

**New York State Department of Taxation and Finance**  
**Office of Counsel**  
**Advisory Opinion Unit**

TSB-A-09(15)I  
Income Tax  
November 4, 2009

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I090803A

The petition asks whether the farmers' school tax credit of Petitioner, [REDACTED], an S corporation, is to be allocated to the shareholders of the S corporation based on their ownership interest at the time the property taxes were paid or whether the credit should be allocated to all shareholders during the S corporation's tax year using a per share per day basis method.

We conclude that, while the qualified school district property taxes were paid after the shareholders' termination, the farmers' school tax credit must be allocated on a per share per day basis when the shareholders did not make an election under Internal Revenue Code §1377(a)(2).

**Facts**

Petitioner and family members ("Petitioner's group") collectively owned 50% of the shares of a New York S corporation that qualified for the farmer's school tax credit in both 2007 and 2008. In 2008, Petitioner's group bought out the other shareholders of the S corporation. After Petitioner's group had acquired a 100% interest in the S corporation, the group paid both the 2007 and the 2008 school taxes. The school taxes were paid with funds that were contributed by Petitioner's group after they had acquired all the S corporation's outstanding shares. Also, the shareholder agreement did not require that the school taxes be specially allocated in a manner that differed from the shareholders' ownership interest in the S corporation. Further, at the time of the sale, the shareholders did not elect to terminate the S corporation year as permitted under IRC §1377(a)(2).

**Analysis**

Under Tax Law § 210.22(b), a corporation is an eligible farmer if, during the taxable year, its Federal adjusted gross income from farming is two-thirds of its excess Federal gross income. A corporation that satisfies the eligible farmer test can claim a credit, under Tax Law §210.22 (a), equal to the allowable school district property taxes it paid, against its Article 9-A tax.

Tax Law §606(i)(1)(A) permits a New York S corporation shareholder to be regarded as the taxpayer with regard to his or her pro rata share of the S corporation's tax credit. Therefore, an S corporation shareholder can apply his or her pro rata share of the Article 9-A farmers' school tax credit in determining his or her New York State personal income tax liability under Article 22.

An issue arises as to how to allocate the farmers' school tax credit among S corporation shareholders, if a shareholder's interest is terminated before the end of the S corporation's tax year and before the allowable school district property tax is paid, and the shareholders did not make an election under IRC §1377(a)(2). In a year in which a shareholder termination occurs, IRC §1377(a)(2) allows the S corporation shareholders to elect to treat the S corporation as if it had two short taxable years, the first of which ends on the date of the shareholder's termination, and the second of which starts the day after the shareholder termination and continues until the date the S corporation normally ends its tax year. Therefore, if the shareholders make an election under IRC §1377(a)(2), all shareholders prior to the

