



Advisory Opinion: TSB-A-24(13)I

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED], (“Petitioner”). Petitioner asks if its individual resident members/partners are allowed a subtraction modification when computing their New York adjusted gross income (“NYAGI”) for their distributive share of payroll expenses that were required to be added back on Petitioner’s Form 1065 U.S. Return for Partnership Income (“Form 1065”) when Petitioner claimed an Internal Revenue Code (“IRC”) § 41(d) increasing research activities credit (“research credit”).

We conclude that the individual partners are entitled to a subtraction modification for their distributive share of payroll expenses under Tax Law § 612(c)(15).

Facts

Petitioner is a professional limited liability company (“LLC”) taxed as a partnership for federal and New York state tax purposes. All of Petitioner’s partners are New York resident individuals. For taxable years 2016 – 2018, Petitioner filed amended Forms 1065 in order to claim the IRC § 41 research credit. On Petitioner’s amended Forms 1065, Petitioner reduced its payroll expenses pursuant to IRC § 280C(c)(1)¹ by the amount included in the computation of the research credit claimed. Also, Petitioner’s New York partnership returns and individual partner returns were amended to reflect this change.

Analysis

The New York personal income tax law conforms to the federal income tax classification of limited liability companies (“LLCs”) and limited liability partnerships (“LLPs”). Therefore, an LLC that is treated as a partnership for federal income tax purposes will be treated as a partnership for New York tax purposes. See Department of Taxation and Finance Memorandum, TSB-M-94(6)I and (8)C, October 25, 1994. Under Tax Law § 601(f), a partnership is not subject to tax under Article 22 of the Tax Law; however, persons carrying on business as partners are liable for personal income tax in their separate or individual capacities. Under Tax Law § 617(a) and (b), in determining a resident partner’s NYAGI, any modifications under Tax Law § 612(c) that relate to an item of partnership income, gain, loss or deduction are made in accordance with the partner’s distributive share and shall have the same character for the partner as for federal income tax purposes.

The New York taxable income of a resident individual partner is the partner’s NYAGI less New York deductions and New York exemptions. See Tax Law § 611. In determining a

¹ IRC § 280C(c)(1) requires taxpayers to reduce their IRC § 174 deductions by the amount of the IRC § 41 research credit claimed for the tax period to prevent a taxpayer from receiving a double benefit (an expense deduction and a credit) related to the research credit. Also, Petitioner in this case did not qualify to compute the research credit without reducing qualified research expenditures as the election to do so was not made on a timely filed original return including extensions. See IRC § 280(C)(c)(3). Also, Petitioner is not a qualified small business that may elect to claim a certain portion of the research credit as a payroll tax credit.

resident individual partner's NYAGI, the starting point is the individual's federal adjusted gross income ("FAGI"). Additions and subtractions then are made to the FAGI amount pursuant to the income modifications set forth in Tax Law § 612. Pursuant to Tax Law §§ 612(c)(15) and 617, a resident individual partner is entitled to a subtraction modification from FAGI for the portion of wages and salaries paid or incurred for the taxable year for which a deduction is disallowed pursuant to IRC § 280C in accordance with the partner's distributive share and the character of the partnership item.

In this case, when Petitioner amended its Forms 1065 to claim the research credit, Petitioner's payroll expense deductions were required under IRC § 280C(c)(1) to be reduced by the value of payroll expenses included in the computation of the credit claimed under IRC § 41. This reduction in payroll expenses led to an increase in Petitioner's FAGI. As Petitioner has timely filed amended NY Partnership returns (Forms IT-204) to reflect the changes made to the Forms 1065, Petitioner's resident individual partners will be allowed on their individual amended returns, a subtraction modification under Tax Law § 612(c)(15) for their distributive share of payroll expenses paid or incurred for the taxable year for which a deduction was disallowed pursuant to IRC § 280C.

Dated: April 24, 2024

/s/

Brian McCann
Principal Attorney

Note: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.