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This Week in State Tax (TWIST)

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New York: Tribunal Finds Insufficient Relationships and Lack of Unity

The New York Tax Appeals Tribunal recently held that the New York combined return of a real estate investment company should not include an indirect subsidiary that functioned as a passive, part-owner of an out-of-state shopping mall. The parent, an Australian company, indirectly owned Yarmouth Lend Lease KOP, Inc. (KOP), an entity that had no employees or business activities. KOP's sole asset was a 50 percent ownership stake in King of Prussia Associates, the entity that operated one of the largest shopping malls in the U.S. in King of Prussia, PA. Prior to tax-year-ending December 31, 2007, the taxpayer included KOP on its New York combined return as part of its retail property business. In the years leading up to tax year 2007, however, the taxpayer sold most of its interests in retail property. By 2007, KOP was the only mall in which the taxpayer maintained an interest, and the taxpayer ceased including KOP in its New York combined group. The returns for tax years 2007-2009 were audited, and the auditor determined that the taxpayer should have continued to include KOP in its New York combined group. After conclusion of the audit, an Administrative Law Judge (ALJ) agreed with the taxpayer that KOP was properly excluded from the return. The Department of Taxation and Finance appealed.

Under New York law for the years involved, an entity must be included on a combined return if a substantial ownership requirement was met (undisputed here), and there were "substantial intercorporate transactions" (generally meaning 50 percent of expenditures, not counting administrative services such as accounting, legal and personnel services) among related companies. Alternatively, combined reporting could be mandated if failure to include an entity on a combined report would result in distortion of tax liability.

The Tax Tribunal ruled that the ALJ had correctly determined that the taxpayer's transactions with KOP did not meet the "substantial intercorporate transactions" threshold. Furthermore, there was no unitary business between KOP and the taxpayer because the taxpayer was no longer in the retail property business aside from its ownership of KOP, meaning there was no flow of value or integration between the entities. In addition, the Tribunal determined that exclusion of KOP from the New York return was not distortive because the taxpayer did not play an active role in managing the King of Prussia Mall investment. Contact Aaron Balken with questions about In the Matter of Lendlease Americas Holdings, Inc.

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