

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-15(4)C
Corporation Tax
May 29, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C150210A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] “Petitioner”. Petitioner asks whether, assuming that it meets the definition of a qualified New York manufacturer, as described herein, it is eligible to claim the real property tax credit for manufacturers for the 2014 tax year.

We conclude that Petitioner is not allowed to claim the real property tax credit for manufacturers for the real property taxes it pays pursuant to a lease agreement, as described herein, for the 2014 tax year.

Facts

Petitioner is a manufacturer that rents its manufacturing facilities from [REDACTED] (the “lessor”) and pays real property taxes pursuant to its lease agreement. Petitioner and the lessor are related through common ownership: A 66% owner and a 17% owner of Petitioner are also, respectively, a 76% owner and a 12% owner of the lessor.

The Petition states: Petitioner “rents its manufacturing facilities from a related party.”

Analysis

Tax Law section 210(48) provides for the real property tax credit for qualified New York manufacturers, as defined in Tax Law section 210(1)(a)(vi), available for the 2014 tax year. Specifically, Tax Law section 210(48)(b)(2) provides, in relevant part (emphasis added), that:

the term real property tax includes taxes paid by the taxpayer upon real property principally used during the taxable year by the taxpayer in manufacturing where the taxpayer leases such real property from *an unrelated third party* if the following conditions are satisfied: (i) the tax must be paid by the taxpayer as lessee pursuant to explicit requirements in a written lease, and (ii) the taxpayer as lessee has paid such taxes directly to the taxing authority and has received a written receipt for payment of taxes from the taxing authority.

An unrelated third party is any person that does not meet the definition of a related person under Internal Revenue Code §465(b)(3)(C), which definition includes two corporations that are members of the same controlled group of corporations determined by applying a 10% ownership test (*see* TSB-M-15(3)C, (3)I, “Real Property Tax Credit and Reduction of Tax Rates for

Qualified New York Manufacturers”; *see also* IRS Publication 925, “Passive Activity and At-Risk Rules”).

Since the lessor is a related person to the Petitioner under Internal Revenue Code §465(b)(3)(C), the taxes paid by Petitioner upon the real property leased from the lessor are not included in the term “real property tax” for purposes of Tax Law §210(48).

Therefore, even assuming that Petitioner is a qualified New York manufacturer, and further assuming that it otherwise meets the requirements of Tax Law section 210(48)(b)(2), Petitioner is not allowed to claim the real property tax credit for manufacturers for the real property taxes it pays pursuant to its lease agreement with the lessor for the 2014 tax year.

DATED: May 29, 2015

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: 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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.