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Federal Circuit: State brownfield tax credit amounts held subject to federal income tax

The U.S. Court of Appeals for the Federal Circuit today affirmed the summary judgment motion granted to the government in the taxpayers' refund suit for a portion of federal income tax that they paid on an excess amount of a state tax credit received by them.

The case is: *Ginsburg v. United States*, 2018-1788 (Fed. Cir. April 25 2019). Read the Federal Circuit's [decision](#) [PDF 129 KB]

Summary

The taxpayers (married individuals) through a limited liability corporation in which they indirectly held a majority of the partnership interests, had received a New York State tax credit for the re-development of a brownfield site. The amount of the brownfield re-development credit was approximately \$6.6 million for 2011, and the taxpayers' share of that credit was just under \$5 million.

In 2013, New York State paid the taxpayers a refund of \$1.9 million attributable to the brownfield re-development tax credit. The taxpayers did not report this amount as income on their 2013 federal income tax return, claiming that this payment was a nontaxable refund.

The IRS, however, examined the return and proposed adjustments to include about \$1.8 million of the \$1.9 million as taxable income. The amount of federal tax owed was approximately \$609,000 which the taxpayers paid. The taxpayers in May 2016 filed a refund claim with the IRS for \$602,000 (representing a part of the deficiency attributable to the brownfield re-development tax credit). Eventually, the refund claim ended up in the U.S. Court of Federal Claims which denied the taxpayers' contention that the brownfield re-development tax credit qualified for certain exceptions or exclusions from federal income tax. The taxpayers had asserted that the tax credit was a reimbursement of capital costs.

The Federal Circuit today affirmed.

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