



**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 11-508(i)(11) and 11-537(a) of the New York City Administrative Code, and sections 389(b) and 1043 of the New York City Charter, I hereby promulgate the within Amendment to Rules Relating to the Unincorporated Business Tax. This amendment was published in proposed form on January 26, 2010. A hearing for public comment was held on February 26, 2010.

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David M. Frankel
Commissioner of Finance

**Amendment to Rules Relating to the
Unincorporated Business Tax (19 RCNY Chapter 28)**

Section 1. The first unnumbered subparagraph of paragraph (5) of subdivision (d) of section 28-07 of the Rules Relating to the Unincorporated Business Tax (19 RCNY Chapter 28) is relettered subparagraph (i), and new subparagraphs (ii), (iii) and (iv) are added to such paragraph (5) to read as follows:

(5) Missing factors. (i) The allocation percentage is computed by adding together the percentages of the taxpayer's real and tangible personal property, payroll and gross income within New York City during the period covered by the return, and dividing the total of such percentages by three unless the taxpayer is a manufacturing business and elects to use a double weighted gross income percentage for a taxable year beginning on or after July 1, 1996, in which event the total of such percentages is divided by four. However, if one of the factors, for example, the payroll factor is missing, the other percentages are added and the sum is divided by the number of percentages, and if two of the factors are missing, the remaining factor percentage is the allocation percentage. (A factor is not missing merely because its numerator is zero, but it is missing if both its numerator and its denominator are zero.)

Example: A taxpayer has no employees either within or without the City. The payroll factor being missing, the allocation percentage may be computed by adding the percentage derived from the allocation of gross income and property, and dividing the total by two.

(ii) In the event that any of the percentages to be determined under subparagraphs (i), (iii) or (iii) of paragraph (1) of this subdivision (d) cannot be determined because the taxpayer has either no property, no payroll or no gross income from sales or services within or without the City, then the computation to be made under subdivision (i) of section 11-508 of the Administrative Code (applicable to taxable years beginning in 2009 and thereafter but before 2018) shall be made by taking the sum of the products that are determined under such subdivision (i) for the factors that are present, and dividing that sum by the sum of the weight factors that apply to each of the present factors in the calculation made under such subdivision (i). This amount is then rounded to four decimal places. (An allocation factor is not missing merely because its numerator is zero, but it is missing if both its numerator and its denominator are zero).

(iii) Weight factor defined. For purposes of subparagraph (ii) of this paragraph, "weight factor" is the percentage used in the allocation computation in subdivision (i) of section 11-508 of the Administrative Code, by which the percentage derived from paragraph (1) of this subdivision is multiplied in such allocation computation. For example, in subparagraph (A) of paragraph (1) of subdivision (i) of section 11-508 of the Administrative Code, the weight factor is 30%; in subparagraph (A) of paragraph (9) of subdivision (i) of section 11-508 of the Administrative Code, the weight factor is 3 ½%.

(iv) Example: For the tax year 2009, a taxpayer has no employees either within or without the City. The property factor percentage determined under (d)(1)(i) of this section is 10%, and the gross income factor percentage determined under (d)(1)(iii) of this section is 25%. As the payroll factor is missing, the allocation percentage may be computed by taking the sum of

(A) the product of 30% and 10%, and

(B) the product of 40% and 25%,

which is $.03 + .1 = .13$,

then dividing that sum by the sum of the weight factors for property and gross income, which are .30 and .40, respectively:

$\frac{.13}{.30 + .40} = \frac{.13}{.70} = .18571$, rounded to four decimal places = .1857

$\frac{.13}{.30 + .40} = \frac{.13}{.70}$

BASIS AND PURPOSE OF AMENDMENT

Chapter 201 of the Laws of 2009 amended provisions of chapter 5 of title 11 of the New York City Administrative Code relating to the allocation of income to New York City. The amendment phases out the use of a formula based on three factors (tangible personal property, payroll and gross income) and provides for the use of a single sales factor, phased in over a ten year period. As required by Administrative Code §11-508(i)(11), as enacted by Chapter 201 of the Laws of 2009, this proposed amendment adds a provision to the Rules Relating to the Unincorporated Business Tax to provide guidelines as to how income is to be allocated if any of the three allocation factors cannot be determined.

In the near future, the Department will propose additional amendments to these rules to further conform the rules to the changes made to the Administrative Code by Chapter 201 of the Laws of 2009.