

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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► SUBJECT

NEW YORK CITY RULES AMENDED

► AFFECTING

- I. General Corporation, Banking Corporation, and Unincorporated Business Tax rules have been amended to provide guidelines, applicable during the phase-in period to a single receipts factor, for allocating income when any of the three allocation factors is missing.
- II. Unincorporated Business Tax (“UBT”) rules have been amended to provide that the Commissioner of Finance may prescribe a simplified form that may be filed by a business whose income falls below the amount that would require the filing of a return under the Administrative Code.

► DETAILS

I. Allocating Income When Factor Missing

During the phase-in period to a single receipts factor, if any of the allocation percentages cannot be determined because the taxpayer either has no property, no payroll, or no business receipts within or outside the city, or for the banking corporation tax, either has no payroll, no receipts, or no deposits within or without the city (*i.e.*, the numerator and denominator are both zero), then for taxable years beginning in 2009 and before 2018, the computation should be made by:

- Taking the sum of the products determined for the factors that are present,
- Dividing that sum by the sum of the “weight factors” that apply to each of the factors in the calculation, and
- Rounding to four decimal places.

CONTACT:

West:

ROCKY CUMMINGS, Tax Partner
408-278-0220 / rcummings@bdo.com

PAUL MCGOVERN, Tax Director
714-913-2592 / pmcgovern@bdo.com

Northeast:

NICK NESI, Tax Partner
212-885-8420 / nnesi@bdo.com

Southeast:

MARK SIEGEL, Tax Senior Manager
404-979-7188 / msiegel@bdo.com

Central:

RICHARD SPENGLER, Tax Senior Director
616-776-3687 / rspengler@bdo.com

NICK BOEGEL, Tax Senior Manager
414-615-6773 / nboegel@bdo.com

JOE CARR, Tax Senior Manager
312-616-3946 / jcarr@bdo.com

Mid-Atlantic:

LOU LIPPO, Tax Senior Director
215-636-5524 / llippo@bdo.com

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The “weight factor” is the phase-in percentage for each factor used in the allocation computation for the particular taxable year.

EXAMPLE:

A taxpayer has no employees, a property factor of 10%, and a receipts factor of 25%. The weight factor for 2009 is 30% for property and 40% for receipts. Its 2009 allocation factor is computed as follows:

The product of 30% and 10% = .03.

The product of 40% and 25% = .10.

The total, .13, is divided by .70, the sum of the weight factors (.30 + .40).

The allocation factor is .1857.

II. Simplified Tax Return May Be Filed

For taxable years beginning in 2009, a taxpayer with unincorporated business gross income of \$95,000 or less, determined without any deduction for the cost of goods sold or services performed, is not required to file an Unincorporated Business Tax Return. Under NYC Regulation Section 28-18, this law has been amended to allow the Commissioner of Finance to prescribe a form which may be filed voluntarily by a business whose gross income falls below the \$95,000 threshold. This filing will constitute the filing of a return pursuant to NYC Admin. Code Section 11-523, which states that if a return is filed, UBT may only be assessed within three years after the return was filed.

EXAMPLE:

A taxpayer has 2009 gross income for UBT purposes of less than \$95,000, and thus is not required to file a UBT return. If the taxpayer does not file a UBT return, the period of limitations for the 2009 taxable year does not begin to run, and the taxable year can be examined by the NYC Department of Finance at any time. However, if the taxpayer files the simplified tax return voluntarily, the three-year period of limitations begins with the filing of the return, and the Department would only have three years from the date the return was filed to audit the 2009 UBT return.

For more information about this New York City Alert, please contact:

Nicholas A. Nesi

100 Park Avenue (9th Floor) / New York, NY 10017
212-885-8420 / nnesi@bdo.com

Harriet Sonnenschein

100 Park Avenue (9th Floor) / New York, NY 10017
212-885-8221 / hsonnenschein@bdo.com

Catherine Sabol

100 Park Avenue (9th Floor) / New York, NY 10017
212-885- 7371 / csabol@bdo.com

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