

New Jersey – Out-of-state limited partner subject to CBT

November 1, 2013

UPDATE: The parties settled this matter in March 2015.

In brief

A New Jersey tax court found that the corporate limited partner of a New Jersey limited partnership was subject to the state's Corporation Business Tax. The reasons for the corporate partner's nexus with New Jersey included: (1) the partner and limited partnership were in the same line of business; (2) they were both parties to the same New Jersey-governed cash management agreement; (3) they had common agents, managers, officers, and directors; and (4) they shared a principal place of business in New Jersey.

New Jersey taxpayers that have, or are considering, refund claims asserting the absence of nexus when their only contact with the state is a limited partnership interest may find this decision instructive.

Village Super Market outlines the types of contacts with New Jersey and relationships with in-state limited partnerships that could create nexus with the state. [[*Village Super Market of PA, Inc. v. Director, Division of Taxation*](#), New Jersey Tax Court, #021002-2010 (10/23/13)]

In detail

Facts

During the years at issue (1999-present), Village Super Market, Inc. (INC) was the corporate parent of Village Super Market of PA, Inc. (PA), which owned and operated a Pennsylvania supermarket. PA owned a limited partnership interest in Village Super Market of NJ, LP (LP), which was formed on October 28, 1999, and owned supermarkets located in New Jersey. PA's limited partnership interest in LP varied between 83.33% and 99% during the years at issue.

During the years at issue, PA did not file a New Jersey Corporation Business Tax (CBT) return due to its stated "lack of presence in New Jersey."

Following an audit, the Division determined that PA was subject to the CBT. PA filed a complaint with the tax court asserting that it has no nexus with New Jersey.

Taxpayer asserts similarities with BIS LP

PA argued that its limited partnership interest in LP is not enough to subject it to CBT because it is merely a passive investor, similar to the taxpayer in the New Jersey Appellate Court's decision in *BIS LP, Inc.*

v. Director. In *BIS LP*, a corporation's 99% limited partnership interest was insufficient to create nexus with New Jersey for reasons including: (1) the corporation was not involved in the same line of business as the limited partnership, (2) there were no 'substantial' overlapping of officers between the corporation and the limited partnership, and (3) there was no sharing of offices, operational facilities, technology, or know-how between the corporation and limited partnership. [Click here](#) for our summary of the *BIS LP* decision.

Nexus established through interactions with LP and INC

The tax court found that PA's interactions with LP and INC established sufficient minimum contacts to meet the requirement of presence-based nexus in New Jersey. The court focused on three identifiable areas: (1) physical presence in New Jersey, (2) contractual presence, and (3) correlating business interests.

The tax court found the following facts supported PA's New Jersey physical presence:

- PA's official documents and business records were kept in New Jersey.
- PA's tax returns and bank statements identified New Jersey as PA's address.
- PA's New Jersey registration form indicated that there were persons working in New Jersey on behalf of PA.
- Nearly all of PA's officers and directors worked out of a New Jersey office.

PA, LP, and INC executed a joint cash management agreement (CMA). Elements of the CMA that the court

found supported New Jersey nexus included:

- All of PA's cash assets were held in New Jersey as a subsidiary loan to INC.
- The substantial interest income generated as a result of such loans remained in New Jersey because it was added to the principal balance of the loan and not paid out to PA.

The tax court found that PA was not a separate, distinct, and independent business from LP or INC for the following reasons:

- All of the entities were involved in the supermarket business, were interrelated, and were interdependent.
- Employees and resources were shared among the entities.
- A substantial overlap of officers and directors existed.
- PA received income in the form of a patronage dividend from a food cooperative. PA was entitled to such a dividend only because of INC's ownership in the cooperative.

The tax court held that PA and LP were not discreet and independent

entities because they were in the same line of business; were both parties to the same New Jersey-governed CMA; had common agents, managers, officers, and directors upon whom they were dependent upon to operate the supermarket stores; and shared a principal place of business in New Jersey. Accordingly, the court found that PA is subject to CBT from October 28, 1999, to the present.

The takeaway

The appellate court in *BIS LP* found that an out-of-state limited partner did not have nexus with the state. *Village Super Market* illustrates out-of-state limited partner activities that differ from those found in *BIS LP* could lead to a different result. Taxpayers that have, or are considering, refund claims based on *BIS LP* may find the *Village Super Market* decision instructive regarding the types of contacts with New Jersey and relationships with in-state limited partnerships that could rise to the level of creating nexus with the state. Given this Division-favorable decision, the Division may place an even greater scrutiny on related refund claims going forward.

Let's talk

If you have any questions regarding the *Village Super Market* decision, please contact:

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