
DECLARATORY RULING

Zachys Wine & Liquor Store, Inc.

Agenda # 12/11/2024-068L

Question Presented

May Zachys Wine and Liquor Store retain its Auction Permit following Zachys transition from a Subchapter S-corporation to a Limited Liability Company (LLC)?

Statement of Facts

Zachys holds a retail, off-premises liquor store license. It has been licensed since 1946. Zachys also holds an Auction Permit. The license is presently held by an S-corporation. Zachys wishes “to form a limited liability company and to merge Zachys Wine & Liquor Store Inc. into the LLC, with the LLC surviving.” Zachys filed an endorsement application seeking permission from the Authority to convert from an S-corporation into an LLC. The same persons will have the same ownership interests. Following approval of the endorsement application, Zachys will file a corporate change application seeking permission to add a new member. The application will be processed in due course. Pursuant to Alcoholic Beverage Control Law Section 99-d, the LLC will be bound by the representations set forth in the original application and any amendments approved by the Authority.

Applicable Law

New York Alcoholic Beverage Control Law (“ABCL”) §99-g provides in pertinent part:

1. (b) For purposes of this section, if wine or liquor is offered at an auction, “licensed person” means any person licensed under section sixty-three or seventy-nine of this chapter, who shall have been so licensed for a period of ten years or more.
2. (a) The Liquor Authority is hereby authorized to issue a wine and liquor auction permit to a licensed person to conduct auctions of wines and/or liquors.

New York Limited Liability Company Law §1004, which governs the effects of merger or consolidation of corporate entities states that:

When any merger or consolidation shall have become effective under this chapter, for all purposes of the laws of this state, all of the rights, privileges, immunities, powers and purposes of each of the domestic limited liability companies and other business entities that have merged or consolidated, and all property, real, personal and mixed, tangible and intangible, and all debts, obligations, liabilities, penalties and duties of such domestic limited liability companies and other business entities, as well as all other things belonging to each of

such domestic limited liability companies and other business entities, shall be vested in the surviving or resulting domestic limited liability company or other business entity...

Determination of the Members

The LLC would like to continue to hold its Auction Permit following the merger of the S-corporation into the LLC. It will be necessary for the proposed LLC to retain the rights of the S-corporation if the LLC is to retain the Auction Permit, since pursuant to ABCL 99-g, a Licensee holding such a permit must have been licensed for at least ten years.

An LLC is a type of business entity, while an S-corporation is a tax classification. To qualify as an S-corporation the business must register as a C-corporation, or an LLC and then go on to meet specific guidelines set by the IRS for S-corporations. Both an S-corporation and an LLC are "pass through" entities, allowing corporate income, losses, and deductions to go directly to the shareholders, thus avoiding "double" personal and corporate taxation.

Under both ABCL §99-d and New York Limited Liability Company Law §1004, the proposed Limited Liability Company assumes the rights and privileges of the S-corporation, which presently holds the Auction Permit in question. As noted above, since the owners of the LLC will, at least initially, be the same owners of the S-Corp, the conversion will not adversely affect Zachys ability to retain its auction permit. Therefore, we rule that Zachys may retain its auction permit upon its conversion from an S-Corp to an LLC.

This Ruling is limited to the facts and the parties set forth in the request and shall not be considered as approval for any other proposal.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on December 11, 2024 before Chair Lily Fan, Commissioner Edgar De Leon, and Commissioner John Maya. The above written ruling was approved by Chair Fan on behalf of the Members on April 8, 2025.

Dated: 06/23/25



Donald Roper
Secretary to the Authority