

Q&A With Hiscock & Barclay's Kevin McAuliffe



Law360, New York (February 10, 2014, 6:13 PM ET) -- Kevin McAuliffe is a partner in Hiscock & Barclay LLP's Syracuse office where he currently serves as chairman of the project development practice area where he deals with complex matters involving various state and federal development tax incentives. McAuliffe frequently advises clients on how to best maximize the benefits available under the New York State Empire Zone program, the Historic Rehabilitation tax credit program, the Brownfield credit program, and the New Markets Tax Credit program. He also has in-depth familiarity with the START-UP NY program, assisting clients with applying to the program and planning for participation as it rolls out in 2014.

McAuliffe has been recognized by The Best Lawyers in America and Martindale-Hubbell's "AV" Peer Review for his outstanding legal work. He currently serves on the board of directors for Central New York's Near Westside Initiative.

Q: What is the most interesting or challenging tax problem you've worked on to date?

A: Buckingham Group Inc., a manufacturer of equipment for those who work in trees and on utility poles, faced the loss of \$450,000 in tax credits when the New York State Department of Taxation & Finance applied the so-called "Business Allocation Percentage" and declared the company's Empire Zone tax-reduction credit should be cut by 90 percent because the company shipped 90 percent of its products out of state.

David Burch of my office and I took on the first-of-its-kind case and took the matter to a hearing in the division of tax appeals. The division ruled in favor of Buckingham. This case really set the foundation for us and many businesses. We continue to represent multiple other taxpayers facing the same Business Allocation Percentage challenge to their Empire Zone tax-reduction credits.

Q: Currently, what is a pressing tax concern for your clients, and how are you addressing it?

A: Navigating through state tax audits of claims for New York economic development incentives, such as Empire Zone, Excelsior, Brownfields and Qualified Emerging Technology Company credits. We continue

to counsel clients to strictly following the program requirements as they set up and operate under a program and help them respond completely and precisely to state audit inquiries so audits can be closed out quickly and correctly, allowing the businesses to receive their earned benefits.

Q: What do you anticipate being the biggest regulatory challenge in your practice in the coming year and why?

A: Assisting businesses who are planning for and entering the "Start-Up New York" program, which is just starting in 2014. There are a number of new concepts in the Start-Up New York legislation and regulations, and we are working with clients to understand and address those concepts. Again, based on our experience with other development programs in New York, careful planning and record keeping will be key to the ability of businesses to maximize their opportunities under the Start-Up New York program.

Q: Outside of your own firm, who is an attorney in your practice area whom you admire, and what is the story of how s/he impressed you?

A: Harold Iselin in the Albany office of Greenberg Traurig is someone who I have worked with in the past and who has impressed me with his ability to interact with New York's governmental leaders to the benefit of his clients. I realized the extent of his abilities as he deftly negotiated on our mutual client's behalf with legislative and executive leaders to effect changes needed to clear the way for a transformational project in upstate New York.

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