporation, a sole proprietorship, a limited liability company, or a partnership whose Federal gross income from farming for the taxable year is at least two-thirds of excess Federal gross income.

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Developments with Regard to Certain Tax Credits (con't.)

- Excess Federal gross income means the amount of Federal gross income from all sources for the taxable year in excess of $30,000.
- An eligible farm employee is an individual who is employed for 500 hours or more per taxable year by a farm employer in New York State. General executive officers of a farm employer are excluded from the credit.

Developments with Regard to Certain Tax Credits (con't.)

- The credit is phased in gradually by taxable year:

Tax years beginning on or after	and before	Credit per eligible farm employee
January 1, 2017	January 1, 2018	$250
January 1, 2018	January 1, 2019	$300
January 1, 2019	January 1, 2020	$500
January 1, 2020	January 1, 2021	$400
January 1, 2021	January 1, 2022	$600

- Any employees counted in the computation of this credit cannot be used as the basis to claim any other credit.

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Developments with Regard to Certain Tax Credits (con't.)

- Urban Youth Jobs Tax Credit.
  - Law expands programs four and five of the urban youth jobs tax credit program.
  - The amount of tax credit the Commissioner of the Department of Labor (DOL) is allowed to annually allocate is increased from $20 million to $50 million in both programs four and five.
  - A qualified employee is defined as an individual who meets the following criteria:
    - Is between the ages of 16 and 24;

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Developments with Regard to Certain Tax Credits (con't.)

- Resides in a city with a population of 55,000 or more, or a town with a population of 480,000 or more;
- Is low income or at risk, as defined by the Commissioner of DOL;
- Is unemployed prior to being hired; and
- Pays wages that are equivalent to the wages paid for similar jobs, with appropriate adjustments for experience and training, and for which no other employee was terminated, or where the employer has not otherwise reduced its workforce by involuntary terminations with the intention of filling the vacancy by creating a new hire.

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Summary – NYS Employment Based Credits

- Work Opportunity Credit (WOTC).
  - WOTC is designed to promote the hiring of individuals who qualify as a member of one or more of 10 targeted groups. Federal credit of up to $2,400 for qualified individuals.
- Workers (with Disabilities) Employment Tax Credit (WETC).
  - WETC is New York State's initiative to assist the disabled in securing employment. A New York State tax credit that can result in $2,100 for each individual hired.

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Summary – NYS Employment Based Credits (con't.)

- Workers with Disabilities Tax Credit (WDTC).
    - The Workers with Disabilities Tax Credit (WDTC) program provides tax credits to for-profit businesses/organizations that hire individuals with developmental disabilities (not to be confused with WETC).
- Urban Youth Jobs Program.
    - Encourages the hire of unemployed, disadvantaged youth, ages 16 to 24, who live in New York State. Tax credits of up to $5,000 for hiring youth full-time, and up to $2,500 for hiring youth part-time.

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Summary – NYS Employment Based Credits (con't.)

- Hire-a-Vet Credit.
  - Encourages the hire of qualified veterans. Businesses may earn up to $5,000 for hiring a qualified veteran and up to $15,000 for hiring one who is disabled.
- Minimum Wage Reimbursement Credit.
  - This helps businesses adjust to the rise in the minimum wage rate of pay. Businesses may earn a credit of $1.35 per hour for all hours worked by an eligible employee. An eligible employee is a student who is 16 to 19 years of age at the time of employment at the minimum wage rate.

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Summary – NYS Employment Based Credits (con't.)

- Work For Success.
  - Work for Success Program helps businesses earn up to $2,400 in Federal tax credits (WOTC) for each formerly incarcerated person they hire. Work for Success sends businesses only the most qualified and appropriately trained applicants for open jobs.
- Additional requirements and application information can be found at: www.labor.ny.gov.

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New York State Department of Taxation and Finance – Advisory Opinions

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- An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.

Here is an Overview of some of the TSB-A's Issued During 2016, by Type of Tax

Corporation Tax

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TSB-A-16(6)C

- Petitioner asks whether, in acting as the broker in the sale of two pieces of real property located in the State of New York, for which it received two commissions, it is subject to tax under Article 9-A of the Tax Law.
  - Petitioner received its two commissions for the 2014 tax year when it acted as broker in the sale of two pieces of real property located in New York.
  - Petitioner received the commissions in the amounts of $150,000 and $125,000 for the sale of the two properties, located in Upstate New York.

TSB-A-16(6)C (con't.)

- Petitioner was a foreign corporation that did not have an office in New York State during 2014. Previously had an office, but closed that office in 2011.
- The employee who worked on that sale worked out of the petitioners Connecticut office and worked approximately 26 days in New York on the deals.

- Based on the facts of the case, including the nature, continuity, frequency, and regularity of Petitioner's activities in the state, it was determined that that Petitioner is "doing business" in New York and is therefore, subject to tax under Article 9-A of the Tax Law for tax year 2014.

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Individual Tax

TSB-A-16(4)I

- Petitioner, asks whether distributions under a “nonqualified deferred compensation plan” qualify as “retirement income” under 4 U.S.C.S. § 114(b)(1)(I) and, if so, whether the distributions are subject to New York State income tax withholding.
  - Petitioner participated in several nonqualified deferred compensation plans during his employment in New York.
  - Petitioner was allowed to designate one of three forms of payment from each plan to be paid after separation from service. Petitioner elected to receive payments in quarterly installments over a 10-year period.

TSB-A-16(4)I (con't.)

- Petitioner was domiciled and resided outside of New York during and after his employment. After retiring, Petitioner began receiving distributions from the nonqualified deferred compensation plans. Petitioner states these payments are reportable on Form W-2.

- Conclusion: The payments conform to the definition of "retirement income" under 4 U.S.C.S. § 114(b)(1)(I), and were not subject to New York State income tax or withholding.

TSB-A-16(1)I

- Petitioner asks whether a lump sum payment to be distributed to Petitioner in 2015 from his former employer's 401(k) Restoration Plan will be exempt from New York State and City personal income tax.
  - In August 2014, Petitioner retired from a corporation ("the Corporation") where he had been employed since 1998. From the time he was first employed by the Corporation until December 31, 2014, Petitioner was a resident of New York State and City.

TSB-A-16(1)I (con't.)

- During his employment Petitioner contributed to the Corporation 401(k) Restoration Plan, a nonqualified retirement plan designed to provide supplemental retirement benefits to highly compensated employees. The distribution was payable as a lump sum within 90 days following the end of the Restoration Plan year in which his employment was terminated.
- On December 30, 2014, Petitioner turned in the keys to the New York City apartment that he had been renting and moved to another state, where he now resides.
- Until 2015, when Petitioner was no longer a resident of New York, he had no fixed right to receive any amount of income from his account in the Restoration Plan.

TSB-A-16(1)I (con't.)

- Although Petitioner's account in the Restoration Plan was fully vested, the amount of the account continued to change until the proceeds were distributed.

- Because all the events that fixed Petitioner's right to receive the income from the Restoration Plan and the amount of Petitioner's income from the Plan could only be determined with reasonable accuracy after 2014, the conclusion was the Petitioner is not subject to New York State or City income tax on distributions from this account in 2015.

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Sales and Use Tax

TSB-A-16(18)S

- Petitioner asks whether its service, which provides advertisers with information about Internet users, is subject to sales and use tax.
  - Petitioner offers a service that makes groups of individual Internet users available to its advertiser customers, who then serve an advertisement (“ad”) to each individual user in that group. In order to provide this service, Petitioner collects and analyzes data on approximately 700 million individual users across the Internet.
  - Petitioner does not provide reports on the information it collects, but uses this information to organize a mechanism (technology that includes HTML tags, Internet cookies, and filters to group or segment those cookies) for advertisers to target individual users for relevant ads.

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TSB-A-16(18)S (con't.)

- Conclusion: Service was determined to be a Taxable Information Service.
- Tax Law § 1105(c)(1) imposes a sales tax on receipts from the service of furnishing information by printed, mimeographed, or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling, or analyzing information of any kind or nature and furnishing reports thereof to other persons.

TSB-A-16(3)S

- Petitioner asks whether the sale of Product A, which delivers real-time web analytics data regarding website performance to owners of websites, is subject to sales and use tax.
  - Petitioner sells a web analytics product that allows its customers to monitor web traffic ("visits") to the customer's website in real-time. To use Petitioner's product, customers must embed Petitioner's JavaScript code (the "Code") within the customer's website. The customer cannot alter, reverse engineer, turn on or off, or even access the Code. The Code runs seamlessly in the background on a customer's website.

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TSB-A-16(3)S (con't.)

- The Code allows Petitioner to collect various metrics ("data") related to visitors' use of the customer's website. The collected data is streamed to Petitioner's servers, where it is analyzed and then reported to the customers through a password protected, hosted dashboard website (the "Dashboard") provided by Petitioner.

- Conclusion: Not subject to sales and use tax because the information provided is personal or individual in nature and may not be substantially incorporated in reports furnished to other persons, the service qualifies for the "personal or individual" exclusion from tax in Tax Law § 1105(c)(1).

TSB-A-16(19)S

- Petitioner asks whether its charges for its data storage service are subject to New York State and local sales and use taxes. We conclude that Petitioner's service is not subject to sales or use tax.
  - Petitioner provides a web-based data-hosting service that uses "cloud" based technology and storage to enable subscriber users to: (i) securely store and back-up data files; (ii) share data files with others (including non-subscribers) across the Internet; and (iii) synchronize files across multiple user devices (collectively the "Service").

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- The Business subscription is targeted at businesses, organizations, and groups that require greater storage and sharing capacity across multiple users. Petitioner offers a Free, Pro, and Business subscription.
- All subscriptions allow users the ability to access their data and information stored by Petitioner via any web browser.

- Conclusion: Petitioner's charges for its service are not receipts from the sale of software, Petitioner is not providing an information service as users can access only their own information, and Petitioner is not storing tangible personal property.
  - Data storage service is not one of the enumerated services and thus is not subject to sales tax.

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TSB-A-16(10)S

- Petitioner asks whether the sale and installation of its new product (the "Product"), which is used to organize closets, are subject to sales and use tax.
    - Petitioner is a retailer of home organizational products and is introducing the Product to organize customers' closets. The Product is placed on the floor but is not attached to the floor. It can be enhanced to include drawers, hanging rods, retractable dressing mirrors, tie and belt racks, jewelry trays, hampers, and other organizational amenities. Decorative trim can also be added to give the appearance of built-in cabinetry.

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TSB-A-16(10)S (con't.)

- The Product can be positioned against a wall or freestanding in the center of a room. When the Product is placed against a wall, an anti-tip bracket is used to connect it to the wall with two screws. The anti-tip bracket is used to prevent damage and injury from tipping. Generally, one anti-tip bracket is used for each wall. When the Product is free standing, no anti-tip brackets are used.
- Disassembly and removal of the Product are performed by reversing the installation procedure. When the Product is removed, the only damage to the wall is two screw holes for each anti-tipping bracket installed and two or four small holes from finishing nails if the customer used rear paneling.

- Conclusion: Product, when installed, did not meet the definition of a capital improvement and therefore was subject to sales and use tax.

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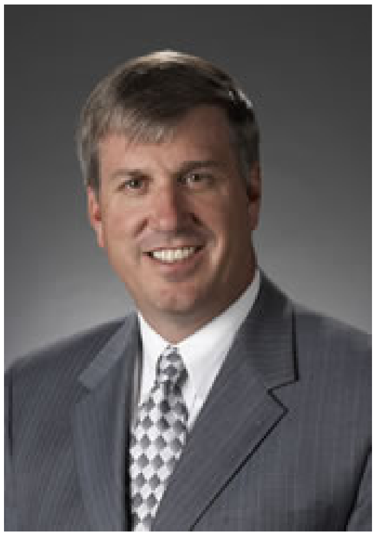

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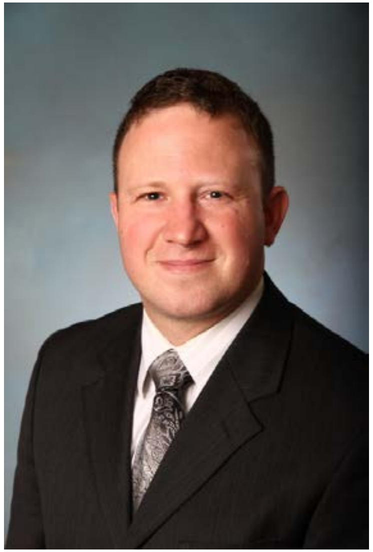

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