

Income/Franchise:

New York Court Dismisses Taxpayer's Challenge of Certain Article 9-A Apportionment Rule Provisions

Case No. 904047-24, N.Y. Sup. Ct., Albany County (12/18/24). In a lawsuit brought forth by a payroll services provider challenging certain apportionment provisions within the New York State Department of Taxation and Finance's (Department) Article 9-A Business Corporation Franchise Tax Regulations (specifically, 20 NYCRR Part 4, Apportionment, Subpart 4-1, sections 4-1.2(b)(6) and 4-1.2(c)) [see Repeal of preexisting 20 NYCRR Subchapter A, Parts 1 through 9, the Business Corporation Franchise Tax, and Adoption of New 20 NYCRR Subchapter A, Parts 1 through 9; Repeal of preexisting 20 NYCRR Subchapter B, the Franchise Tax on Banking Corporations Regulations; and Adopted Amendments to 20 NYCRR Subchapter C, the Franchise Taxes on Insurance Corporations, N.Y. Dept. of Tax. & Fin. (12/11/23); Notice of Adoption, N.Y. Dept. of Tax. & Fin. (12/27/23); and previously issued Multistate Tax Alert for more details on the Article 9-A Business Corporation Franchise Tax Regulations adopted in December 2023], a New York court granted the Department's motion for summary judgment to dismiss the action in its entirety – concluding, among other reasons, that the taxpayer was sufficiently forewarned of certain changes to former law and the retroactive application of such law changes did *not* violate due process.

[URL: https://www.tax.ny.gov/rulemaker/adoptions/corp/2023.htm#om121123](https://www.tax.ny.gov/rulemaker/adoptions/corp/2023.htm#om121123)

[URL: https://dos.ny.gov/system/files/documents/2023/12/122723.pdf](https://dos.ny.gov/system/files/documents/2023/12/122723.pdf)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-york-adopts-final-corporate-income-tax-regulations.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-york-adopts-final-corporate-income-tax-regulations.pdf)

Among its claims, the taxpayer argued that the regulatory provisions at issue (20 NYCRR Part 4, Apportionment, Subpart 4-1, sections 4-1.2(b)(6) and 4-1.2(c)) were inconsistent with New York State tax law because:

1. The amount a professional employer organization (PEO) receives for worksite employees, and other expenses, are within the meaning of "receipt" as the term is commonly known; and
2. The regulation at issue excludes reimbursements and thus "creates a new definition of receipts that is unsupported" by state tax law.

The taxpayer had sought a declaratory judgment as to 20 NYCRR Part 4, Apportionment, Subpart 4-1, sections 4-1.2(b)(6) and 4-1.2(c)), challenging the provisions as "against public policy;" "irrational, unreasonable arbitrary and capricious;" "in excess of the Department's jurisdiction;" and "a violation of its rights under the equal protection clause of the New York State and United States Constitutions." The taxpayer also challenged the retroactivity of the provisions as a violation of its due process rights. In response to this argument, the court stated that "[a]lthough nine years appears to be a significant period, under these circumstances, it is possible that it is a reasonable period of time." Please contact us with any questions.

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