STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **FIDELITY NATIONAL INFORMATION SERVICES INC. AND SUBSIDIARIES** for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Years 2015, 2016 and 2017.	:	DETERMINATION DTA NO. 850502

Petitioner, Fidelity National Information Services Inc. and Subsidiaries, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under article 9-A of the Tax Law for the years 2015, 2016 and 2017.

A formal hearing was held before Winifred M. Maloney, Administrative Law Judge, on October 30 through 31, 2024, with all briefs to be submitted by July 2, 2025. The six-month period for the issuance of this determination was extended pursuant to Tax Law § 2010 (3). With permission, parties were permitted to file simultaneous letter briefs addressing the relevance of the recent decision in ***Matter of Charter Communications, Inc. v New York State Tax Appeals Trib.*** (244 AD3d 1634 [3d Dept 2025]), by February 13, 2026, which date commenced the extended due date for the issuance of this determination. Petitioner appeared by State Tax Law LLC (Marc A. Simonetti, Esq., of counsel) and the Division of Taxation appeared by Amanda Hiller, Esq. (David Markey, Esq., of counsel).

ISSUES

I. Whether the Division of Taxation has established that no material and triable issue of fact exists such that summary determination may be granted in its favor.

II. Whether petitioner qualifies as a qualified emerging technology company such that petitioner may compute its corporation franchise tax using the qualified emerging technology company preferential tax rates for tax years 2015, 2016 and 2017.

III. Whether, in the alternative, those members of petitioner's combined group that were qualified emerging technology companies during the years 2015, 2016 and 2017 should be permitted to compute their tax on their business income base at the reduced rate applicable to such companies on an individual basis.

FINDINGS OF FACT

1. Petitioner, Fidelity National Information Services Inc. (FIS) and Subsidiaries (collectively, FIS Group or petitioner), is an affiliated group of United States (U.S.) entities. The FIS Group, a publicly traded Fortune 500 company, is a global leader in financial services technology with a focus on retail and institutional banking, payments, asset and wealth management, risk and compliance, consulting and outsourcing solutions. Through its solutions portfolio, global capacities and domain expertise, the FIS Group serves more than 20,000 clients in over 130 countries.

2. Headquartered in Jacksonville, Florida, the FIS Group does business in various states, including New York State. The FIS Group owned or leased business locations within New York State throughout the entire period from January 1, 2015 through December 31, 2017, i.e., tax years 2015, 2016 and 2017 (audit period). Specifically, the FIS Group had 10 business locations including 6 in the Metropolitan Commuter Transportation District during the audit period.

3. The services and products provided by the FIS Group during the audit period included: (a) "Debit Processing," (b) "TBS," (c) "Profile," (d) "QualiFile," (e) "Systematics" and (f) "Fox River."

4. FIS Group's "Debit Processing" software product provides comprehensive and customized electronic commerce and transaction processing solutions.

5. FIS Group's "TBS" product is a credit card transaction processing software solution for financial institutions.

6. FIS Group's "Profile" software product is a real-time, multi-currency deposit and loan core banking system.

7. FIS Group's "QualiFile" software product uses data to predict deposit account risk and enables financial institutions to automate the deposit account approval process.

8. FIS Group's "Systematics" suite of products provides integrated, end-to-end software solutions for banks, including customer management, deposits, lending and financial and management reporting.

9. FIS Group's "Fox River" product consists of equity trading execution software solutions, algorithms designed to assist equity pricing under varying market conditions, an equity trading platform and a sponsored access system for sell-side firms.

10. Petitioner is a unitary group of affiliated companies. FIS, as designated agent for the combined group, timely filed petitioner's form CT-3-A, general business corporation combined franchise tax return, and form CT-3-M, general business corporation MTA surcharge return (combined returns), for each of the tax years 2015, 2016 and 2017. On each of those combined returns, petitioner's reported highest tax base was the business income base.

11. For tax years 2015 and 2016, petitioner applied the standard corporation franchise tax rate of 7.1% and 6.5%, respectively, to calculate its tax liability for each of those years.

12. For tax year 2017, petitioner applied the corporation franchise tax qualified emerging technology company (QETC) preferential tax rate of 5.5% to calculate its tax liability for such year.

13. On or about January 18, 2019, the Division of Taxation (Division) assigned the general verification audit of petitioner's combined returns for tax years 2015, 2016 and 2017 (audit examination or audit) to its Income/Franchise Field Audit Bureau, Buffalo District Office (Buffalo District Office). Initially, the audit examination was assigned to Joel Drewniak, a Tax Auditor 1, who conducted the audit from February 14, 2019 until it was reassigned to another Tax Auditor 1, Kimberly Rybat, on December 18, 2019. Subsequently, the audit examination was reassigned to a third Tax Auditor 1, Amanda Dorolek, who conducted the audit from July 3, 2020 through October 17, 2022, at which point she went out on extended leave.

14. At the hearing, the Division presented the testimony of Eric Pikula, a Tax Auditor 2 in the Buffalo District Office, because Ms. Dorolek no longer worked for the Division. Mr. Pikula testified that he now supervises a team of three auditors who as an audit team conduct audits of an average of 50 taxpayers per year.

15. In September 2021, Mr. Pikula became the team leader who supervised Ms. Dorolek's audit examination of petitioner. A review of the Division's audit log indicates that on January 23, 2023, Mr. Pikula "[p]repared case to be closed disagreed."[1]

[1] During the course of the audit, a series of consents extending the period of limitations for assessment of franchise tax under articles 9 (except section 180), 9-A, 13, 32, 33 & 33-A of the Tax Law were executed that extended the statute of limitations for the period January 1, 2015 through December 31, 2017 to March 15, 2023.

16. During the course of the audit, the Division utilized its authority to issue information document requests (IDRs) to gather the information necessary to examine the FIS Group. Specifically, during the audit examination, a total of 13 IDRs were issued. The Division requested all documents it deemed relevant to its audit inquiry of petitioner through those 13 IDRs.

17. In response to IDR #5, petitioner stated that for tax year 2017, it "performed an analysis of its annual revenue and determined that greater than 50% of its revenue relates to internally-developed emerging technologies products or services" that "relate to operating and applications software, artificial intelligence, computer modeling and simulation, processor architecture, automation, and algorithms" which are described in Public Authorities Law § 3102-e (1) (b) (4). As part of its response to IDR #5, petitioner provided an example listing the product line and product description for 10 products and applications that it sold which were "representative of the Audit Years" and documented the basis for its "emerging technologies determination" for tax year 2017.

18. In response to IDR #11, petitioner provided the documentation to support its claim that it qualified as a qualified emerging technology company (QETC) for tax year 2017. Specifically, petitioner provided a detailed "QETC Revenue Analysis Supplement Example" that listed 77 product lines, the legal entities that used and/or sold each of those product lines, each product's description, whether each product line was a qualified emerging technology, each product line's qualified emerging technology type and U.S. receipts for tax year 2017.

19. Upon review of petitioner's response to IDR #11, the Division requested that petitioner provide information relating to its eligibility for the QETC preferential tax rate for tax years 2015 and 2016.

20. As a result of the Division's request, petitioner analyzed its qualification for the QETC preferential tax rate for tax years 2015 and 2016. On December 22, 2021, the FIS Group submitted a letter to the Division with the requested QETC analysis and evidence in support of its QETC qualification for the years 2015 and 2016. Petitioner's "2015-2016 QETC Support" analysis listed, in table form, 67 product lines, whether the product line qualified as emerging technology, the product description and the product line's revenue amount for each of the tax years 2015 and 2016.

21. In its letter, the FIS Group asserted that it qualified "as a QETC under New York Tax Law and the New York Public Authorities Law" for tax years 2015 and 2016. The FIS Group claimed that (i) it "was located in New York State" and (ii) "its primary products and services were classified as emerging technologies because the Group derived over 50% of its receipts from information and communications technologies." It argued that the Division "has erroneously asserted that the QETC determination requires that all members of the combined group qualify as QETCs under the Tax Law." The FIS Group also argued that the Division's position was "inconsistent with the plain language of the law" and "negate[d] the law's mandate to apply the reduced tax rate to qualifying entities." As such, the FIS Group asserted that because the QETC determination must be made on a combined group basis, it must "apply the 5.7% and 5.5% reduced corporation franchise tax rates" for tax years 2015 and 2016, respectively.

22. In its letter, the FIS Group also stated that:

> "[e]ven if the QETC determination is made on an entity-by-entity basis, the Tax Law requires qualifying taxpayers to apply, and the [Division] to grant, the reduced QETC tax rate. The [Division] cannot wholesale deny the QETC tax rate for the FIS Group and disregard the law's mandate to apply the reduced rate for those members that do qualify. Therefore, if the QETC determination is made on

> an individual entity basis, then the [Division] must properly apply the reduced rate for qualifying FIS Group members" (emphasis in original).

23. The Division treated petitioner's letter as a refund claim for tax years 2015 and 2016.

24. At the hearing, petitioner presented the testimony of Rachel Ayres, FIS's vice-president of domestic income tax. Ms. Ayres is responsible for audit compliance and tax accounting for FIS. Ms. Ayres testified that she is familiar with FIS's tax filings, including petitioner's New York State tax filings. Ms. Ayres indicated that she was involved in the audit of petitioner's combined returns for tax years 2015, 2016 and 2017. She further indicated that at different points in the audit, she "either directly responded, or assisted in responding to the IDR's, or follow-up questions," gathered materials and helped pull together the data that made up the IDR responses.

25. Ms. Ayres testified that an analysis to assess petitioner's eligibility for the reduced tax rate available to QETCs under New York Tax Law was conducted for tax year 2017. Ms. Ayres explained that petitioner maintains an internal entity management system that includes a database with a detailed description of all products. Petitioner used its internal entity management system to conduct its analysis and determine whether it generated over 50% of its gross receipts from emerging technology products or services.

26. Ms. Ayres testified that petitioner analyzed its products and services in descending order of gross receipts, starting with those generating the highest revenue and progressing to those with the lowest revenue. She further testified that petitioner's analysis concluded that many of its primary products and services were qualified emerging technologies products or services.

27. Petitioner applied the same analysis of its products and services for tax years 2015 and 2016. For tax year 2015, petitioner's analysis concluded that its combined receipts from

qualified emerging technology activities exceeded 50.552% of its receipts (i.e., 80.570% of the 62.744% analyzed). For tax year 2016, petitioner's analysis concluded that its combined receipts from qualified emerging activities exceeded 55.828% of its receipts (i.e., 86.512% of the 64.533% analyzed). For tax year 2017, petitioner's analysis concluded that its combined receipts from qualified emerging technology activities exceeded 50.434% of its receipts (i.e., 85.928% of the 58.693% analyzed). In conducting its analysis, petitioner determined that if it had tested all its U.S. revenue for tax years 2015, 2016 and 2017, it would continue to identify additional qualifying revenue streams. Based upon its analysis, petitioner determined that it satisfied all the requirements to qualify for the QETC preferential tax rates applicable for tax years 2015, 2016 and 2017.

28. During the audit examination, in response to the Division's IDRs, petitioner provided: (i) documentation to support its claim that it qualified as a QETC for the audit period; (ii) a business record that included a list of New York State business locations in response to IDR #1; (iii) evidence to prove that the combined group owned or rented property used in its emerging technology business in New York State for the relevant years; (iv) evidence to prove that it derived more than 50% of its combined receipts from qualified emerging technology activities for the audit period; and (v) evidence that its combined receipts from qualified emerging technology activities exceeded 50.552%, 55.828% and 50.434%, for tax years 2015, 2016 and 2017, respectively.

29. The documents that petitioner provided to the Division in response to the IDRs regarding the primary products requirement for QETC qualification are business records.

30. Ms. Dorolek concluded in an initial draft audit narrative that petitioner "as a combined group meets [the QETC emerging technologies] requirement." That conclusion does not appear in the Division's audit report.

31. As a result of its audit examination, the Division concluded that some members of the FIS Group had New York business locations for purposes of the QETC analysis. The Division utilized an economic nexus standard to determine if individual members of the combined group satisfied the "located in New York" requirement. The Division classified individual members of the combined group as having economic nexus if they derived receipts within New York State meeting a $1,000,000.00 threshold. The Division did not utilize the $10,000.00 economic nexus threshold that applies to individual members of unitary groups.

32. The auditors denied QETC treatment to the FIS Group based upon the theory that every entity in a combined group must individually satisfy the QETC requirements. In reaching that conclusion, the auditors relied upon Technical Memorandum, TSB-M-15(1)C, dated February 12, 2015.

33. The Division found that petitioner did not qualify as a QETC for the audit period because not every member of the FIS Group independently satisfied the requirements to qualify as a QETC. The Division found that: (i) petitioner did not qualify for the 5.7% QETC preferential tax rate for tax year 2015 and applied a 7.1% tax rate to petitioner's business income base; (ii) petitioner did not qualify for the 5.5% QETC preferential tax rate for tax year 2016 and applied a 6.5% tax rate to petitioner's business income base; and (iii) petitioner did not qualify for the 5.5% QETC preferential tax rate for tax year 2017 and applied a 6.5% tax rate to petitioner's business income base.

34. On September 22, 2022, the Division issued a consent to field audit adjustment proposing additional corporation franchise tax in the amount of $5,319,633.00, plus interest and penalties, for a total tax liability of $9,007,501.00, for the period January 1, 2015 through December 31, 2017. The Division's proposed deficiency contained several audit adjustments unrelated to the QETC issue.

35. Petitioner agreed to resolve several audit adjustments unrelated to the QETC issue with a partial payment of the asserted additional tax in the amount of $1,787,499.00,[2] plus interest in the amount of $1,225,610.00, for a total of $3,013,109.00.

36. By letter, dated January 23, 2023, the Division confirmed receipt of petitioner's check for partial payment in the amount of $3,013,109.00.

37. In the audit results section of its audit report, the Division stated that:

> "[t]he taxpayer agrees with all proposed audit adjustments except for the QETC rate issue for the audit period. On 1/13/2023, the taxpayer made payment in the amount of $3,013,109 of which $1,787,499 was for tax and $1,225,610 of interest computed to 1/20/2023. The refund requested for CY 2015 and CY 2016 for the QETC rate adjustment in the amount of $1,475,307 was denied in full. Due to the disagreement on the QETC rate issue for the audit period, the audit will be billed on all audit issues and the payment made will be associated with the assessment."

With respect to the imposition of penalties, the audit report stated that:

> "[p]enalties under Article 27, Section 1085(k) for substantial understatement of liability was applied for CY 2017. Penalties for CY 2015 and CY 2016 were not imposed since the taxpayer agreed with all the proposed adjustments except for the denial of the QETC Claim for the audit period. The taxpayer made payment in the amount of $3,013,109 on the agreed upon audit adjustments on 1/13/2023."

38. On January 27, 2023, the Division issued to FIS a notice of deficiency, assessment ID L-057664473, asserting additional corporation franchise tax in the amount of $5,319,633.00,

[2] The tax was computed at the applicable QETC preferential tax rate for tax years 2015, 2016 and 2017.

plus interest of $3,389,789.01 and penalty of $198,051.00, less payments of $3,013,109.00, for a balance due in the amount of $5,894,364.01 for tax years 2015, 2016 and 2017.

39. On January 18, 2023, the Division issued a notice of disallowance to petitioner acknowledging and denying petitioner's refund claim in the amount of $1,475,307.00 for tax years 2015 and 2016 for the following reasons:

> "[o]n December 22, 2021, the taxpayer claimed to meet the requirements of a Qualified Emerging Technology Company. The Department determined that the taxpayer did not meet the requirements as a Qualifying Emerging Technology Company and therefore the reduced rate request for CY 2015 and 2016 was denied."

40. The Division's assessment pertaining to non-QETC issues is resolved. The sole issue in dispute is the QETC qualification.

41. Mr. Pikula testified that the FIS Group's primary products analysis showed that, on a combined basis, the group's primary products were classified as emerging technologies.

42. Mr. Pikula admitted that the Division never challenged petitioner's descriptions of its activities and that those activities qualify for QETC treatment. In its audit report, the Division stated that "the taxpayer's analysis provided to the Division indicates that these [emerging technologies] made up more than 50% of the combined group's activity."

43. In preparation for the hearing, Mr. Pikula prepared a document, i.e., a schedule analyzing which of the individual entities in the FIS Group satisfied the QETC requirements in each of the tax years 2015, 2016 and 2017. Mr. Pikula testified about the schedule that he prepared from documents contained in the audit file.

44. For tax year 2015, Mr. Pikula memorialized that petitioner provided sufficient evidence to prove that certain member corporations of the FIS Group, including: (i) FIS, (ii) Metavante Corporation, (iii) Fidelity National Card Services Inc., (iv) eFunds Corporation, (v)

The Capital Markets Company, Inc., (vi) Complete Payment Recovery Services Inc., (vii) Certegy Check Services. Inc., (viii) Kirchman Corporation, (ix) Link2Gov Corp., (x) WildCard Systems Inc., (xi) Fidelity International Resource Management Inc. (xii) Fidelity Information Services International Holdings Inc., (xiii) Reliance Trust Company, (xiv) Clear2Pay Americas, Inc., (xv) GIFTS Software, Inc., (xvi) Advanced Financial Solutions, Inc., (xvii) Vicor Inc., (xviii) mFoundry Inc. and (xiv) Reliance Trust Company of Delaware Inc., independently qualified as QETCs.

45. For tax year 2016, Mr. Pikula memorialized that petitioner provided sufficient evidence to prove that certain member corporations of the FIS Group, including: (i) FIS Data Systems Inc., (ii) FIS, (iii) Metavante Corporation, (iv) FIS Brokerage & Securities Services LLC, (v) The Capital Markets Company Inc., (vi) eFunds Corporation, (vii) FIS Systems International Inc., (viii) Fidelity National Card Services Inc., (ix) Reliance Trust Company, (x) WildCard Systems Inc., (xi) Complete Payment Recovery Services Inc., (xii) Certegy Check Services Inc., (xiii) Clear2Pay Americas Inc. and (xiv) Kirchman Corporation independently qualified as QETCs.

46. For tax year 2017, Mr. Pikula memorialized that petitioner provided sufficient evidence to support that certain member corporations of the FIS Group, including: (i) FIS Data Systems Inc., (ii) FIS, (iii) Metavante Corporation, (iv) FIS Brokerage & Securities Services LLC, (v) Fidelity National Card Services Inc., (vi) eFunds Corporation, (vii) Complete Payment Recovery Services Inc., (viii) WildCard Systems Inc., (ix) Certegy Check Services Inc., (x) Kirchman Corporation, (xi) The Capital Markets Company, (xii) Reliance Trust Company, (xiii) Monis Software Inc., (xiv) Integrity Treasury Solutions Inc. and (xv) GL Trade Americas, Inc., independently qualified as QETCs.

47. At the hearing, Mr. Pikula conceded that the Division utilized an improper $1,000,000.00 economic nexus standard to determine whether the individual members of the combined group had economic nexus. He further conceded that the Division should have used the $10,000.00 economic nexus standard for entities in a combined group.

48. Mr. Pikula testified that he has worked for the Division for 23 years. During his career at the Division, Mr. Pikula has conducted approximately 200 audits, of which three to five have been QETC audits. The taxpayer in every QETC audit that Mr. Pikula conducted was a combined group. Mr. Pikula testified that he did not find any taxpayer that qualified for the QETC preferential tax rate.

49. Mr. Pikula testified that the Division has used discretionary authority or alternative apportionment to force a taxpayer who files an individual return to be part of a combined return. He further testified that the Division has used alternative apportionment or discretionary authority to require a taxpayer who files a combined return to de-combine. Mr. Pikula acknowledged that he has employed alternative apportionment and discretionary authority on audit.

50. Mr. Pikula testified that the Audit Division must submit all requests for the use of alternative apportionment or discretionary authority to the Division's Office of Counsel.

51. Mr. Pikula testified that the Division "never interpreted" petitioner's letter, dated December 22, 2021, as a request for the Division to use its discretionary authority or alternative apportionment. Mr. Pikula further testified that a discretionary adjustment request would involve the taxpayer requesting to have the companies de-combined.

52. Mr. Pikula testified that petitioner's fair tax liability could be computed if an alternative method was used.

53. Mr. Pikula testified that to disallow the QETC preferential tax rate to a combined group when certain members did not individually qualify for the preferential tax rate may result in distortion.

54. On April 5, 2023, petitioner timely filed its petition, challenging the notice of disallowance for tax years 2015 and 2016, and the notice of deficiency for tax years 2015, 2016 and 2017. In its petition, the FIS Group asserted that it qualified as a QETC for tax years 2015, 2016 and 2017 and was subject to the corporation franchise QETC preferential tax rates in effect for each of those periods. Section VIII of the petition references an "Attachment to Petition" (attachment to petition) that sets forth allegations in 40 numbered paragraphs.

55. On July 5, 2023, the Division timely filed its answer. In paragraph 1 of its answer, the Division denied all the allegations contained in the attachment to the petition. In its answer, the Division also specifically denied the allegations in three of the numbered paragraphs and denied knowledge or information sufficient to form a belief as to the allegations contained in five of the numbered paragraphs in the attachment to the petition.

56. The sole issue in dispute is whether the FIS Group qualifies for the QETC preferential tax rate for tax years 2015, 2016 and 2017.

57. At the conclusion of the hearing, the record remained open for petitioner to submit into evidence (i) FIS's annual reports (forms 10-K) for tax years 2015, 2016 and 2017 and (ii) FIS's U.S. corporation income tax returns for tax years 2015, 2016 and 2017 by November 14, 2024.

58. Petitioner timely submitted (i) copies of the forms 10-K for petitioner for the years 2015, 2016 and 2017 (marked and received as petitioner's exhibit 15) and (ii) copies of federal

forms 1120 for petitioner for the years 2015, 2016 and 2017 (marked and received as petitioner's exhibit 16).

59. On August 7, 2024, the Division filed a motion for summary determination (motion) in this matter.

60. During a conference call held on August 22, 2024, the undersigned administrative law judge stated that the filing of the Division's motion would not postpone the hearing scheduled for October 30 and 31, 2024 in Albany (***see*** 20 NYCRR 3000.5 [e]).

61. By letter, dated October 11, 2024, the Division requested an adjournment of the hearing scheduled for October 30 and 31, 2024, which was denied.

62. At the hearing, the Division submitted a binder containing its representative's cover letter, dated August 7, 2024, which transmitted the Division's motion, dated August 7, 2024, seeking summary determination pursuant to section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) and Civil Practice Law and Rules (CPLR) 3212. In support of its motion, the Division submitted the following: (i) a 4-page single line spaced letter brief, dated August 7, 2024; (ii) the alleged "affirmation" of its representative, David Markey, Esq.;[3] (iii) the petition filed in this matter; (iv) the Division's answer and accompanying cover letter, each dated July 5, 2023; (v) copies of the updated power of attorney forms, executed on June 12, 2023, filed with the Division of Tax Appeals that reflects petitioner's representative's move to a different law firm and provides the representative's new contact information and the accompanying cover letter, dated June 19, 2023; (vi) the affidavit of Eric Pikula, a Tax Auditor 2 in the Division's Buffalo District Office, sworn to on August 5, 2024;

[3] The alleged "affirmation" submitted by Mr. Markey is not in the form prescribed by CPLR 2106, and the Division, in its brief, attempted to address the shortcomings in the form of Mr. Markey's affirmation. Based upon the conclusions found herein, a conclusion on the merits of Mr. Markey's alleged "affirmation" is not necessary.

(vii) a copy of the audit report (AU-241); (viii) copies of petitioner's combined reports for tax years 2015, 2016 and 2017; (ix) copies of a letter, dated December 22, 2021, to the Division's auditor, Ms. Dorolek, and accompanying exhibit A, 2015-2016 QETC analysis; (x) a copy of IDR #10, dated December 4, 2019; (xi) a copy of petitioner's response to IDR #10, dated April 29, 2020; (xii) a copy of IDR #11, dated August 13, 2020; (xiii) copies of petitioner's responses to IDR #11, dated December 2, 2020 and March 15, 2021; (xiv) a copy of IDR #13, dated December 29, 2021; (xv) copies of petitioner's responses to IDR #13, dated February 22, 2022, March 31, 2022 and April 26, 2022; (xvi) a copy of IDR #12, dated September 20, 2021; (xvii) a copy of petitioner's response to IDR #12, dated October 18, 2021; and (xviii) copies of ***Matter of Charter Communications*** (Tax Appeals Tribunal, January 25, 2024) and the determination of the Administrative Law Judge issued on December 1, 2022.

63. At the conclusion of the hearing, petitioner was directed to file its response to the Division's motion at the same time as it filed its post-hearing brief. At that time, the parties were advised that the Division's motion would be addressed in the determination.

64. Petitioner filed a timely response in opposition to the Division's motion that consisted of: (i) petitioner's response to the "affirmation" of David Markey in support of summary determination and (ii) petitioner's brief in opposition to the Division's motion.

65. The parties did not execute a stipulation of facts.

66. Petitioner submitted 106 proposed findings of fact. In accordance with State Administrative Procedure Act (SAPA) § 307 (1), proposed findings of fact 1, 3 through 11, 13, 14, 20 through 22, 27, 30 through 33, 35 through 37, 41, 43 through 50, 53, 54, 66 through 72, 100, 101 and 106 are supported by the record and have been combined, renumbered and substantially incorporated herein. Proposed findings of fact 2, 12, 15 through 18, 23, 28, 34, 38

through 40, 42, 52, 55, 56, 60 through 65, 78, 80, 83 through 88, 90, 92 through 99 and 102 through 105 have been modified to more accurately reflect the record and, as modified, have been combined, renumbered and substantially incorporated herein. Proposed findings of fact 29, 51 and 89 are rejected as repetitious. Proposed findings of fact 19, 24 through 26, 57 through 59, 73 through 77, 79, 81, 82 and 91 have been rejected. If any part of a proposed finding of fact is not supported by the record, it has been rejected in its entirety.

67. Pursuant to 20 NYCRR 3000.15 (d) (6), the Division submitted 21 proposed findings of fact. In accordance with SAPA § 307 (1), proposed findings of fact 1 through 6, 8 and 16 are supported by the record and have been combined, renumbered and substantially incorporated herein. Proposed findings of fact 7, 11 through 15, 17 and 19 through 21 have been modified to more accurately reflect the record and, as modified, have been combined, renumbered and substantially incorporated herein. Proposed findings of fact 9, 10 and 18 have been rejected. If any part of a proposed finding of fact is not supported by the record, it has been rejected in its entirety.

CONCLUSIONS OF LAW

A. At the hearing, the Division submitted a motion for summary determination in this matter. A motion for summary determination "shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented" (20 NYCRR 3000.9 [b] [1]).

B. Section 3000.9 (c) of the Rules provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212. "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact

from the case" (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853 [1985], citing ***Zuckerman v City of New York***, 49 NY2d 557, 562 [1980]). Here, the Division, in its answer, denied all the allegations made in the attachment to the petition. It also specifically denied the allegations in three of the numbered paragraphs and denied knowledge or information sufficient to form a belief as to the allegations contained in five of the numbered paragraphs in the attachment to the petition. In addition, the parties did not execute a stipulation of facts in this matter. Clearly, there are material issues of fact in dispute, and the Division's motion must be denied (***see Glick & Dolleck v Tri-Pac Export Corp***., 22 NY2d 439, 441 [1968]; ***Museums at Stony Brook v Village of Patchogue Fire Dept***., 146 AD2d 572, 573 [2d Dept 1989]).

C. Article 9-A of the Tax Law imposes a franchise tax on all domestic and foreign corporations doing business, employing capital, owning or leasing property, maintaining an office in New York State or deriving receipts from activity in New York State (***see*** Tax Law § 209 [1] [a]). Corporations doing the same within the metropolitan commuter transportation district are also subject to the surcharge under Tax Law § 209-B (1) (a). Tax Law § 208 (1) (a) defines a corporation, in part, as

> "an association within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), (b) a joint-stock company or association, (c) a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof . . ."

Tax Law § 208 (2) defines "taxpayer" as "any corporation subject to tax under [the corporate franchise tax]." Tax Law § 210-C (2) (a) provides that:

> "[e]xcept as provided in paragraph (c) of this subdivision, any taxpayer (i) which owns or controls either directly or indirectly more than fifty percent of the voting power of the capital stock of one or more other corporations, or (ii) more than fifty percent of the voting power of the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations, or (iii) more than fifty percent of the voting power of the capital stock of which and the

> capital stock of one or more other corporations, is owned or controlled, directly or indirectly, by the same interests, and (iv) that is engaged in a unitary business with those corporations . . . shall make a combined report with those other corporations."

For the years at issue, corporate taxpayers that filed a combined report computed their tax on the highest of three alternative bases (***see*** Tax Law §§ 210 [1]; 210-C [1] [a]). Taxpayers compute the tax measured by the combined business income base by multiplying such business income base by the tax rate specified in Tax Law § 210 (1) (a) (***see*** Tax Law § 210-C [1] [a]). Every member of the combined group that is subject to tax under this article is to be jointly and severally liable for the tax due pursuant to a combined report (***see*** Tax Law § 210-C [6]).

D. As noted above, there is no dispute that petitioner's primary products were classified as emerging technologies and that those emerging technologies made up more than 50% of the combined group's activities for the tax years 2015, 2016 and 2017. During the audit, petitioner asserted that it qualified for the QETC preferential tax rates under Tax Law § 210 (1) (a) (vii) for tax years 2015, 2016 and 2017. After completing its audit examination, the Division determined that petitioner, on a combined basis, did not qualify as a QETC for the years at issue because not every member of the FIS Group independently satisfied the requirements to qualify as a QETC. As a result of its determination, the Division applied the general corporate franchise tax rate applicable in each of tax years 2015, 2016 and 2017 to petitioner's combined business income base and recomputed the tax due for each of those years. The Division also made several audit adjustments unrelated to the QETC issue that petitioner agreed to resolve with a partial payment prior to the issuance of the notice of deficiency in this matter. The sole issue is whether petitioner, as a combined group, qualifies for the QETC preferential tax rate for tax years 2015, 2016 and 2017.

E. Tax Law § 210 (1) (a) (vii) provides as follows:

> "[f]or a taxpayer that is defined as a qualified emerging technology company under paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law regardless of the ten million dollar limitation expressed in subparagraph one of such paragraph (c) the amount prescribed by this paragraph shall be computed at the rate of 5.7 percent for taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen, 5.5 percent for taxable years beginning on or after January first, two thousand sixteen and before January first, two thousand eighteen, and 4.875 percent for taxable years beginning on or after January first, two thousand eighteen."

A qualified emerging technology company is defined as follows:

> "a company located in New York state: (1) whose primary products or services are classified as emerging technologies and whose total annual product sales are ten million dollars or less; or (2) a company which has research and development activities in New York state and whose ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies classified as determined by the National Science Foundation in the most recent published results from its Survey of Industry Research and Development, or any comparable successor survey as determined by the department, and whose total annual product sales are ten million dollars or less" (Public Authorities Law [PAL] § 3102-e [1] [c]).

F. In ***Matter of TransCanada Facility USA, Inc.*** (Tax Appeals Tribunal, May 1, 2020), the Tax Appeals Tribunal (Tribunal) determined that a tax cap was not an exemption, exclusion or deduction that operated to negate a taxpayer's obligation to pay an otherwise applicable tax. Accordingly, in ***Matter of TransCanada***, the Tribunal concluded that the tax cap provision of Tax Law former §§ 209 and 210 (1) (b) (1) was to be "construed most strongly against the government and in favor of the citizen" (***id.***, quoting ***Matter of Grace v New York State Tax Commn.***, 37 NY2d 193, 196 [1975], ***rearg denied*** 37 NY2d 816 [1975], ***lv denied*** 338 NE2d 330 [1975]). The QETC preferential tax rates in this case are more akin to a tax cap than an exemption, exclusion or deduction because Tax Law §§ 209 and 210 (1) (a) (vii) impose a franchise tax on a taxpayer and do not negate the taxpayer's obligation to pay the otherwise applicable tax, but rather define the applicable tax rate that may be imposed (***see Matter of TransCanada Facility USA, Inc.***, citing ***Matter of Golub Serv. Sta. v Tax Appeals Trib.***, 181

AD2d 216, 219 [3d Dept 1992]).[4] Accordingly, Tax Law § 210 (1) (a) (vii) is to be construed most strongly against the government (***see Matter of TransCanada Facility USA, Inc***).

G. Whether petitioner qualifies for the QETC preferential tax rates is a matter of statutory construction. The fundamental rule of statutory construction is to ascertain and give effect to the Legislature's intent ***(see Matter of Yellow Book of N.Y., Inc. v Commissioner of Taxation & Fin.***, 75 AD3d 931, 932 [3d Dept 2010], ***lv denied*** 16 NY3d 704 [2011]; ***see also Matter of TransCanada Facility USA, Inc.***). The best evidence of that intent is the statutory text (***see Matter of Stewart's Shops Corp. v New York State Tax Appeals Trib.***, 172 AD3d 1789, 1792 [3d Dept 2019]). Proper statutory construction ultimately focuses on the "precise language of the enactment in an effort to give a correct, fair and practical construction that properly accords with the discernable intention and expression of the Legislature" (***Matter of 1605 Book Ctr. v Tax Appeals Trib. of State of N.Y.***, 83 NY2d 240, 244-245 [1994], ***cert denied*** 513 US 811 [1994]).

H. The Division asserts that the Tribunal decision in ***Matter of Charter Communications*** (Tax Appeals Tribunal, January 25, 2024, ***confirmed*** 244 AD3d 1634 [3d Dept 2025]) should be applied to the present matter. The Division, in its brief, points out that the years at issue in ***Matter of Charter Communications*** were 2012 through 2014, while the years at issue in the present matter are 2015 through 2017, the relevant Tax Law provisions for both periods are substantially the same, and PAL § 3102-e (1) (c) remained the same during both periods. In ***Matter of Charter Communications***, the Tribunal addressed the issue of whether petitioners, a combined group, may be considered a qualified New York manufacturer for tax years 2012 and 2013 as a QETC under Tax Law former § 210 (1) (a) (vi) or a QETC for tax year

[4] Petitioner claims that Tax Law § 210 (1) (a) (vii) is a tax imposition statute. In its brief, the Division did not dispute that Tax Law § 210 (1) (a) (vii) is properly considered a tax imposition statute.

2014 under Tax Law former § 210 (1) (a) (vii). The Tribunal held that the Division's construction of Tax Law former § 210 (1) (a) (vi) and (vii) and PAL § 3102-e (1) (c), by which all members of a combined group must be QETCs in order for the group to be considered a QETC, is consistent with the statutory language and therefore is reasonable (***see Matter of Charter Communications***). The Appellate Division "agree[d] with the agency's statutory interpretation" (***Matter of Charter Communications***, Tax Appeals Tribunal, January 25, 2024, ***confirmed*** 244 AD3d at 1636). In reaching its decision, the Court found that a taxpayer is "any corporation subject to tax under [Tax Law article 9-A]" (***Matter of Charter Communications*****,** 244 AD3d at 1637, citing Tax Law § 208 [2]). The Court also found that a taxpayer may be a qualified New York manufacturer in two separate ways: first, by being principally engaged in manufacturing; and second:

> "based upon the plain language of the statute, a combined group may only be a qualified New York manufacturer under the definition of a qualified emerging technology company *if each taxpayer qualifies* because, pursuant to the statute, the 'taxpayer' is each corporation and not the combined group" (***Matter of Charter Communications***, 244 AD3d at 1639 [emphasis added]).

Petitioner asserts that the 2015 Tax Reform enacted a mandatory combined reporting law that redefined the term "taxpayer" (***see*** Tax Law § 210-C). Petitioner further asserts that "[t]he amended law requires any corporate taxpayer that is engaged in a unitary business and that meets one of three common ownership tests to file a combined report and requires entities in a combined group to be treated as a single corporation" as set forth in Tax Law § 210-C (2) (a). Petitioner argues that the combined group "shall generally be treated as a single corporation, except as otherwise provided" (Tax Law § 210-C [4] [a]). Petitioner further argues that the Court's holding relies on the definition of taxpayer to determine how a taxpayer qualifies for the QETC preferential tax rate under Tax Law § 210 (1) (a) (vii). Petitioner asserts that the ***Charter***

decision requires the combined group taxpayer to be treated as a single corporation to determine QETC qualification, and petitioner, as a combined group, qualifies as a QETC for purposes of the QETC preferential tax rate.

I. Petitioner's arguments are without merit. New York State had combined reporting prior to the legislative changes made in 2015 (***see Matter of Disney Enters. Inc. v Tax Appeals Trib. of State of N.Y.***, 10 NY3d 392, 395 [2008]). While the corporate tax framework was reformed, effective January 1, 2015, by L 2014, ch 59, pt A, it did not redefine the term taxpayer. Petitioner's reliance on Tax Law § 210-C (4) is misplaced. Tax Law § 210-C (4) provides the manner in which the tax bases are computed on a combined report. The combined report must be filed by a designated agent who is a taxpayer (***see*** Tax Law § 210-C [2] [d]; [7]). Tax Law § 210-C (4) (a) provides that "[i]n computing the tax bases for a combined report, the combined group shall generally be treated as a single corporation, except as otherwise provided, and subject to any regulations or guidance issued by the commissioner or the department." Tax Law § 208 (2) provides that a taxpayer is any corporation subject to tax. A corporation is similarly defined as a single entity (***see*** Tax Law § 208 [1]). As such, petitioner, on a combined basis, does not qualify for the QETC preferential tax rates (***see*** Tax Law § 210 [1] [a] [vii]; 20 NYCRR 6-2.1 [e]; ***see also Matter of Charter Communications***, 244 AD3d at 1634).

J. Petitioner argues that the Governor's 2015-2016 New York State Executive budget bill originally proposed legislation that "restrictively required QETC qualification for each individual entity of a combined group taxpayer." Specifically, "[t]he legislative drafters included the following language: '[i]n the case of a combined report, each corporation included in the combined report must qualify as a qualified emerging technology company in order for the tax rates provided by this subparagraph to apply'" (***see*** 2015 NY Senate-Assembly Bill S2009A,

A3009A). Petitioner further argues that "[t]he Legislature rejected the proposed language by striking it from the law as enacted" by L 2015, ch 59, pt T, § 12 (***see*** Tax Law § 210 [1] [a] [vii]). Petitioner asserts that "[t]he Legislature explicitly rejected language that would have required each member of a combined group to independently satisfy the QETC Requirement. This rejection demonstrates that the Legislature did not intend to impose such a requirement."

Petitioner's arguments are without merit. The fact that the Legislature did not add a clarification does not mean the Legislature rejected the requirement that each member of a combined group independently qualify as a QETC for the QETC preferential tax rates to apply. The text of Tax Law § 210 (1) (a) (vii) is clear, only a taxpayer, a single corporation (***see*** Tax Law § 208 [2]), which is a QETC under PAL § 3102-e (1) (c), is allowed to apply the QETC preferential tax rates (***see Matter of Stewart's Shops Corp. v New York State Tax Appeals Trib.***, 172 AD3d at 1792; ***see also Matter of 1605 Book Ctr. v Tax Appeals Trib. of State of N.Y.***, 83 NY2d at 244-245).

K. Petitioner asserts that to the extent that the examination of the QETC preferential tax rate qualification is done at the individual group member level, petitioner requested that the Division utilize its discretionary authority to divide the FIS Group into two subgroups. Petitioner further asserts that the Division's construction distorts its tax liability because the members of the combined group that qualify as QETCs are denied the QETC preferential tax rate. Petitioner argues that its letter, dated December 22, 2021 (letter), requested that the Division divide the FIS Group into two distinct groups - one composed of the group members that qualify independently as QETCs and one group of individual members that did not independently qualify as QETCs. Petitioner further argues that the Division refused to consider its request. The Division argues that petitioner's letter was not a discretionary adjustment

request. It further argues that the letter included petitioner's interpretation of the statute and was sent in response to a request for information as part of the audit. In addition, the Division contends that petitioner never requested to have the companies in the combined group de-combined. The Division claims that there is no authority under the Tax Law to permit individual members of the combined group to separately use the QETC preferential tax rate, and petitioner's letter was not a request for discretionary adjustment.

A careful review of the letter indicates that it was not a discretionary adjustment request. Rather, the letter included petitioner's interpretation of Tax Law § 210 (1) (a) (vii) and was sent in response to a request for information as part of the Division's audit. There is no provision in the Tax Law to correct distortion of the tax rate. Therefore, petitioner's alternative request must be denied.

L. The Division of Taxation's motion for summary determination is denied.

M. The petition of Fidelity National Information Services Inc. and Subsidiaries is denied, the notice of deficiency, dated January 27, 2023, and the notice of disallowance, dated January 18, 2023, are sustained.

DATED: Albany, New York
May 7, 2026

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE

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