

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

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Income Tax
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Eligibility of Shareholder of New York S Corporation to Claim Employment Incentive Credit

The issue is whether a shareholder of a New York S corporation is eligible to claim the employment incentive credit for property acquired in 1998 and 1999 when the New York S corporation was taxed as a New York C corporation.

Company X is a manufacturer that was incorporated in New York State. Company X was taxed as a New York C corporation through December 31, 1999. Company X claimed an investment tax credit (ITC) for assets placed in service in tax years ending December 31, 1998, and December 31, 1999.

On January 1, 2000, Company X elected to be taxed as a New York S Corporation.

Applicable law and regulations

Section 606(a)(1) of the Tax Law provides, in part:

A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article. The amount of the credit shall be the per cent provided for hereinbelow of the investment credit base. The investment credit base is the cost or other basis, for federal income tax purposes, of tangible personal property and other tangible property, including buildings and structural components of buildings, described in paragraph two of this subsection, less the amount of the nonqualified nonrecourse financing with respect to such property to the extent such financing would be excludible from the credit base pursuant to section 46(c)(8) of the internal revenue code (treating such property as section thirty-eight property irrespective of whether or not it in fact constitutes section thirty-eight property). . . .

Section 606(a-1)(1)(A) of the Tax Law provides:

Where a taxpayer is allowed a credit under subsection (a) of this section, other than at the optional rate applicable to research and development property, the taxpayer shall be allowed a credit for each of the two years next succeeding the taxable year for which the credit under such subsection (a) is allowed with respect to such property, whether or not deductible in such taxable year or in subsequent taxable years pursuant to paragraph five of subsection (a) of this section. Provided, however, that the credit allowable under this subsection for any taxable year shall be allowed only if the average number of employees during such taxable year is at least one hundred one percent of the average number of employees during the employment base year. The employment base year shall be the taxable year immediately preceding the taxable year for which the credit under such subsection (a) is allowed except that in the case of a new business, the

employment base year shall be the taxable year in which the credit under such subsection (a) is allowed.

Section 606(i)(1) of the Tax Law provides, in part:

For purposes of determining the application under this section of the credit provisions enumerated in the following table, a shareholder of a New York S corporation:

(A) shall be treated as the taxpayer with respect to his or her pro rata share of the corresponding credit base of such corporation, determined for the corporation's taxable year ending with or within the shareholder's taxable year and

(B) shall be treated as the owner of a new business with respect to such share if the corporation qualifies as a new business pursuant to paragraph (j) of subdivision twelve of section two hundred ten of this chapter.

With respect to the following credit under this section:

The corporation's credit base under section two hundred ten or section fourteen hundred fifty-six of this chapter is:

Investment tax credit under subsection (a)

Investment credit base or qualified rehabilitation expenditures under subdivision twelve of section two hundred ten

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Employment incentive credit under subsection (a-1)

Applicable investment credit base under subdivision twelve-D of section two hundred ten

Opinion

Section 606(i)(1) of the Tax Law treats a shareholder of a New York S corporation as the taxpayer with respect to his or her pro rata share of the corresponding credit base of the corporation for the credits listed. Therefore, the shareholder of a New York S corporation is allowed, for personal income tax purposes, to claim his or her pro rata share of the corporation's credit base for certain credits. With respect to the employment incentive credit under section 606(a-1) of the Tax Law, where a taxpayer was allowed the ITC under section 606(a) of the Tax Law with respect to qualifying property, section 606(a-1) provides an employment incentive credit for each of the two years next succeeding the tax year that the ITC under section 606(a) was allowed with respect to such property.

In this case, the ITC previously allowed to Company X related to assets placed in service in tax years ending December 31, 1998, and December 31, 1999, while Company X was taxed as a New York C corporation. Accordingly, since the shareholder of Company X was not the taxpayer allowed an ITC under section 606(a) of the Tax Law with respect to such property, the shareholder of Company X is not eligible, pursuant to section 606(a-1) of the Tax Law, to claim the employment incentive credit against the personal income tax with respect to property placed in service in taxable years when Company X was taxed as a New York C corporation.

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