

**SUPER-CONCRETE CORPORATION**

Petitioner

v.

**STATE DEPARTMENT OF**

**ASSESSMENTS AND TAXATION**

Respondent

\* **IN THE**

\* **MARYLAND TAX COURT**

\*

\* No. 12-TR-OO-128

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**MEMORANDUM AND ORDER**

The matter before the Court presents the following question: Was the Maryland State Department of Assessments and Taxation correct to deny Super-Concrete Corporation’s request for refund, which cited §§12-108(p)(2), 13-207(a)(9), and 13-404(b)(1)(ii) of the Tax Property Article of the Annotated Code of Maryland?

The court concludes that the Maryland State Department of Assessments and Taxation was correct to deny the request for refund.

**I. Facts**

The parties stipulate that on August 1, 2011, Super-Concrete Corporation (a District of Columbia corporation, hereafter “Super-Concrete” or “Petitioner”) made two filings with the Maryland State Department of Assessments and Taxation (hereafter “SDAT” or “Respondent.”).

The first filing was the Articles of Merger of Silver Hill Materials II, LLC (Hereafter “Silver Hill”) into Super-Concrete. Silver Hill was a Maryland limited liability company. At its creation in late 1999 or early 2000, Silver Hill elected to be treated as a corporation for federal income tax purposes by filing a form 8832 with the IRS.

The second filing was a completed Certificate of Conveyance form. The form indicated that Silver Hill owned real property in Prince George’s County, Maryland, included in the merger. On the form was a check box, which asked if the conveyance was made pursuant to a re-

organization described in IRC §368(a). The form described such conveyances as exempt from recordation and transfer taxes. The petitioner checked the box in the affirmative.

SDAT reviewed the Super-Concrete filings, and denied Super-Concrete's exemption claim because IRC §368(a) does not describe the merger of a limited liability company into a corporation. SDAT assessed state and local recordation and transfer taxes on the conveyance of \$299,770.12, and conditioned its acceptance of the Super-Concrete filings on payment of those taxes.

Petitioner paid those recordation and transfer taxes. On August 19, 2011, petitioner made a request for refund of the full amount of those taxes. The request included a memorandum of law prepared by petitioner's counsel. Petitioner's counsel wrote an additional letter in support of the request on October 11, 2011, and mailed it to SDAT.

SDAT replied to the petitioner's request by letter dated January 18, 2012. SDAT denied the request for refund, supported by a memorandum of law written by its counsel. Petitioner then appealed SDAT's denial to this Court.

## **II. Petitioner Claims it is entitled to Exemptions from Maryland Taxes, based on an Interpretation of Federal Law in the Federal Context.**

The petitioner's theory may be summarized as thus: Instruments of writing made pursuant to a re-organization described in IRC §368(a) are exempt from state recordation taxes<sup>1</sup>, state transfer taxes<sup>2</sup>, and county transfer taxes.<sup>3</sup> IRC §368(a) describes reorganizations between corporations. Silver Hill elected to be treated as a corporation for federal income tax purposes as permitted by federal regulation<sup>4</sup>. Therefore, since Silver Hill was a corporation for the purposes of the IRC, its reorganization and merger into Super-Concrete is described in IRC §368(a) and exempt from Maryland transfer and recording taxes.

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<sup>1</sup> MD. CODE ANN. TAX-PROP. §12-108(p)(2) (LexisNexis 2012).

<sup>2</sup> MD. CODE ANN. TAX-PROP. §13-207(a)(9) (LexisNexis 2012).

<sup>3</sup> MD. CODE ANN. TAX-PROP. §13-404(b)(1)(ii) (LexisNexis 2012)

<sup>4</sup> Treas. Reg. §301.7701-3 (West, 2000)

The petitioner's theory assumes that under §21 of Article 1 of the Maryland Code, the direct reference of IRC §368(a) into the Maryland Tax Property Article includes the terms of that section as understood in the context of the IRC.

The Court disagrees with petitioner's assumption and theory.

**A. The Law of Tax Exemptions, the Interpretation of Same, and the Construction of Laws Made by Direct Reference to Other Laws.**

Instruments of writing made pursuant to reorganizations described in IRC §368(a) are exempt from state recordation and transfer taxes. MD. CODE ANN. TAX-PROP. §§12-108(p)(2), 13-207(a)(9) (LexisNexis 2012). Articles of transfer made pursuant to a reorganization described in IRC §368(a) are exempt from county transfer tax. MD. CODE ANN. TAX-PROP. §13-404(b)(1)(ii) (LexisNexis 2012).

“It is a firmly established principle of law that exemptions from taxation are not favored, but are strictly construed in favor of the State . . . . Therefore, before any claimant can obtain an exemption, it is incumbent [sic] upon him to show affirmatively that the alleged exemption has been clearly allowed by law. If there is real doubt upon the subject, that doubt must be resolved in favor of the state.” *Department of Assessments and Taxation v. Belcher*, 315 Md. 111, 119 (1989) (quoting *Pittman v. Housing Authority*, 180 Md. 457, 460-61 (1942), citations omitted).

“Unless altered by statute, as in Maryland . . . a general reference statute incorporates in its coverage all subsequent amendments and modifications to the incorporated act while specific reference statutes do not.” *Hanrahan v. Alterman*, 41 Md. App. 71, 82 (1979) (footnote omitted).

Where Maryland law refers to any other law, the reference applies to any subsequent amendment to that portion of the Code, unless the referring provisions expressly provides otherwise. MD. CODE ANN. ART. 1 §21 (LexisNexis 2012).

In sum, where an exemption section of the state tax articles makes specific reference to another law, that other law's incorporation into the Maryland code shall be limited to its terms. Those terms are to be defined and interpreted according to the Maryland law, and construed narrowly.

**B. IRC §7701 and its Regulations are not Amendments to IRC §368(a).**

It is plain to the Court that Article 1, Section 21 only permits the automatic incorporation of subsequent amendments of another law incorporated into the Maryland code by direct reference.

The re-organizations described in IRC §368(a) plainly refer only to corporations, and make no mention of limited liability companies.

IRC §7701 is its own section, and not an amendment to IRC §368(a). As §7701 is not an amendment to §368(a), *a fortiori*, neither are the Treasury Regulations pertaining to §7701.

Definitions under §7701 and its regulations are not amendments to §368(a), and are not incorporated into the Maryland code. In this instance, they may be persuasive, but are not controlling.

**C. Petitioner's argument fails because it equivocates IRC §368(a) with the terms of IRC §368(a) as incorporated into the Property Tax Article**

The meaning of the term "corporation" in the IRC is distinct and distinguishable from the meaning of the term "corporation" in the Maryland Tax Property Article. The former is defined by IRC §7701 and its regulations. The latter is defined by Tax Property §1-101(f), and the Maryland Corporations & Associations Article.

The petitioner mistakenly interprets the references to IRC §368(a) as referring to the application of the terms of that section as defined by the context of the federal code.

When the General Assembly incorporated §368(a) by reference, it incorporated the terms of that §(over 2,100 words) as though they were written into the Tax Property Article. *See Hanrahan v. Alterman*, 41 Md. App. 71, 81 (1979).

The distinction is nuanced, but important. The petitioner argues that direct references to §368(a) is a reference to the application of federal law in the federal context. In fact, the direct

reference adopts the language of the referenced statute into the Maryland code, to be applied in the Maryland context.

As with any law, the interpretation of similar or identical laws from other jurisdictions may be informative, but are not controlling over the laws of Maryland. The laws of Maryland distinguish between corporations and limited liability companies, and that must be reflected in the application of the exemption statutes at issue here. That cannot be over-ridden by how the federal government chooses to apply its identical law.

### **III. The Certificate of Conveyance does not control the application of §368(a).**

A reasonable and knowledgeable user of the SDAT's Certificate of Conveyance form could conclude, as the petitioner did, that a merger of a limited liability company into a corporation qualified for a tax exemption. However, that conclusion is contrary to the controlling statute.

A tax form, such as the Certificate of Conveyance, no matter how in-artful or ambiguous, is not controlling over statute. *State Department of Assessments and Taxation v. Loyola Federal Savings & Loan Association*, 79 Md. App. 481, 494, cert. denied, 317 Md. 511 (1989).

The equivocal language of the certificate of conveyance form does not and cannot create a tax exemption that does not exist in statute.

### **IV. Conclusion**

Where the Tax Property Article incorporates by direct reference the terms of IRC §368(a), the terms of the section are isolated from the context of the IRC, and integrated into the context of the laws of Maryland. While the federal definitions of these terms may be persuasive, the Maryland definition of those terms is controlling. Here, we take the meaning of "corporation" in those terms to exclude limited liability companies.

A Maryland limited liability company may elect to be treated by the federal government as a corporation, but that election does not transform it into a corporation in the eyes of the state.

Petitioner reasonably misinterpreted the certificate of conveyance form, concluding it was eligible for an exemption. However, the misinterpretation does not create an exemption that is not provided for in the statute.

Accordingly, this 29<sup>th</sup> day of August, 2012, by the Maryland Tax Court, **ORDERED** that the SDAT's denial of petitioner's request for refund is **AFFIRMED**.

CC: Walter R. Calvert, Esq.  
James D. Wright, Esq.  
David M. Lyon, Esq.

**CERTIFIED TRUE COPY**  
**TEST: John T. Hearn, Clerk**

**NOTICE:** You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.