

THE GENETELLI CONSULTING GROUP
State and Local Tax Services
431 FIFTH AVENUE
NEW YORK, NY 10016

(212) 684-4111
FACSIMILE: (212) 213-1020
EMAIL: rgenetelli@genetelli.com

Subject: Matter of Bausch & Lomb, Inc. and Affiliates
Date: July 25, 2006

To: Our Clients and Friends

The filing of corporate franchise tax returns in New York on a combined basis is an important planning opportunity that should not be overlooked. A decision to file on a combined basis must include an analysis of the tax impact. A taxpayer must review not only the current year, but also future years and prior years that are open under the statute of limitations.

The filing of returns on a combined basis in New York presents many issues related to the computation of the franchise tax. Many computational issues center on whether the combined group should be treated as a single corporation ("the single company theory") or as separate corporations ("the separate company theory"). This issue is at the center of a recent New York State Division of Tax Appeals determination, Petition of Bausch & Lomb, Inc. and Affiliates, Administrative Law Judge Unit, May 18, 2006.

In Bausch & Lomb, the taxpayer incurred a loss on the sale (to a third party) of a subsidiary that was a member of the taxpayer's combined group. The taxpayer took the position that when a loss is incurred on the sale of subsidiary assets included in the combined group, such loss is attributable to business capital rather than subsidiary capital. Consequently, the taxpayer reduced the entire net income of the combined group, which produced a loss which the taxpayer attempted to carry back to a prior year. The rationale implicit in the taxpayer's position was to treat the combined group as a single corporation (so that the loss on the sale was not attributable to subsidiary capital, and an add back of the loss to entire net income was not required).

However, the ruling of the Administrative Law Judge applied the rationale of the separate company theory. The Administrative Law Judge held that the entire net incomes of the individual members of the combined group were to be computed and then added together when calculating combined entire net income. In performing the computation in this manner, the loss on the sale of the subsidiary was added back to the individual member of the combined group that sold the subsidiary. Thus, the taxpayer was unable to claim the benefit of the loss on the combined return, nor carry it back to a prior year.

There have been many other determinations that have hinged on whether a combined group is viewed as a single company or as separate corporations. If you have any questions on combined reporting computational issues, or any other state and local tax matters, please do not hesitate to contact me.

THE GENETELLI CONSULTING GROUP
State and Local Tax Services

Richard W. Genetelli
The Genetelli Consulting Group
State and Local Tax Consultants
431 Fifth Avenue, 3rd Floor
New York, NY 10016
Tel: (212) 684-4111
Fax: (212) 213-1020
<http://www.genetelli.com>