IN CASE YOU MISSED IT – March 2025

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Almost every day, federal and state courts issue opinions that affect taxpayers. The IRS and state taxing authorities also publish guidance on a myriad of topics.

Each month, this column will review a selection of recent court cases or guidance that tax professionals should know about when advising their clients and preparing tax returns.

For more extensive details on any of these items, please feel free to reach out to the author.

Mackey – entitlement to credits

This was a New York State personal income tax case for the year 2018.

The issue under dispute was whether or not the taxpayer was entitled to the solar energy equipment system credit pursuant to Tax Law section 606 (g-1) for tax year 2018.

Tax Law section 606 (g-1) provides for a tax credit of 25 percent of qualified solar energy system equipment expenditures, not to exceed $5,000.00, for qualified solar energy equipment placed in service in a principal residence in New York on or after September 1, 2006.

The taxpayer attached to his timely filed Form IT-201, for tax year 2018, a Form IT-255, Claim for Solar Energy System Equipment Credit. The taxpayer properly completed the form, showing he had placed solar energy equipment in service on February 19, 2018. The form reflected that he had incurred qualified expenditures of $23,128.00 and he had computed that he was entitled to the maximum credit of $5,000.00.

The New York State Division of Taxation (the "Division") audited his return and issued a Statement of Proposed Audit Change ("Proposed Change") disallowing his claim for the solar energy system equipment credit. The Division explained that the taxpayer had claimed a solar energy system equipment credit in 2017 in the amount of $5,000 and concluded that since the maximum solar energy system equipment credit per eligible system is $5,000, the taxpayer was not entitled to any credit in 2018. The taxpayer responded to the Proposed Change by submitting his two separate purchase agreements for solar systems, one for 2017 and one for 2018, showing that he had acquired a second, identical separate system.

The Division responded to his submission by doubling down on its argument that “the maximum solar energy system equipment credit per eligible system is $5,000,” and denying his claim for 2018 based on his 2017 claim. The Division issued a Notice of Deficiency and the taxpayer timely filed a petition with the Division of Tax Appeals. The taxpayer explained clearly in his petition that he installed a second, separate, qualified solar energy system in 2018 and thus was entitled to a second $5,000 credit.

The Division truly embarrassed itself at the hearing in this matter. The team leader in the Division’s personal income tax unit testified that “we basically added his 2017 credit and his 2018 credit and saw he was in excess of $5,000 at the same address.” When questioned as to whether the 2018 system could be treated as a second, distinct system, the team leader appeared to ignore the question, stating that she “did look to see if the petitioner’s primary residence had changed, but based on the information in his previous returns and the information that he provided it appeared he’s lived at the Perkinsville address the entire time.” When asked further about the two separate purchase agreements, she testified that both agreements had the same address. Rather than realizing the issue was whether or not the taxpayer had two systems at one address, she kept focusing on whether or not he had two separate residences. When asked outright whether someone who purchased the exact same equipment two years in a row would be entitled to two separate credits, she testified that because a qualifying solar energy system has to have a net metering agreement, the taxpayer would have had to have a second net meter to get a second credit.

Incredulously, she then argued that the taxpayer did not provide her with any evidence of a net metering agreement for 2017 or 2018 and that he did not provide any building permits or other documents to show what the 2018 system looked like upon completion.

When the taxpayer was able to cross-examine her, the witness admitted that she had never asked him to provide a net meter agreement, building permit, or electrical permit.

The taxpayer explained in his testimony that he in fact installed two separate solar energy systems at his residence, one in 2017 and another one in 2018, and that he was required to obtain permits for both installations. He explained that he installed a separate electrical subpanel that houses both two solar systems. He provided proof of the loans he incurred to finance the purchase of the second system in 2018.

Nothing in Tax Law section 606 (g-1) limits a taxpayer to one $5,000 credit if he installs more than one system.

The courts have held that “a tax credit is ‘a particularized species of exemption from taxation’” and the taxpayer carries “the burden of showing ‘a clear-cut entitlement’ to the statutory benefit” (Matter of Golub Serv. Sta. v Tax Appeals Trib).

While the courts construe tax credits and tax exemptions very narrowly, it is clear that the taxpayer met his burden of proving that he is entitled to the solar energy system equipment credit for tax year 2018. He repeatedly testified that he installed a separate solar system in 2018. He provided a copy of the agreement and work order to install the 2018 system. The documents showed that the system complied with all of the technical requirements of Tax Law section 606 (g-1).

The Division's argument that he could not qualify for the credit since he did not provide a net metering agreement was meritless since they could not supply any reference to a statutory

provision or law to support this argument. Regardless, the documents that the taxpayer had submitted at trial did show that his system was net- metered and in full compliance with the law.

Takeaway: Sometimes persistence pays off. The taxpayer followed the rules. He installed two separate systems and thus was entitled to two separate credits. Some auditors get caught up in the wrong facts and sadly sometimes a taxpayer is forced to go to court to have a judge show the Division the error of its ways.

Neupert – NY state sales tax

The New York State sales tax on food is so convoluted that it is important to check the statute whenever you encounter a new fact pattern for your client. The slightest alteration in presentation makes all the difference.

This was seen in the recent Neupert case, in which the taxpayer unsuccessfully appealed all the way to the Tax Appeals Tribunal level.

Tax Law section 1105 (d) imposes sales tax on prepared food and drink, while unprepared food is generally exempt from sales tax. Tax Law section 1115(a)(1). To qualify for the exemption, the food must be "(A) sold in an unheated state and, (B) … of a type commonly sold for consumption off the premises and in the same form and condition, quantities and packaging, in establishments which are food stores other than those principally engaged in selling foods prepared and ready to be eaten." Tax Law section 1105(d), 20 NYCRR 527.8(e)(2).

The taxpayer in this case owned a deli in Buffalo, New York that sold both prepared foods and deli meat and other non-prepared foods. During an audit, the Division determined that the party platters sold at the deli should have been subject to tax as they were considered to be “prepared foods.” The party platters were described as catering platters where the customer could choose three meats and three cheeses that would be served on a tray with rolls, mayonnaise, mustard, oil, lettuce, tomatoes, onions, and banana peppers. The taxpayer submitted pictures of the party platters showing that the meats and cheeses are pre-sliced and arranged in a circle in the middle of the tray, while the outer ring consisted of individual containers of the various condiments and sliced sandwich toppings. The rolls that came along with the platters would simply be put in a separate bag. The customer is charged one price for the entire platter with no itemization for the separate components.

As stated above, tax exemption statutes are strictly construed against the taxpayer.

At the administrative law judge level, the judge noted that the taxpayer pre-slices the meat, cheeses, lettuce, tomatoes, onions, and banana peppers and individually packages the various condiments and held that these actions rendered the food different in form and condition from how the same items are sold in a food store, and deemed the platters to be prepared food ready to be eaten and subject to sales tax.

The taxpayer had argued that the food was not ready to be eaten, the platters simply provided the individual components necessary to create a sandwich, and the consumer had to assemble the sandwiches themselves and therefore the platters should not be viewed as "ready to eat." The judge explained that this approach ignored the second prong of the section 1105(d)

exemption as the arrangement of the party platters rendered the components not in the same form and condition for how meats, cheeses, vegetables, and condiments are sold at a food store.

The taxpayer did not want to give up the fight and appealed to the Tax Appeals Tribunal, arguing that 1) the sandwich rolls, lettuce, tomatoes, onions, banana peppers, mayonnaise, mustard, and oil are all served off the platter, and that 2) the party platters are unheated and intended to be consumed off the premises, and therefore the party platter should be exempt from sales tax.

The Tribunal disagreed with the taxpayer, holding that even though some of the components of the platter could have been exempt from sales tax if they were sold individually, by selling the entire platter for just one price, the taxpayer caused the entire price of the party platter to be subject to sales tax.

In addressing the taxpayer's renewed argument that the consumer has to take additional steps to assemble the sandwiches, the Tribunal found that this did not negate the preparation involved in preparing the platters or the fact that the platters were readily consumable as sold. The Tribunal reasoned that "Many foods that are ready to eat can be augmented in some fashion and so we decline to adopt his reasoning."

Takeaway: When dealing with any aspect of New York Sales Tax, it is always important to read the statute and the numerous esoteric exceptions very carefully.

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