Ruling 97-04

Vermont Department of Taxes

Date: July 22, 1997

Written By: George H. Phillips, Tax Policy Analyst

Approved By: Edward W. Haase, Commissioner of Taxes

This ruling addresses the issue of the computation of incremental income tax limitation to the Vermont manufacturers' tax credit for [Company]. The ruling is based on information provided on [Company] amended Vermont corporate income tax return for the year ending September 30, 1995 and information you provided in our telephone conversation on July 11, 1997.

[Company] has been given a certificate of eligibility for Vermont manufacturer's investment tax credit pursuant to Title 32, Vermont Statutes Annotated, section 5930. The certificate approves credits totaling $8,101,563. Under the provisions of section 5930, the credit is available to [Company] beginning with the year ending September 1995. The statute provides that the credit may not reduce a manufacturer's Vermont liability in any one year by more than 80 percent of the "incremental tax" and that unused credits may be carried forward.

"Incremental tax" is defined at V.S.A. 32 V.S.A. §5930(a)(2):
(2) "Incremental Tax" means the manufacturer's current year Vermont income tax liability minus the manufacturer's Vermont income tax liability for the last full tax year ending before January, 1993, or the average of the manufacturer's Vermont income tax liability for the last two or three full tax years ending before January, 1993, as the manufacturer elects. For any manufacturer with no pre-1993 full-year income tax liability, "incremental tax" shall mean its current year Vermont income tax liability minus 80 percent of its first full year Vermont income tax liability. In the case of two or more organizations, trades or businesses owned or controlled directly of indirectly by the same interests, the commissioner may determine the manufacturer's incremental tax, if necessary, clearly to reflect the manufacturer's income. "Vermont income tax liability" for purposes of this subsection shall mean such tax liability determined without regard to net operating or capital losses from other years, and without regard to any credits."
[Company] and two affiliated corporations, [Company] and [Company], have filed a consolidated Vermont income tax return for the year ending September 1995 as authorized by 32 V.S.A. §5862(c). For each of the last three years ending before January 1993 the companies filed separate returns [Company] indicated that it did not have activity in Vermont which would subject it to Vermont tax in the year ending September 1992).

For the year ending September 1995, the Vermont Income tax liability of the consolidated group (before application of the credit) was $326,037. Had [Company] filed on a separate basis for that year, its Vermont income tax liability would have been $842,967. The average Vermont income tax liability for the three years prior to January 1993 for [Company] was $186,823. [Company] chooses to use this amount as the basis for incremental income because it is less than either the prior year's liability or the average of the two prior years' liabilities.

The 80% incremental tax liability is calculated by subtracting from the current year's liability the average liability of the elected base period. In the case of the year ending September 1995, the current year's Vermont income tax liability is that portion of the $326,037 liability of the affiliated group which is attributable to [Company]. The portion attributable to [Company] is determined by prorating the total liability in proportion to the liability each corporation would pay on a separate basis.

Because there have been changes in the filing procedure between the base year and the current year, the commissioner may provide for another calculation which clearly reflects income. The $186,823 represents a liability partially attributable to the choice of filing on a separate basis during the base periods. Actual increase in income tax liability is more clearly reflected by comparing [Company] current year liability (from prorating the consolidated liability) to a similar calculation for the base years.

The income tax liability increase would also be clearly reflected if [Company] continued to file on a separate basis for the duration of the credit's availability. The Department will allow the corporations to deconsolidate for periods where the credit is available if it chooses to do so. Otherwise the correct calculation of the limitation is to reduce [Company] share of the current year liability of the consolidated group by the amount of [Company] share of the liability computed by a pro-forma similar calculation for the base periods, then multiplying by 80 percent.

You have suggested that a proper calculation which starts with a pro-forma Vermont liability on a separate filing basis for the current year with the resulting credit then applied to the total tax liability of the combined group. This calculation would totally eliminate the Vermont tax liability for the year ending September 1995. This clearly would not produce the result intended from the limitation. The purpose of limiting the credit to incremental income tax liability was to assure that the credit did not reduce liabilities below the base level. That is, it was the legislative intent that a manufacturer would pay at least the amount of tax that it had been paying before receiving the credit, plus 20% of any additional tax which would otherwise be due. This result is not achieved by allowing the credit to be computed on a liability which is avoided by the mechanics of consolidation.

This ruling is issued solely to your business and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.