

Income/Franchise:

New York ALJ Says Company is an In-State Manufacturer Despite Engaging Subcontractor for Production

Determination DTA No. 830227, N.Y. Div. of Tax App., ALJ Div. (2/15/24). In a case involving a multinational beverage manufacturing and distribution company, an administrative law judge (ALJ) with the New York State Division of Tax Appeals held that the company met the requirements of a “qualified New York manufacturer” (“QNYM”) under Tax Law § 210 (1) (a) (vi) for the periods January 1, 2016 through December 31, 2019 through an in-state vineyard it acquired in 2016, and therefore it was eligible to utilize a reduced Article 9-A New York business corporation franchise tax rate for the underlying tax periods. In doing so, the ALJ reasoned that despite not having company employees physically working at its in-state vineyard and instead engaging a land management contractor to work onsite production, the company nevertheless “used” such property principally in the production of goods via qualified activities under state law. According to the ALJ, regardless of who is subcontracted to perform day-to-day labor at the New York vineyard, the company employed its grapevines for a purpose, and put the grapevines into service and thus qualified as a QNYM pursuant to state law under the facts for the tax years at issue. For tax year 2016, the ALJ also held that although the company purchased the vineyard in mid-December of 2016, because the company owned the vineyard at the close of 2016 and used the vineyard in the production of goods by viticulture in 2016, it constituted a QNYM in 2016 and was eligible to utilize a reduced Article 9-A New York business corporation franchise tax rate. Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/determinations/830227.det.pdf>

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