NY Tax Minutes: Final SALT Regs And 2 Post-Budget Changes

By **Timothy Noonan and K. Craig Reilly** (July 8, 2019, 3:20 PM EDT)

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The Fourth of July fireworks may be over but there's still plenty to see on the New York tax front. In this month's edition of NY Tax Minutes, we take a look at the Internal Revenue Service's final state and local tax, or SALT, regulations addressing potential workarounds to the SALT deduction cap. We also highlight two noteworthy post-budget changes to New York's tax law and look in on the past month's important state tax decisions and opinions.

This time around, we focus on decisions from both the U.S. Court of Appeals for the Second Circuit and the New York State Court of Appeals, where one concurring judge described the majority's most recent ruling as, "the taxpayer always loses." Finally, we cover new guidance from New York City and state on interest deduction attribution rules and capital loss treatment. So sit back, go easy on the leftover hot dogs and enjoy the show.

The Headlines

IRS Issues Final Regulations on SALT Credits

Going back to some of our **earliest columns**, we've regularly outlined New York's proposed workarounds to the federal $10,000 state and local tax deduction cap. Specifically, we've noted New York and other states attempts to circumvent the cap by allowing taxpayers to make payments in lieu of taxes to a variety of government-operated public purpose foundations, hoping that taxpayers can then treat the payments as fully deductible charitable contributions for federal income tax purposes.

As previously reported, however, on Aug. 23, 2018, the IRS released proposed regulations[1] that attempted to put a stop to the states' proposed workaround. According to the regulations, taxpayers making a payment or transfers property to or for the use of an entity listed in Section 170(c) (which includes contributions to states for exclusively public purposes) and receiving a state or local tax credit in return were deemed to have received a return benefit, or quid pro quo, which would thereby reduce the taxpayer's charitable contribution deduction.

In response to the propose regulations, the IRS received over 7,700 comments, and, on June 13, the IRS issued final regulations, which generally adopt, with some clarifying and technical changes, the proposed regulations that were issued in August 2018. Most notably, the final regulations retain the general rule that if a taxpayer makes a payment or transfers property to or for the use of an entity described in Section 170(c), and the taxpayer receives or expects to receive a state or local tax credit (the rules are different for deductions) in return for such payment, the taxpayer must reduce its federal charitable contribution deduction by the amount of the state or local credit.

One change, however, that was adopted in response to the comments on the proposed regulations was to provide a safe harbor that, subject to certain limitations (including the

$10,000 SALT cap), allows individuals who itemize their deductions to still treat payments made in exchange for tax credits as payments of state or local taxes for federal income tax purposes. According to IRS Notice 2019-12,[2] the change was to ensure that the IRS did not reduce existing financial incentives to donate to state and local tax credit programs.

The final regulations also confirm the initial applicability date from the proposed regulations of Aug. 27, 2018. As we discussed back in August, New York Gov. Andrew Cuomo responded to the draft regulations by issuing an alert, subtly entitled, "Gov. Cuomo Alerts New Yorkers to Deadline to Make Charitable Donations Before Politically Motivated IRS Regulations Take Effect." Gov. Cuomo encouraged donations to New York's public purpose foundations be made on Aug. 24, 25 and 26 in order to beat the IRS' new rules. And it now appears that taxpayers who took advantage of the governor's short window may be entitled to their full federal charitable contribution deduction.

New York Adds GILTI Exemption; Raises Nexus Threshold to $500,000

On June 20, 2019, both the New York State Assembly and Senate passed bills that made noteworthy changes to the state's treatment of two hot tax issues: (1) the taxation of global intangible low-taxed income, or GILTI, and (2) the state's threshold for establishing economic nexus for sales and use tax purposes. The legislation was signed into law by Gov. Cuomo on June 24.

We previously discussed New York's treatment of GILTI back in **January** and **February**. To recap, the governor's final 2019-2020 executive budget that was signed into law in April established a statutory sourcing rule for GILTI that required net GILTI to be included in the denominator of a corporate taxpayer's apportionment factor, with zero reported in the numerator. This apportionment rule provided some relief to corporate taxpayers having to pay federal and state tax on GILTI, but it was a far cry from the 95% exemption that was originally contained in the governor's executive budget proposal but subsequently removed just prior to passage.

Apparently, the government just needed some additional time to summon the political will to pass the 95% exemption, because that's exactly what the state's new law enacts. The new law amends the definition of "Exempt CFC Income" in Section 208(b) of the Tax Law to include "[95%] of the income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951A[.]"

The new law also definitively indicates that this income "shall not constitute investment income" and also requires an add back for any deduction taken pursuant to Section 250(A)(1)(B)(I) of the Internal Revenue Code. Finally, the new law amends the apportionment rules for C corporations. Rather than allowing C corporations to include the full amount of GILTI in the apportionment denominator, the new law permits the inclusion of only 5% of the income.

We note, however, that the new law does not appear to provide any relief for individual taxpayers who are required to report GILTI at the state level. These individual shareholders of controlled foreign corporations may therefore be left with a full state tax bill on income that corporate shareholders are now able to exclude at 95%. The new law takes effect immediately and applies to taxable years beginning on or after Jan. 1, 2019.

In addition to the GILTI exclusion, New York state has also increased its sales threshold for the state's newly enacted (enforced?) economic nexus sales tax rules.

As we've reported in **prior columns**, New York state originally took the position that following the U.S. Supreme Court's South Dakota v. Wayfair Inc. decision,[3] under existing New York law, any vendor who (1) sells more than $300,000 in tangible personal property and (2) makes more than 100 separate sales of tangible personal property delivered into New York state during the immediately preceding four sales tax quarters was required to register and comply with New York state sales tax laws, regardless of whether the vendor had any other presence in the state.[4] The state's new law increases the economic nexus sales threshold from $300,000 to $500,000.

This mirrors action taken recently by California, which also increased its economic nexus threshold to $500,000 (up from $100,000). So it looks like the larger states are going to permit more economic activity within their borders without requiring out-of-state sellers to collect and remit sales tax. These states appear, instead, more interested in going after the big fish and securing collection and remittance from **marketplace providers and facilitators**.

New York Taxpayers Petition U.S. Supreme Court in Double Tax Case

Earlier this year, the New York State Court of Appeals declined to hear two cases in which taxpayers alleged that New York's statutory residency scheme improperly subjects statutory residents to double taxation in violation of the federal commerce clause.[5] The suits were primarily based on the constitutional analysis employed by the U.S. Supreme Court's 2015 Wynne v. Maryland decision,[6] where the court struck down a portion of Maryland's resident credit scheme on constitutional grounds. In Wynne, the Court held that Maryland's failure to provide a credit for the local portion of the state's individual income tax for taxes paid to other states violated the dormant commerce clause because it failed the internal consistency test.

In the lower court cases, the New York taxpayers alleged that, in light of the analysis used by the Supreme Court in Wynne, New York's scheme was unconstitutional. At the end of 2018, however, two state Appellate Division courts held that New York's scheme was constitutional, despite the U.S. Supreme Court ruling and granted the Tax Department's motions for summary judgment. According to the Appellate Division, the Wynne decision had not abrogated the New York Court of Appeals prior ruling in Matter of Tamagni v. Tax Appeals Tribunal,[7] in which the court rejected a claim that New York's failure to provide credits for taxes paid to other states on intangible income violates the commerce clause to the U.S. Constitution.

The Court of Appeals then declined to take up the cases, finding that "no substantial constitutional question is directly involved." On June 24, however, attorneys from Paul Weiss LLP and Hodgson Russ LLP filed petitions for certiorari[8] with the United States Supreme Court, asking the court to consider: "Whether a state tax scheme that taxes the intangible income of individuals who are domiciled in the State and certain individuals not domiciled in the State, without offsetting credits for taxes paid to another State of domicile, violates the dormant Commerce Clause under this Court's decision in Comptroller of Treasury of Maryland v. Wynne, 135 S. Ct. 1787 (2015)."

The Cases

Each month, we highlight new and noteworthy cases from New York State's Division of Tax Appeals and Tax Appeals Tribunal, along with any other cases involving New York taxes. This month, we cover the New York State Court of Appeals review of a statutory exclusion from tax for certain information services, including the court's potentially groundbreaking new rule for interpreting such exclusions. We also look at the U.S. Court of Appeals for the Second Circuit's dismissal of a consumer class action lawsuit against Costco Wholesale Corp. as well as Disney's attempts to deduct foreign royalty payments from affiliated non-New York taxpayers.

Court of Appeals Construes Sales Tax Information Services Exclusion in Favor of the Tax Department

Western New Yorkers love their regional supermarket chain, Wegmans Food Markets Inc. The stores are clean and well-stocked; there is an abundance of delicious prepared foods and the prices are generally right.

On June 27, however, the New York State Court of Appeals (with one separate concurrence and two separate dissents) reversed a lower appellate court's decision and held in Wegmans Food Markets Inc. v. Tax Appeals Tribunal,[9] that the Tax Appeals Tribunal had rationally determined that one of the information service tools that Wegmans uses as part of its pricing strategies cannot be excluded from the state's sales tax on information services. The majority's decision potentially represents a groundbreaking shift in how to interpret tax exclusions.

Wegmans, like most other retailers, regularly monitors competitors' prices. And as part of this strategy, the court described that Wegmans engaged a third-party company, RetailData LLC, to perform competitive price audits, whereby Wegmans would select products and periods for RetailData to surveil and RetailData's data collectors would then travel to the locations specified in Wegmans' requests and collect the information by scanning prices from various other store shelves. After collecting the prices, RetailData would then validate the information, create reports and furnish the reports to Wegmans in its requested format.

Following a sales and use tax audit, the New York State Department of Taxation and Finance determined that Wegmans' purchases of the competitive price audits of its competitors and the corresponding reports from RetailData were taxable receipts under Tax Law 1105(c)(1), which imposes sales tax on certain information services but excludes the furnishing of information that is "personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons." Wegmans then petitioned the Division of Tax Appeals, arguing that RetailData's services qualified as an exempt information service that was personal and individual in nature. An administrative law judge denied Wegmans' petition. The Tax Appeals Tribunal affirmed. But the Appellate Division annulled the Tribunal's determination, concluding that the tax exclusion applied to Wegmans' purchases.

One principal factor in the Appellate Division's decision was its statement that "in the event of ambiguity, where, as here, an exclusion rather than an exemption is involved, the statute must be strictly construed in favor of the taxpayer" (emphasis added). The Appellate Division therefore granted Wegmans' petition and annulled the Tribunal's determination, which cancelled Wegmans' underlying sales and use tax assessment.

On appeal, however, the New York State Court of Appeals, citing to Mobile Oil Corp v. Finance Administrator of City of New York,[10] reversed the Appellate Division, claiming there should be no distinction between "exclusions" and "exemptions." According to the Court of Appeals, the Appellate Division had failed to apply a clear rule of statutory interpretation, which was that "[i]n cases of statutory exclusions, the presumption is in favor of the taxing power."

Although the court acknowledged that "[a] statute which levies a tax is to be construed most strongly against the government and in favor of the citizen," the court said the rule is "otherwise with respect to the taxpayers' right to exclude items from taxation." In other words, when the matter at issue "is subject to the taxing statute," but the question is whether taxation is negated by a statutory exclusion or exemption, "the presumption is in favor of the taxing power." And the Court of Appeals went on to say that the same holds true for exemptions, deductions, and exclusions.

In separate concurring and dissenting opinions, three judges took issue with this claim. In a separate concurrence, Judge Leslie Stein, for example, wrote, "[e]ffectively overruling our landmark decision in Matter of Grace v. New York State Tax Commission,[11] the majority today declares a new rule: in New York, the taxpayer always loses." Judge Stein added that "what has long been obvious to the bench and bar [is that] in Grace, this court distinguished between exemptions and exclusions for purposes of construing such provisions in tax statutes." Judge Stein therefore emphasize that, in her view, "the majority's statements regarding statutory construction are, in fact, dicta."

In separate dissent, Judge Eugene Fahey wrote, "[f]or decades the Appellate Division has correctly analyzed this area of law in holding that an exclusion should be interpreted in favor of the taxpayer," and Judge Rowan Wilson added, the majority has "dispense[d] pure obiter dicta denigrating a 40-year-old principle of statutory interpretation distinguishing tax exemptions from tax exclusions."

Applying its (new?) principles of statutory interpretation, however, the majority held that the information that RetailData compiled and the reports it furnished to Wegmans derived from a "nonconfidential and widely-accessible source [--i.e.] the supermarket shelves of Wegmans' competitors." According to the court, the tribunal therefore "rationally concluded that the information RetailData furnished to Wegmans was not personal or individual in nature because it was collected from prices on supermarket shelves, which are publicly available, widely accessible and not confidential."

Here, again, Judge Wilson disagreed with the majority's analysis, noting that, under his review of the law's legislative history, it is only the service of gathering and compiling information that must be "personal or individual" in order to qualify for the exclusion, as opposed to any requirement that the underlying information itself qualify as "personal or individual." According to the majority, however, because the information at issue did not fall within Section 1105(c)(1)'s exclusion for the "the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons," Wegmans' audit purchases were properly subject to sales and use tax.

Whether the majority's decision shifts the landscape for interpreting statutory exclusions from tax remains to be seen, but we except the court's newest decision to play an important role in future state tax cases involving statutory interpretation.

Second Circuit Affirms Costco Class Action Dismissal

Back in **September 2018**, we highlighted the recent litigation trend of class action lawsuits against retailers for allegedly over collecting sales tax. Our focus was on Guterman v. Costco Wholesale Corp.,[12] in which a New York federal district court granted Costco's motion to dismiss its customers' class action claim. The plaintiffs alleged that Costco illegally charged its New York customers sales tax on the full price, rather than the reduced price, of their coupon-related warehouse purchases.

And, although the district court did raise some questions about whether Costco may have overcharged its customers on the tax due on its undisclosed manufacturers' coupons, the court held that the plaintiffs' remedy lied exclusively within the refund procedures laid out in New York state's sales tax laws, not in federal court.

On June 12, the U.S. Court of Appeals for the Second Circuit agreed and affirmed the lower court's opinion. Specifically, the court noted that the explicit language of Sections 1139 and 1140 of the Tax Law provides that the state's administrative refund procedures are the "exclusive remedies" for a person challenging the imposition of a sales tax. Citing to its prior decision in Estler v. Dunkin' Brands Inc.,[13] the court noted that Section 1139 "makes clear that [Section] 1140's exclusive administrative remedy is designed for precisely those cases in which a claimant alleges that a tax has collected erroneously, illegally, or unconstitutionally."

Although the plaintiff in Guterman argued that Estler was distinguishable because, in that case, the sales tax erroneously collected was conveyed directly to New York, such that New York was overpaid and the consumer's natural remedy was a refund from the New York treasury, Costco, the plaintiff alleged, actually charged consumers for an amount of tax that, under New York's regulations governing manufacturers' coupons, was due to New York from Costco.

The plaintiff therefore argued that "New York received only what it was owed, and that the amount collected from the consumer in effect unjustly enriched Costco, not New York." But even assuming this interpretation was correct, the Second Circuit held that Section 1140 "renders the remedies provided in Section 1139 exclusive for claims that a sales tax was collected 'illegally'—exactly what [the plaintiff] alleges happened here." The court therefore affirmed the dismissal of the plaintiff's class action suit. Retailers across the state should take note of Tax Law Sections 1140 and 1139 if faced with similar claims from disgruntled customers.

Disney Unable to Deduct Foreign Royalty Payments from Affiliated Non-New York Taxpayers

In Matter of <u>The Walt Disney Co</u>. and Consolidated Subsidiaries,[14] an administrative law judge from the Division of Tax Appeals ruled that The Walt Disney Co. and its consolidated subsidiaries could not exclude royalty payments received from foreign affiliates when computing the state's corporate franchise tax.

As explained by the ALJ, on its 2008, 2009 and 2010 fiscal year New York state corporate franchise tax returns, Disney deducted several billion dollars in foreign royalty payments related to its intellectual property that was licensed to foreign affiliates. During the years in issue, former New York Tax Law Section 208.9(o)(3) provided that "a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal income unless such royalty payments would not be required to be added back under subparagraph two of this paragraph[.]" The exclusion was eliminated in 2013.

Section 208.9(o)(2) of the Tax Law then provided that a taxpayer paying a royalty to a related person was not required to add-back to entire net income any deduction for such royalty payments if: "(1) the related members were part of a combined report (combined reporting exception); or (2) the related member paid the royalty during the same tax year to a non-related member for a valid business purpose in an arm's-length deal (the conduit exception); or (3) the royalty payments were paid to a related member organized under the laws of a foreign country subject to a comprehensive tax treaty with the United States and the payments were taxed in that country at a rate equal to or greater than the rate in New York (treaty exception)."

Disney argued that it was entitled to exclude the royalties that it received from its foreign affiliates because those foreign affiliates would have been required to add-back the royalty payment deductions if they had been New York taxpayers. In other words, the affiliates would not have qualified for any of the exceptions under Section 208.9(o)(2). The Audit Division countered first that Disney failed to prove that the royalties were, in fact, royalties. And, second, the division argued that even if the royalties were royalties, Disney could only deduct the royalties if the payer of the royalties was a New York taxpayer that was required to add-back the deduction for the royalty payments.

After finding that Disney had proven that the payments were royalties, the ALJ went on to analyze the royalty deduction statute based on its language and legislative history. Although we don't necessarily agree with the outcome of the ALJ's analysis (see below), we do commend the ALJ for not applying the "only reasonable construction standard" in considering the proper interpretation of the statute. We have written elsewhere that the "only reasonable construction" standard has no place in the Division of Tax Appeals' arsenal of interpretive tools. And we were pleased to see that the ALJ rightly gave no deference to the division's interpretation of the statute here.

Under his own analysis, the ALJ determined that the statute at issue is properly read to require that the payer of the royalty be a New York taxpayer in order for the recipient to be able to deduct the payment. We conceded this is a close question. The ALJ noted that the purpose of former Section 208(9) was to "address a common tax avoidance strategy whereby a corporation transferred its intangible assets, such as trademarks, to a related corporation and paid a royalty for the use of those intangible assets thereby reducing its taxable earnings in New York."

So far, we agree. But we take issue with the ALJ's conclusion that the "addback and exclusion provisions contained in Tax Law former Section 208(9)(o) work in tandem to ensure that royalty transactions between related members are taxed only once, not escape taxation all together."

To us, the use of the phrase "would not be" instead of "are not" in former New York Tax Law Section 208.9(o)(3) indicates that the Legislature contemplated that nontaxpayer royalty payers would not preclude a royalty payment recipient from claiming the special exclusion. Fairness dictates symmetry in tax provisions like this. So for every deduction denial, there ought to be a corresponding exclusion.

And we find it hard to belief that the division would permit a New York royalty payer to avoid the deduction add-back requirement simply because the royalty recipient was not a New York taxpayer. But there is no symmetry unless the law is properly construed to permit an exclusion for a New York royalty recipient when the payer is a nontaxpayer. Otherwise, New York has a "heads I win, tails you lose" situation.

Division of Tax Appeals Confirms Itemized Deduction Limitations Apply to Nonresidents

Section 615(g) of New York State's Tax Law provides that with "respect to an individual whose New York adjusted gross income is over $1 million and no more than $10 million, the

New York itemized deduction shall be an amount equal to 50% of any charitable contribution deduction allowed under Section 170 of the Internal Revenue Code." In other words, the only itemized deduction available to taxpayers with more than $1 million in New York AGI is half of their federal charitable deduction.

In Matter of Lifton,[15] two nonresident taxpayers argued that this limitation applies only to resident taxpayers, and therefore, as nonresidents, the couple was fully entitled to a $1,458,158 investment interest expense deduction. An administrative law judge disagreed, however.

First noting that "deduction and exemption statutes must be strictly construed against the taxpayer" (we encourage the majority from Wegmans Food Markets, Inc. v. Tax Appeals Tribunal to note that the ALJ did not mention "exclusion" statutes), the ALJ went on to analyze the statutory rules under which a nonresident calculates his or her New York source income.

Under these rules — specifically Tax Law Section 601(e) — nonresidents calculate their tax base "as if such nonresident or part-year resident ... were a resident." According to the ALJ, "[t]hat language can only mean that, because the deduction cap in Tax Law Section 615(g) applies to resident individuals, the cap also applies to nonresident individuals."

The ALJ also dismissed the taxpayers' equal protection argument, noting that the taxpayers failed to "identify a class of similarly situated persons being treated in a different way," which the ALJ noted is a prerequisite for any equal protection claim. Accordingly, the ALJ found that the taxpayers were not entitled to deduct their investment interest expenses on their New York state nonresident income tax returns.

Other Guidance

New York Updates Guidance on Post-TCJA Interest Deduction Attribution Rule

New York state continues to update its guidance in the wake of 2017's federal tax changes. Better late than never? This month, the state provided modifications to the required methodology for the attribution of interest deductions for business corporate franchise taxpayers.

Under TSB-M-19(1)C,[16] taxpayers with repatriated income under Internal Revenue Code Section 965; taxpayers with a carryforward of interest deductions limited by Section 163(j); and taxpayers impacted by a Section 163(j) limitation in the current tax year are provided step-by-step instructions for the attribution of interest deductions under Article 9-A of the Tax.

The state's most recent technical memorandum should be read alongside TSB-M-15(8)C,[17] that outlines the state's general interest attribution rules, following New York's 2014 corporate tax reform, which made significant changes to the definitions of "investment capital" and "investment income." Under the state's current franchise tax rules, all noninterest deductions are now attributable to business income and the methodology for the attribution of interest deductions changed dramatically from the pre-2014 rules. In addition, the state's 2014 amendments created a 40% safe harbor election in lieu of interest attribution for certain types of income.

Both memorandums detail the procedures for determining direct and indirect interest deductions, and the state's newest guidance seems to further complicate an already difficult area following changes made to the business interest expense deduction rules under federal tax reform. Despite the complexity, taxpayers with repatriated Section 965 income or Section 163(j) limitations should closely review the new instructions.

New York Tax Department Releases Draft Regulations on Capital Losses

In the past, we've commended New York's efforts to issue and seek comments on draft regulations related to the state's 2014 corporate tax reform. Those efforts continued this month, with new draft amendments to the capital loss provisions of the state's business corporate franchise tax regulations.

The proposed amendments[18] outline the proper treatment of New York investment capital losses and New York business capital losses sustained in taxable years beginning on or after Jan. 1, 2015, and capital losses sustained in taxable years beginning before Jan. 1, 2015. Specifically, for capital losses and gains sustained in taxable years beginning on or after Jan. 1, 2015, taxpayers must ensure that New York investment capital losses offset only New York investment capital gains and that New York business capital losses offset only New York business capital gains.

The regulations also detail the proposed rules for capital loss carryforward and carrybacks, along with the rules for federal capital losses sustained in New York-non filing years or in years in which the taxpayer qualifies as a New York S corporation. According to the rules, a New York net business capital loss or net investment capital loss cannot be carried back before 2015.

Otherwise, New York net business capital losses and New York net investment capital losses are carried first to each of the three taxable years immediately preceding the loss year and carried forward to the five taxable years immediately succeeding the loss year. Federal taxable income is also to be increased under the proposed rules by any losses used in New York non-filing years or New York S corporation years.

The amended regulations go on to provide detail examples covering the rules above, and comments are due to the Tax Department by Sept. 16. We encourage New York to keep up the good work on this front.

New York City Department of Finance Issues Business Tax Practitioner Newsletter

The New York City Department of Finance issued Volume 1, Issue 1 of its Business Tax Practitioner Newsletter[19] at the end of May. According to the Commissioner's introduction, "the newsletter will present information that is meant to be useful to tax professionals and business owners who must file city taxes, [including] interpretations of city, state, and federal tax laws, tips for practitioners to better serve their clients, and answers to the questions most frequently asked of our agency."

The first issue outlines New York City's voluntary disclosure and compliance program; details New York City's shift from three-factor to single-factor, receipts only allocation; and provides some initial guidance on the city's interest expense attribution rules in the wake of the new Section 163(j) limitations on deductions for business interest expenses.

The inaugural issue also introduces the city's recurring, "Dear DOF" feature, which provides readers the opportunity to ask questions or seek guidance on specific topic. Perhaps it's time for NY Tax Minutes to strike up a dialogue with the Business Tax Practitioner Newsletter?

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Disclosure: Timothy Noonan represents petitioners Richard Chamberlain and Martha Crum in their U.S. Supreme Court petition for a writ of certiorari (Chamberlain v. New York State Department of Taxation) and petitioners Samuel Edelman and Louise Edelman in their U.S. Supreme Court petition for a writ of certiorari (Edelman v. New York State Department of Taxation and Finance).

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[1] REG-112176-18.

[2] IRS Notice 2019-12, https://www.irs.gov/pub/irs-drop/n-19-12.pdf.

[3] South Dakota v. Wayfair, Inc., 138 S. Ct. 2080 (2018).

[4] N.Y. Tax Law § 1101(b)(8).

[5] Chamberlain v. N.Y. State Dep't of Taxation & Fin., 2018 NY Slip Op 07383 (3rd Dept., App. Div.); Edelman v. New York State Department of Taxation & Fin., 162 A.D.3d 574 (1st Dept 2018).

[6] Comptroller of the Treasury v. Wynne, 135 S. Ct. 1787 (2015). https://www.supremecourt.gov/opinions/14pdf/13-485_o7jp.pdf.

[7] Matter of Tamagni v. Tax Appeals Tribunal, 91 N.Y.2d 530 (1998).

[8] https://www.supremecourt.gov/DocketPDF/18/18-1569/103831/20190624120651433_Chamberlain%20cert%20petition.pdf; https://www.supremecourt.gov/DocketPDF/18/18-1570/103827/20190624120144526_Edelman%20cert%20petition.pdf.

[9] Matter of Wegmans Food Mkts., Inc. v. Tax Appeals Tribunal of the State of N.Y., 2019 NY Slip Op 05184, 2019 WL 2618068 (N.Y. June 27, 2019).

[10] Mobil Oil Corp. v. Fin. Adm'r of N.Y., 58 N.Y.2d 95, 459 N.Y.S.2d 566, 446 N.E.2d 130 (1983).

[11] Grace v. N.Y. State Tax Com., 37 N.Y.2d 193, 371 N.Y.S.2d 715, 332 N.E.2d 886 (1975).

[12] Guterman v. Costco Wholesale Corp., 342 F. Supp. 3d 468, 2018 WL 4572257 (S.D.N.Y., September 24, 2018).

[13] , Inc., 691 F. App'x 3 (2d Cir. 2017)' target='_blank' style='color: #990000'>Estler v. Dunkin' Brands, Inc., 691 F. App'x 3 (2d Cir. 2017).

[14] Matter of The Walt Disney Company and Consolidated Subsidiaries, https://www.dta.ny.gov/pdf/determinations/828304.det.pdf.

[15] Matter of Lifton, https://www.dta.ny.gov/pdf/determinations/827854.det.pdf.

[16] TSB-M-19(1)C, https://www.tax.ny.gov/pdf/2019/corp/m19-1c.pdf.

[17] TSB-M-15(8)C, https://www.tax.ny.gov/pdf/memos/multitax/m15_8c_7i.pdf.

[18] https://www.tax.ny.gov/bus/ct/pending/capital%20loss%20reg%206.14.19_.pdf.

[19] https://www1.nyc.gov/assets/finance/html/newsletters/dof-newletter.pdf.