

October 10, 2000

Re: Request for Ruling
Unincorporated Business Tax
FLR # 004767-005

Dear _____ :

This is in response to your request for a ruling dated August 8, 2000 regarding the application of the New York City Unincorporated Business Tax to a limited liability company (LLC). This office received additional information on September 8, 2000.

FACTS

The facts presented are as follows:

The LLC is treated as a partnership for federal income tax purposes. It is a registered broker-dealer that is required to file periodic statements and reports with the Securities and Exchange Commission (SEC), and to meet minimum capital requirements. However, according to your ruling request, the LLC is exclusively engaged in securities trading for its own account, the profits from which constitute the LLC's sole source of income. The LLC does not sell to or engage in trades on behalf of customers, nor does it maintain any inventory of securities for sale to potential customers. In addition, the LLC does not receive income from services. Its registration as a broker-dealer is solely for the purpose of increasing its margin purchase capabilities.

ISSUE

You have requested a ruling as to whether the LLC's income is subject to the Unincorporated Business Tax (UBT).

CONCLUSION

Based on the representations made in the ruling request and other information submitted, the LLC is exempt from the UBT under section 11-502(c) of the Administrative Code of the City of New York (Code).

DISCUSSION

Code section 11-503(a) imposes the UBT on every unincorporated business conducted, in whole or in part, in the City of New York. Code section 11-502(a) defines “unincorporated business” as “any trade, business, profession or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity....” However, Code section 11-502(c)(2) provides:

An individual or other unincorporated entity, except a dealer as defined in subdivision (l) of section 501 of this chapter, shall not be deemed engaged in an unincorporated business solely by reason of ... the purchase, holding and sale for ... its own account of property, ... or the entry into, assumption, offset, assignment or other termination of a position of any property so defined, or both....

Code section 11-502(c)(1) includes in the definition of property: stocks, bonds and other securities qualifying as investment capital under Code section 11-501(h) as well as “stocks, notes, bonds, debentures, or other evidences of indebtedness” and various other financial instruments. Hence, the LLC is an unincorporated entity involved in trading property for its own account within the meaning of Code section 11-502(c)(2).

Code section 11-501(l) defines a dealer as follows:

[A]n individual or entity that (A) holds or disposes of property that is stock in trade of the taxpayer, inventory or is otherwise held for sale to customers in the ordinary course of the taxpayer’s business, or (B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in property with customers in the ordinary course of the taxpayer’s trade or business....

Based upon the representations and other information provided, the LLC is not a dealer under Code section 11-501(l). The LLC’s status as a registered broker-dealer of securities does not affect this exemption, so long as the LLC does not act as a dealer of securities within the meaning of Code section 11-501(l). Accordingly, the LLC is not engaged in

an unincorporated business under Code section 11-502(c), and its income is, therefore, exempt from the UBT.

Sincerely,

Devora B. Cohn
Associate Commissioner
For Legal Affairs