
Tax Bulletin

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Supreme Judicial Court provides long awaited guidance to Massachusetts corporate taxpayers on consequences of *Perini* case

On May 13, 1996, the Supreme Judicial Court provided definitive guidance as to how taxpayers will be affected by the Court's earlier decision in *Perini v. Commissioner of Revenue*, 419 Mass. 763 (1995), in which the Court found that certain sections of the Massachusetts corporate excise were unconstitutional. The Court's newly issued guidance is welcome news for intangible property corporations, which will now be entitled to deduct the value of all subsidiaries (that are at least 80% owned by the corporation) in computing the net worth measure of the excise, unless and until the law is changed by the Massachusetts Legislature.

Under the Massachusetts corporate excise, corporations pay a tax not only on their net income but also on their net worth. In its 1995 *Perini* decision, the Supreme Judicial Court found unconstitutional certain provisions of the Massachusetts corporate excise allowing corporations to deduct from taxable net worth the value of some subsidiaries and not others, depending upon whether the corporate parent was a Massachusetts or foreign corporation and whether or not the subsidiary was doing business in Massachusetts. Nevertheless, in its 1995 decision, the Court failed to specify the consequences arising from the unconstitutionality of those provisions. The Massachusetts Department of Revenue originally took the position that as a result of the Court's decision, no corporate parent was entitled to a deduction under the provisions at issue, and, in the absence of remedial legislation from the Massachusetts Legislature, the Supreme Judicial Court ultimately agreed to provide further guidance on the consequences of its earlier decision.

In a partial final judgment issued in April, 1996, the Court first determined that for periods before 1995, corporate taxpayers would be entitled to deduct from their taxable net worth the value of their investment in all of their (80%) subsidiaries, regardless of the jurisdictions in which the parent or the subsidiaries were incorporated. In its final judgment, entered on May 13, 1996, the Court adopted the recommendation of a single justice to allow deductions in all years, including years after 1995, for the value of all (80%) subsidiaries, both domestic and foreign. The Court concluded that this approach most closely conformed to the intent of the Legislature to avoid double taxation, although the Court's approach concededly provided unintended tax deductions for some corporations.

Is Your Company Entitled to Refunds?

Corporations subject to the Massachusetts corporate excise should determine whether they should seek an abatement for net worth taxes paid in prior periods. A corporation may be entitled to a refund for a year or period:

- that is still open under the statute of limitations;
- during which the corporation was an "intangible property corporation"; and
- in which the corporation did not deduct the value of all of its subsidiaries in computing its net worth for purposes of determining the tax on net worth.

The deadline for filing an application for abatement is three years from the due date of the return, two years from the date the tax was assessed or deemed to be assessed, or one year from the date that the tax was paid, whichever is later. It is possible, however, that tax periods can remain open by agreement. In addition, taxpayers may be able to make a claim for a taxable year that is the subject of an appeal pending before the Appellate Tax Board.

In general, an "intangible property corporation" is a corporation whose tangible property situated in the Commonwealth on the last day of the taxable year and not subject to local taxation is less than 10% of its total assets (not subject to local taxation) on the last day of the taxable year. Holding companies and other corporations with substantial intangible assets are usually intangible property corporations.

Corporate officers should consult their tax counsel in order to determine whether their companies qualify for a refund. Taxpayers entitled to a refund should prepare and file with the Department of Revenue an application for abatement on Form CA-6, clearly indicating that the application for abatement is being filed on the basis of the Perini decision.

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