

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-97(4)C
Corporation Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C961223A

On December 23, 1996, a Petition for Advisory Opinion was received from Thomas & Betts Corporation, 1555 Lynnfield Road, Memphis, Tennessee 38119.

The issue raised by Petitioner, Thomas & Betts Corporation, is whether the Petitioner is considered a "new business" for purposes of the economic development zone ("EDZ") credits and refund provisions of section 210.12 of the Tax Law when it acquires a corporation doing business in New York State.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner was formed in 1898 and is a manufacturer of electrical and electronic components. Prior to December 11, 1996, Petitioner has never been subject to tax under Article 9 or Article 9-A of the Tax Law. Petitioner is not owned or controlled by a corporation subject to tax under either Article 9 or 9-A of the Tax Law.

Petitioner, a public company, acquired the Augat Corporation including the LRC plant in Horseheads, New York, a public company, through the vote of the respective shareholders of each company on December 11, 1996. Petitioner is the surviving corporation. The stockholders of Augat received Petitioner's shares in exchange for their shares based on a negotiated exchange formula. After the exchange of stock, the stockholders of Augat now own less than 20 percent of Thomas & Betts voting stock.

Petitioner and Augat were not affiliated in any way prior to the acquisition on December 11, 1996. The Augat Corporation produces parts for the cable assembly industry. The Horseheads plant is part of the Elmira Economic Development Zone.

Section 210.12-B of the Tax Law provides for an economic development zone investment tax credit ("EDZ-ITC"). Section 210.12-B(d) of the Tax Law provides that the amount of the EDZ-ITC allowed for any taxable year shall not reduce the tax due for the year to less than the higher of the amounts prescribed in section 210.1(c) and (d) of the Tax Law. Provided, however, that if the amount of EDZ-ITC allowed reduces the tax to such amount, any amount of credit not deductible in the taxable year may be carried over to the following year or years. In lieu of the carryover, a taxpayer which qualifies as a new business under section 210.12(j) of the Tax Law may elect, on its report for its taxable year with respect to which the credit is allowed, to treat 50 percent of the amount of carryover as an overpayment of tax to be credited or refunded in accordance with the provisions of section 1086 of the Tax Law.

Section 210.12(j) of the Tax Law defines a "new business" as any corporation except:

1. a corporation in which over 50% of the number of shares of stock entitling their holders to vote for the election of directors or trustees is owned or controlled, either directly or indirectly, by

a taxpayer subject to tax under Article 9-A; section 183, 184, 185, 186 of Article 9; Article 32 or 33 of the Tax Law;

2. a corporation that is substantially similar in operation and in ownership to a business entity or entities taxable, or previously taxable under Article 9-A; section 183, 184, 185, or 186 of Article 9; Article 32 or 33; or Article 23 or that would have been subject to tax under Article 23, as such article was in effect on January 1, 1980, or the income (or losses) of which is (or was) includable under Article 22 of the Tax Law whereby the intent and purpose of section 210.19(e) of the Tax Law with respect to refunding of credit to new business would be evaded;

3. a corporation that has been subject to tax under Article 9-A for more than four years (excluding short periods) before each tax year during which the taxpayer becomes eligible for the EDZ investment tax credit or EDZ wage tax credit (that is, the year for which the credit is allowed).

Based on the facts presented, it appears that:

1. Petitioner is not a corporation owned or controlled, either directly or indirectly by a taxpayer subject to tax under Article 9, 9-A, 32 or 33 of the Tax Law.

2. Petitioner is similar in operation to an entity previously taxable under Article 9-A, because it acquired Augat which was an Article 9-A taxpayer that is continuing its operations in New York under the new ownership. However, Petitioner is not similar in ownership to a business entity taxable (or previously taxable) under Article 9-A, because even though Augat Corporation was an Article 9-A taxpayer, Augat and Petitioner were not affiliated prior to the acquisition on December 11, 1996, and the ownership of Petitioner after the acquisition is not substantially similar to the ownership of Augat prior to the acquisition.

3. Petitioner was never subject to tax under Article 9-A of the Tax Law prior to the acquisition of Augat Corporation on December 11, 1996.

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Accordingly, Petitioner will be considered a "new business" pursuant to section 210.12(e) of the Tax Law for purposes of the EDZ credits and refunds for those taxable years that it meets the requirements of section 210.12(j)(3) of the Tax Law.

DATED: January 27, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.