

MA Revenue Committee Hearing
Gregory Stay Comments
July 8, 2009

Ahold USA; Stop & Shop

Ahold USA is the parent company for S&S. It also owns grocery stores under the names of Giant and Martins. In MA, Stop & Shop is one of the largest employers in MA with more than 20,000 union associates and over 2000 non-union associates. We have raised and/or donated more than \$1.4 million to regional food banks, 8,000 turkeys to Massachusetts food banks, more than \$40 million to the Jimmy Fund, and in 2008 our 128 MA stores and corporate offices, as is common every year, donated more than \$1.7 million in product, gift certificates and cash donations to local schools, churches and temples, little leagues, firefighters, etc.. Also, since 2003 Stop & Shop has made capital investments of over \$1 Billion. This \$1 Billion was spent mainly on local construction projects which also use union labor. We are proud of our green culture and as a result, Stop & Shop has 51 buildings LEED certified. Since 2004, we have moved our U.S. headquarters from VA to MA, moved Giant MD's management from MD to MA and consolidated the distribution from several states in Freetown MA.

Water's Edge Election – The MA combined reporting statutes permit a unitary group of affiliated corporations to make an election to either be taxed on a worldwide basis or on a water's edge basis. However, the water's edge group as defined under the current statute is not a true water's edge group, because it would include foreign companies that have no business operations, or effectively connected income in the U.S.; that are already taxed in the foreign country; and that are not taxed under U.S. federal statutes. This part of the statute results in significant double taxation on these foreign companies. We do not believe this was the intent of the MA legislature when they passed the statute. The federal government does not seek to tax a non-US corporation solely because it has received a prescribed amount of income from a US affiliate, and neither should Massachusetts. Instead, similar to the sound tax policy adopted by numerous sister states, Massachusetts should not seek to tax income that is outside the reach of federal taxation. This type of taxing regime would significantly and permanently damage the reputation of Massachusetts in the international business community, which will impair Massachusetts' ability to attract and maintain investment and job growth by Insourcing companies. Under a true water's edge election, (i.e. similar to other states) the only income of foreign entities that would be included in the MA return would be the income that is effectively connected to the conduct of a trade or business in the United States.

If, as the DOR has stated, there are perceived abuses, the combined reporting statute and regulations do not address them. A law cannot be so broadly written so as to address imagined yet unidentified tax abuse situations without the risk of penalizing legitimate business transactions. The MA combined reporting law penalizes ALL transactions between affiliates including legitimate, business motivated, arms-length transactions. Federal tax and treaty law already addresses and prevents abusive transactions between the U.S. and foreign countries. This law will cost the State tax revenue by creating an environment that discourages foreign investment in the State.

The DOR guidelines contained in the regulation for allocating expenses that are “reasonably related and not disproportionate” are subjective and will certainly result in disagreements and litigation between taxpayers and the DOR. Additionally, the regulation requires information from non-US affiliates to determine group inclusion. The process to convert this information, which will be in a foreign currency and maintained under foreign accounting principles, into a form that is acceptable to Massachusetts, will be costly and time consuming. Refusal to provide this expensive information, in a form required by the regulations and not required under the statute, may lead to additional confusion and litigation. There may be foreign country restrictions on providing such information and other administrative complexities and expenses may also be involved. This law will increase the litigation, compliance, and enforcement cost.

Conclusion

It is the Department Of Revenue’s responsibility to administer the law as enacted by the legislature. They are not responsible for setting the State’s fiscal policy. While the statute leaves room for interpretation, the regulation is overreaching, as it is more likely that the Legislature intended to limit the water's edge group - as the name suggests - to income connected with the United States. However, technically, the regulations do not conflict with the statute as written. That is why it is critical that the legislature pass this technical correction to meet the intent of the legislators and the Governor to pass a simple, fair, law that will increase tax revenue by not penalizing foreign investment in the State.