SPECIAL ALERT ON DEVELOPMENTS IN

BusinessLaw

New Manufacturer's Property Tax Credit

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Effective for the tax year ending December 31, 2014, manufacturers that own or lease real property in New York and pay real estate taxes with respect to such property, may be entitled to a tax credit for such tax year.

What is the new tax law?

The new law allows "qualified New York manufacturers" to receive a tax credit of up to 20% of the amount of real property taxes paid during the 2014 tax year.[1] The credit is available if the property is owned or (subject to certain restrictions) leased. The credit is applied to reduce the amount of applicable New York State franchise tax (for corporations) or income tax (for sole proprietors, partners, members of a limited liability company, certain estates and trusts, and shareholders of an S corporation) for such tax year.

Who qualifies for the new tax credit?

In order to qualify for the tax credit, a manufacturer must satisfy the following criteria:

- Pay New York State franchise or income tax;
- Be a "qualified New York manufacturer"; and
- Pay real estate taxes on property located in New York, provided that such property is principally used for manufacturing purposes[2].

When is a business considered a "Qualified Manufacturer"?

For tax credit purposes, a manufacturer is a taxpayer principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing[3]. "Principally engaged" means more than 50% of the manufacturer's gross receipts are from the sale of goods produced in those production activities – i.e. the receipts test.[4] In addition to satisfying the receipts test, a "qualified New York manufacturer", must:

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For more information contact
Michael Schiavone

Michael Schiavone has provided legal guidance to businesses for over 30 years. He concentrates his practice in the areas of business law, tax planning, commercial real estate, sports law, and estate planning.

Mr. Schiavone's clients extend across a myriad of industries including banks & financial institutions, hotel & hospitality chains, franchises, healthcare professionals, manufacturing & distribution companies, and professional sports teams.

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Matthew Morey counsels clients through significant events in the life of their businesses.

Mr. Morey's clients continually turn to him for a wide array of needs including protection in contractual matters, corporate and partnership tax matters, guidance to ensure compliance with laws, cost-effective solutions when conflicts arise, and strategies to assist in the growth of their businesses.

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- Possess all of its real or personal property in New York; or
- Possess a portion of its manufacturing equipment in New York, provided such manufacturing equipment has an adjusted basis (for tax purposes) of at least $1,000,000.00.

If the property is leased by the manufacturer, the manufacturer may still be eligible for the credit if it pays the real property taxes and satisfies certain conditions.[5] In the case of a leasing arrangement, the property must be leased by the manufacturer from "an unrelated third party" in a written lease that explicitly obligates the manufacturer to pay the real property taxes. In addition, the lessee-manufacturer must have proof that it paid the real property taxes directly to the taxing authority.

While the language in the applicable statute does not define the term "unrelated third party" for purposes of claiming the new tax credit, the New York Department of Taxation and Finance instructions for claiming the credit (on Form IT-641-I and Form CT 641 -I) provide that an "unrelated third party" is a party that does not meet the IRS definition of a "related person" pursuant to I.R.C. § 465(b)(3)(C).[6]

Obtaining Additional Information

If you have any questions or would like additional information regarding any aspect of tax law, please contact Michael Schiavone by phone at 716 844 3500 or via e-mail at mschiavone@lglaw.com or Matthew Morey by phone at 716 849 1333, ext. 509 or via e-mail at mmorey@lglaw.com.

[1]NY Tax § 210-(B)(43)
[2]Notably, payments in lieu of taxes (otherwise known as "PILOTs"), do not qualify as payment of real estate property taxes for purposes of claiming the tax credit
[3]NY Tax § 210(1)(a)(vi)
[4]NY Tax § 210(1)(a)(vi); Note, if a manufacturer fails the 50% receipts test, it may still qualify if it employs at least 2,500 people in manufacturing in New York and the manufacturing property in New York has an adjusted basis for federal income taxes of at least $100 million
[5]NY Tax § 210-(B)(43)(b)(2)
[6] I.R.C. § 465(b)(3)(C). Among other things, "related persons" include companies under common control or which share more than 50% of common owners.