

LETTER RULING

Letter Ruling 18-2: Corporate Excise Treatment of Motor Vehicle Inventory

DATE:

05/16/2018

ORGANIZATION:

Massachusetts Department of Revenue

REFERENCED SOURCES:

[Massachusetts General Laws](#)

I. Introduction

We have received your Letter Ruling request submitted on behalf of your clients, in which you seek a determination that the motor vehicles held in inventory by _____ (“Dealer”) constitute property “subject to local taxation” that is excluded from the non-income measure of the corporate excise of Dealer’s parent, _____ (“Parent”). For the reasons discussed below, we conclude that Dealer’s motor vehicle inventory is not “subject to local taxation” and cannot be excluded on that basis from Parent’s non-income measure of the corporate excise.

II. Facts

The following is your representation of the facts upon which we base this ruling. Dealer is a “QSub” within the meaning of 830 CMR 62.17A.2(2), and a qualified subchapter S subsidiary as defined in Internal Revenue Code (“IRC”) § 1361(b)(3)(B). Dealer is a wholly-owned subsidiary of Parent, which is an S corporation as defined in 830 CMR 62.17A.2(2) for both federal and Massachusetts tax purposes. Parent is subject to the corporate excise under G.L. c. 63, § 39.

Dealer operates a motor vehicle dealership located in [Municipality], Massachusetts. [Municipality] has licensed Dealer as a motor vehicle dealer pursuant to G.L. c. 140, § 59. Dealer typically owns and holds in inventory approximately 1,000 to 1,200 motor vehicles. When Dealer uses its motor vehicles held in inventory on Massachusetts public roads, as, for example, when they are used for customer test drives or as “company cars” of sales people or other employees of Dealer, such vehicles do not display license plates assigned specifically to an individual motor vehicle. Instead, Dealer attaches “dealer plates” to the vehicles that may be used interchangeably on the motor vehicles pursuant to G.L. c. 90, § 5, under which the Massachusetts Registry of Motor Vehicles (the “RMV”) has issued a general registration to Dealer. Dealer currently holds 39 dealer plates. Dealer is subject to the special excise imposed under G.L. c. 60A, § 1 for each of its dealer plates. You assert that because Dealer is subject to this special excise, its motor vehicles held in inventory are “subject to local taxation” and thus may be excluded by Parent in calculating its non-income measure of the corporate excise.

III. Issue

Whether the motor vehicles held in inventory by Dealer are “subject to local taxation” and thus may be excluded by Parent in determining its non-income measure of the corporate excise. See G.L. c. 63, § 39.

IV. Ruling

For the reasons discussed below, we conclude that the motor vehicles held in inventory by Dealer are not “subject to local taxation” and cannot be excluded on that basis by Parent when computing its non-income measure of the corporate excise.

V. Discussion

Generally, an S corporation that is not a financial institution is subject to the corporate excise under G.L. c. 63, § 39, as modified by G.L. c. 63, § 32D. G.L. c. 63, § 32D(a). An S corporation is subject to the non-income measure of the corporate excise imposed under G.L. c. 63, § 39(a)(1). An S corporation meeting certain gross receipts thresholds is also subject to the income measure of the corporate excise as determined under G.L. c. 63, § 32D.

Depending on whether an S corporation is a tangible^[1] or intangible property corporation^[2], it is subject to either a property measure or a net worth measure. G.L. c. 63, § 39(a)(1). The property measure of a tangible property corporation is imposed on the “book value of such of its tangible property situated in the commonwealth on the last day of the taxable year as is not subject to local taxation nor taxable under section sixty-seven.” G.L. c. 63, § 30.7. The net worth measure of an intangible property corporation is calculated based on, in relevant part, the

...book value of its total assets on the last day of the taxable year ... reduced by the sum of (1) its liabilities on said date, (2) **the book value of its tangible property situated in the commonwealth on said date and subject to local taxation, less the interest of any mortgagee therein**, and (3) the book value on said date of its investment in subsidiary business corporations which represent 80 per cent or more of the voting stock of said subsidiary business corporations or, in the case of a subsidiary business corporation which does not have voting stock, the book value of its investment in such business corporation which represents 80 per cent or more ownership interest.

G.L. c. 63, § 30.8 (emphasis added). An S corporation also includes the value of the property or net worth of all QSubs that it owns when calculating its non-income measure of the corporate excise. G.L. c. 63, § 32D(b). At issue in this ruling is whether the motor vehicles held in inventory by Dealer constitute tangible property “subject to local taxation” that would reduce the book value of Parent’s assets for purposes of the non-income measure of the corporate excise.

Tangible property is “subject to local taxation” for purposes of the non-income measure of the corporate excise if it is not exempt from local real and personal property taxation under G.L. c. 59 or the motor vehicle excise imposed under G.L. c. 60A. G.L. c. 63, § 81. See *also* Letter Ruling 03-9. Generally, G.L. c. 59, § 2 subjects all real and personal property located in Massachusetts to local taxation, unless otherwise exempt. Under G.L. c. 59, § 5, clause 35, motor vehicles and trailers that are either subject to or exempt from taxation under G.L. c. 60A are exempt from the local property tax imposed under G.L. c. 59. Therefore, G.L. c. 60A governs the issue in question.

G.L. c. 60A, § 1 generally imposes a motor vehicle excise in the amount of \$25 per \$1,000 of valuation on

“every motor vehicle and trailer registered under chapter ninety, for the privilege of such registration.” G.L. c. 90, § 5 generally allows a motor vehicle dealer (“dealer”) to obtain a general registration and general registration number plates (so called “dealer plates”) issued by the RMV. Any motor vehicle owned or controlled by a dealer who has been issued a general registration and which properly displays the valid corresponding dealer plate is considered to be registered under G.L. c. 90. G.L. c. 90, § 5(c).

In 1998, G.L. c. 60A, § 1 was amended to impose a separate excise on dealers. In lieu of paying the motor vehicle excise on each motor vehicle in its inventory, a dealer is subject to a special excise for the privilege of obtaining the general registration and dealer plates in the amount of \$100 for each dealer plate issued by the RMV to the dealer. *Id.* However, motor vehicles owned by a dealer are generally exempt from the motor vehicle excise under G.L. c. 60A, § 1, and consequently, exempt from the local personal property tax by virtue of G.L. c. 59, § 5, clause 35.[\[3\]](#)

Contemporaneously with the creation of the special excise under G.L. c. 60A, § 1, the Department issued Information Guideline Release (“IGR”) No. 98-206. IGR No. 98-206 notes that the special excise is imposed in lieu of the motor vehicle excise and is based solely on the number of dealer plates issued to a dealer. Accordingly, the application of the special excise has no correlation with the number or value of motor vehicles owned or controlled by a dealer. The dealer’s motor vehicles held in inventory themselves, to the extent that they are subject to the dealer’s general registration or operated with dealer plates, are exempt from the motor vehicle excise, and thus also exempt from the local personal property tax. G.L. c. 60A, § 1. As a result, the dealer’s motor vehicles held in inventory are not subject to local taxation.

Based on the analysis above, we conclude that Dealer’s motor vehicles held in inventory are not “subject to local taxation” and thus may not be excluded on that basis by Parent when computing its non-income measure of the corporate excise.

Very truly yours,

/s/Christopher C. Harding

Christopher C. Harding
Commissioner of Revenue

CCH:RHF:db

LR 18-2

[1] A tangible property corporation is defined as

...a corporation whose tangible property situated in the commonwealth on the last day of the taxable year and not subject to local taxation is 10 per cent or more of such portion of its total assets on the last day of the taxable year less those assets as are situated in the commonwealth on the last day of the taxable year and are subject to local taxation, less its investment on that date in subsidiary corporations which represent 80 per cent or more of the voting stock of those corporations, as shall be found by multiplying that amount by the corporation's income apportionment percentage, as determined under section 38, or a corporation which, in the judgment of the commissioner, should be so classified.

G.L. c. 63, § 30.10.

[2] An intangible property corporation is defined as

...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 per cent of such portion of its total assets on the last day of the taxable year less those assets as are situated in the commonwealth on the last day of the taxable year and are subject to local taxation, less its investment on that date in subsidiary corporations which represent 80 per cent or more of the voting stock of those corporations, as shall be found by multiplying that amount by the corporation's income apportionment percentage, as determined under section 38, or a corporation which, in the judgment of the commissioner, should be so classified.

G.L. c. 63, § 30.11.

[3] Prior to the 1998 amendment of G.L. c. 60A, § 1, motor vehicles owned and controlled by a dealer who had been issued a general registration and received dealer plates were exempt from the motor vehicle excise, so long as the motor vehicles were used for business purposes only. After the 1998 amendment, motor vehicles owned by dealers are also exempt even when used for certain personal uses. G.L. c. 60A, § 1 now provides that dealers who have obtained a general registration and dealer plates

shall otherwise be exempt from the excise imposed by this section on any motor vehicle owned by such motor vehicle dealer, which motor vehicle may be operated by such dealer, the spouse of such dealer, a co-owner of such dealer or dealership entity, the spouse of such co-owner or an employee of such dealer whose duties involve the sale of motor vehicles at any time for any purpose, including personal use, provided that such employee renders at least 20 hours of service each week to such dealer and provided that such co-owner holds at least 40 per cent proprietary interest in such motor vehicle dealer or any such dealership entity; provided, however, that a motor

vehicle which is operated under such general or distinguishing mark or number shall, at all times, display all notices and stickers required by applicable law to be eligible for sale.