State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 23, 2026 CV-25-0098

In the Matter of PAYCHEX, INC.,
Appellant,
v
DEPARTMENT OF TAXATION AND FINANCE et al.,
Respondents.

MEMORANDUM AND ORDER

Calendar Date: June 1, 2026

Before: Clark, J.P., Fisher, Powers, Mackey and Corcoran, JJ.

Hodgson Russ LLP, Buffalo (*Christopher L. Doyle* of counsel), for appellant.

Letitia James, Attorney General, Albany (*William M. Hayes* of counsel), for respondents.

Powers, J.

Appeal from a judgment of the Supreme Court (Sherri Brooks-Morton, J.), entered December 19, 2024 in Albany County, which, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, among other things, granted respondents' motion for summary judgment dismissing the petition/complaint.

Petitioner is a professional employer organization (hereinafter PEO) that enters contractual co-employment relationships with its clients meant to streamline the management of employee benefits, payroll and other human resource services (*see generally* Labor Law §§ 916, 922). As part of these contracts, petitioner is responsible for the payment of, among other things, employee wages and unemployment insurance and provides certain services, such as withholding and remitting employment taxes and providing for workers' compensation coverage. PEOs, like petitioner, pay such expenses and then seek reimbursement from their clients for services rendered.

Corporations doing business in New York must pay a franchise tax based upon the total "business income apportioned within the state," computed by utilizing what has been titled the business apportionment factor (hereinafter BAF) (Tax Law § 210 [1] [a]). The BAF "is a fraction, determined by including only those receipts, net income, net gains, and other items described in [Tax Law § 210-A] that are included in the computation of the taxpayer's business income," with the amounts required to be included in the numerator and denominator of that fraction explicitly set forth by statute (Tax Law § 210-A [1]; *see* 20 NYCRR 4-1.2 [a]). Through major statutory amendments in 2015, the BAF fraction was modified in key respects (*see* Tax Law §§ 210 [1] [a]; 210-A) and, as a result of that statutory overhaul, respondent Department of Taxation and Finance (hereinafter the Department) repealed the then-existing regulations and promulgated new regulations relevant to the franchise tax in 2023 (*see* 20 NYCRR ch I, subch A). The promulgation of the new regulations came after nearly a decade of ongoing discussions with stakeholders, during which petitioner communicated to the Department on multiple occasions taking issue with that aspect of the regulations that would exclude PEO reimbursements from consideration as business receipts for purposes of the BAF. The Department promulgated the challenged regulations (*see* 20 NYCRR 4-1.2 [b] [6]; [c]) despite petitioner's voiced disagreement.

Not long after promulgation, petitioner commenced the instant combined action and proceeding alleging that the exclusion of PEO reimbursements from the BAF will significantly increase its New York tax liability. Petitioner sought a declaration that the challenged regulations are invalid based upon alleged inconsistencies with the enabling legislation and contended that the promulgation thereof was contrary to the Legislature's policy reflected in Tax Law § 210-A and was arbitrary, capricious and in excess of the Department's jurisdiction. Petitioner also claimed that, insofar as the challenged regulations apply retroactively to tax periods beginning on or after January 1, 2015, that retroactive application violates its due process rights. Respondents joined issue and simultaneously moved for summary judgment dismissing the petition/complaint arguing, among other things, that petitioner lacked standing, the action/proceeding was unripe for review and petitioner had failed to exhaust administrative remedies. Petitioner opposed respondent's motion and cross-moved for summary judgment in its favor. Supreme Court granted respondents' motion for summary judgment and, as a result, dismissed the declaratory judgment action and the CPLR article 78 proceeding. The court noted that it was "not willing" to dismiss for lack of standing and, therefore, denied respondent's motion on that basis. Yet, it then held that petitioner failed to exhaust its administrative remedies and, because of that failure, will not suffer an injury until a notice of deficiency is issued by the Department. The court also denied petitioner's cross-motion, finding, in part, that petitioner's due process rights were not violated by the retroactive application of the regulations in question.[1] Petitioner appeals.

Although Supreme Court confused the issue slightly, it properly granted respondent's motion for summary judgment seeking dismissal of the declaratory judgment action. Petitioner's claimed harm remains conjectural in nature and, "[i]f the anticipated harm is insignificant, remote or contingent, the controversy is not ripe" (*Sullivan v New York State Joint Commn. on Pub. Ethics*, 207 AD3d 117, 131 [3d Dept 2022] [internal quotation marks, brackets and citations omitted]).[2]

"In a declaratory judgment action, there must be a real dispute between adverse parties, involving substantial legal interests for which a declaration of rights will have some practical effect" (*Site Safety LLC v New York State Dept. of Taxation & Fin.*, 237 AD3d 1395, 1396 [3d Dept 2025] [internal quotation marks and citations omitted]; *see Church of St. Paul & St. Andrew v Barwick*, 67 NY2d 510, 518 [1986], *cert denied* 479 US 985 [1986]). "For a challenge to administrative action to be ripe, the administrative action sought to be reviewed must be final, and the anticipated harm caused by the action must be direct and immediate" (*Weingarten v Town of Lewisboro*, 77 NY2d 926, 928 [1991] [citations omitted]). "Ripeness pertains to the administrative action which produces the alleged harm to [the petitioner]; the focus of the inquiry is on the finality and effect of the challenged action and whether harm from it might be prevented or cured by administrative means available to the [petitioner]" (*Matter of Ward v Bennett*, 79 NY2d 394, 400 [1992] [internal quotation marks, emphasis and citation omitted]; *see Sullivan v New York State Joint Commn. on Pub. Ethics*, 207 AD3d at 131; *Matter of*

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[1] Petitioner had also claimed that the regulatory scheme violated its equal protection rights, an argument which Supreme Court found to be lacking in merit. Petitioner does not take issue with that determination on appeal.

[2] Although Supreme Court did not address the issue of ripeness directly, it is properly before us as an alternative ground for affirmance (*see Matter of Sunco Holding Corp. v Town of Vestal*, 204 AD3d 1143, 1144 n 1 [3d Dept 2022]; *see e.g. Grand S. Point, LLC v Bassett*, 230 AD3d 49, 61 [3d Dept 2024], *appeal dismissed* 42 NY3d 1025 [2024], *lv denied* 43 NY3d 907 [2025]).

Adirondack Council, Inc. v Adirondack Park Agency, 92 AD3d 188, 190 [3d Dept 2012]; *Matter of New York Blue Line Council, Inc. v Adirondack Park Agency*, 86 AD3d 756, 760 [3d Dept 2011], *appeal dismissed* 17 NY3d 947 [2011], *lv denied* 18 NY3d 806 [2012]).

Relevant here, if it is determined after an audit that a taxpayer owes a deficiency, the Department may issue a notice of deficiency, which then becomes final after 90 days if no action is taken by the taxpayer (*see* Tax Law § 1081 [b]). However, if it so chooses, the taxpayer may institute an administrative challenge to the notice of deficiency. This may be done by either filing an administrative appeal with the Division of Tax Appeals (*see* Tax Law §§ 1089, 2000, 2002) or seeking a conciliation conference (*see* Tax Law § 170 [3-a] [a]) and, if still unsatisfied after conciliation, the taxpayer may then file a petition with the Division of Tax Appeals (*see* Tax Law § 170 [3-a] [e]).

No notice of deficiency had been issued when petitioner commenced the underlying combined action and proceeding. Consequently, administrative review had yet to occur. Thus, while petitioner is correct that it had "no administrative remedies to exhaust" at the time of commencement, this is because it had not let the administrative process unfold. That process would determine not only if petitioner is harmed by the regulation, but also whether the anticipated harm "may be prevented by further administrative action" (*Matter of New York Blue Line Council, Inc. v Adirondack Park Agency*, 86 AD3d at 761; *see Matter of Acevedo v New York State Dept. of Motor Vehs.*, 132 AD3d 112, 117 [3d Dept 2015], *affd* 29 NY3d 202 [2017]; *Matter of Adirondack Council, Inc. v Adirondack Park Agency*, 92 AD3d at 191; *Matter of Hospital Assn. of N.Y. State v Axelrod*, 164 AD2d 518, 526 [3d Dept 1990]). Accordingly, respondents correctly allege that there was no ripe controversy at the outset (*see Site Safety LLC v New York State Dept. of Taxation & Fin.*, 237 AD3d at 1396; *Grand S. Point, LLC v Bassett*, 230 AD3d 49, 61 [3d Dept 2024], *appeal dismissed* 42 NY3d 1025 [2024], *lv denied* 43 NY3d 907 [2025]). The parties have informed us that a notice of deficiency has since been issued, and administrative proceedings have commenced. In any event, it still remains to be seen whether further administrative action will ameliorate any claimed harm (*see Matter of Tree Hill Innovations, LLC v New York State Cannibis Control Bd.*, 250 AD3d 21, 24 [3d Dept 2025]; *Matter of Buenos Hill Inc. v Saratoga Springs Planning Bd.*, 240 AD3d 990, 993 [3d Dept 2025], *appeal dismissed* 44 NY3d 1015 [2025]; *see also Matter of Jamaica Water Supply Co. v Public Serv. Commn. of State of N.Y.*, 152 AD2d 17, 20-21 [3d Dept 1989]). For these reasons, petitioner's requests for declaratory judgment are unripe for review and, although Supreme Court "blurred the distinction between these two defensive doctrines" by holding that petitioner had failed to exhaust administrative remedies (*Matter of Ward v Bennett*, 79 NY2d at 400),[3] it correctly granted respondents' motion for summary judgment dismissing all but petitioner's constitutional claims.[4]

Finally, petitioner claims that the Department has applied the regulations retroactively in violation of its due process rights. Initially, although promulgated in 2023, the regulations at issue were intended to interpret and construe the statutory scheme which had been enacted in 2015 to be applied only prospectively and, therefore, did not "impose new duties with respect to transactions already completed" (*Barenboim v Starbucks Corp.*, 21 NY3d 460, 472 n 4 [2013] [internal quotation marks and citation omitted]). The regulations at issue elaborate upon the Department's understanding of the requirements for computing the BAF set forth in Tax Law § 210-A and did not work to impose taxes retroactively. Even assuming the opposite is true, we find petitioner's claim to be without merit.

"[R]etroactivity provisions in tax statutes [and regulations], if for a short period, are generally valid" (*AmerisourceBergen Drug Corp. v New York State Dept. of Health*, 227 AD3d 1286, 1291 [3d Dept 2024] [internal quotation marks and citation omitted], *appeal dismissed* 42 NY3d 1023 [2024]; *see James Sq. Assoc. LP v Mullen*, 21 NY3d

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[3] Relevantly, so long as there is an absence of factual issues and the question involves purely statutory analysis, "a declaratory judgment action is an appropriate remedy to challenge the validity or application of a particular statute [or regulation] without exhausting administrative remedies" (*Compass Adjusters & Investigators v Commissioner of Taxation & Fin. of State of N.Y.*, 197 AD2d 38, 40 [3d Dept 1994]; *see Matter of Eisenhauer v Watertown City Sch. Dist.*, 208 AD3d 952, 954 [4th Dept 2022], *appeal dismissed* 39 NY3d 944 [2022]; *Matter of Between the Bread II v Urbach*, 234 AD2d 724, 724 [3d Dept 1996]).

[4] Petitioner's fourth cause of action is ostensibly pursuant to CPLR article 78. However, because that claim attacks the validity of the underlying regulations, it is merely a repleading of its sought-after declaratory relief and was properly dismissed (*see Matter of Highland Hall Apts., LLC v New York State Div. of Hous. & Community Renewal*, 66 AD3d 678, 681 [2d Dept 2009]; *see generally Boreali v Axelrod*, 71 NY2d 1, 8 [1987]; *Matter of North Shore Univ. Hosp. v Axelrod*, 204 AD2d 894, 897 [3d Dept 1994], *lv denied* 84 NY2d 805 [1994]; *Matter of Building Contrs. Assn. v Tully*, 65 AD2d 199, 201 [3d Dept 1978], *lvs dismissed* 47 NY2d 709 [1979], 47 NY2d 903 [1979], 47 NY2d 951 [1979]).

233, 246 [2013]; *see also Matter of Varrington Corp. v City of N.Y. Dept. of Fin.*, 85 NY2d 28, 32-33 [1995]). "[W]hether a retroactive statute comports with due process principles is a question of degree that turns on the length of the retroactivity period, the taxpayer's forewarning of a change in legislation as relevant to reliance interests and the public purpose for retroactive application" (*Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332, 376 [2020] [internal quotation marks and citation omitted]; *see Matter of Mackenzie Hughes LLP v New York State Tax Appeals Trib.*, 178 AD3d 1313, 1315 [3d Dept 2019]; *see also Matter of WL, LLC v Department of Economic Dev.*, 97 AD3d 24, 32 [3d Dept 2012], *affd sub nom. James Sq. Assoc. LP v Mullen*, 21 NY3d 233 [2013]).

First, petitioner argues that the length of retroactivity is nine years. However, that is not true as applied to petitioner. Petitioner settled any claims through May 31, 2019 and the challenged regulations were adopted in December 2023; accordingly, as a result of that settlement, the relevant retroactivity period with respect to petitioner is 4½ years. Next, it is evident that petitioner had forewarning in view of the years of communication it had with the Department and its numerous comments regarding the regulations at issue (*see Matter of Replan Dev. v Department of Hous. Preserv. & Dev. of City of N.Y.*, 70 NY2d 451, 457 [1987], *appeal dismissed* 485 US 950 [1988]; *compare AmerisourceBergen Drug Corp. v New York State Dept. of Health*, 227 AD3d at 1294). The retroactive application of the challenged regulations also supports a valid public purpose as the regulations are intended to avoid distortions in apportionment, rather than increase tax receipts (*see AmerisourceBergen Drug Corp. v New York State Dept. of Health*, 227 AD3d at 1293; *compare James Sq. Assoc. LP v Mullen*, 21 NY3d at 249-250). Petitioner may also request an adjustment if it believes that the BAF does not accurately reflect its business income within the state (*see* Tax Law § 210-A [11]). Considering the foregoing, Supreme Court properly found the retroactivity period did not violate due process and appropriately granted respondents' motion and denied petitioner's cross-motion on this issue (*see Matter of MSK Realty Interests, LLC v Department of Fin. of the City of N.Y.*, 170 AD3d 459, 460 [1st Dept 2019], *appeal dismissed* 33 NY3d 1057 [2019]; *Astoria Fed. Sav. & Loan Assn. v State of New York*, 222 AD2d 36, 46-47 [2d Dept 1996], *appeal dismissed* 88 NY2d 1064 [1996], *lv denied* 89 NY2d 807 [1997], *cert denied* 522 US 808 [1997]; *compare Matter of Mackenzie Hughes LLP v New York State Tax Appeals Trib.*, 178 AD3d at 1316; *Matter of Hague Corp. v Empire Zone Designation Bd.*, 96 AD3d 1144, 1147 [3d Dept 2012], *affd sub nom. James Sq. Assoc. LP v Mullen*, 21 NY3d 233 [2013]).

Petitioner's remaining contentions, to the extent not expressly addressed herein, have been examined and found to be lacking in merit.

Clark, J.P., Fisher, Mackey and Corcoran, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

Robert D. Mayberger

Robert D. Mayberger
Clerk of the Court