



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

June 18, 2002

**Re:** Request for Ruling  
Unincorporated Business Tax

FLR # 024792-005

Dear \_\_\_\_\_ :

This is in response to your request for a ruling dated \_\_\_\_\_, 2002 regarding the application of the New York City Unincorporated Business Tax to the situation described below.

**FACTS**

The facts presented are as follows:

A partnership, hereinafter the "Taxpayer", is engaged in the practice of law outside of New York City. The Taxpayer, which previously did not do any business in the City, has recently established an office in New York City. The Taxpayer will not maintain separate books for its offices and will allocate income to New York City by the three-factor formula set forth in Section 11-508(c) of the New York City Administrative (the "Code").

**ISSUE**

You have requested a ruling as to whether charges for services performed by partners and employees of the Taxpayer chiefly situated at and connected with offices of the Taxpayer outside the City will be allocated outside the City for purposes of the gross income percentage. More specifically, you have advised us that you are seeking a ruling as to whether the provision of Code section 11-508(c), which provides that charges for

services performed by employees chiefly situated at or connected with offices of an unincorporated business in the City are allocated to the City, applies in the converse to charges for services performed by partners and employees chiefly situated at and connected with offices of an unincorporated business outside the City.

## CONCLUSION

Based on the facts presented and the representations submitted, we have determined that, solely for purposes of the gross income factor, charges for services directly performed directly by partners and/or employees of the Taxpayer chiefly situated at and connected to an office outside the City are not considered gross income allocable to the City even if such services were performed within the City. This ruling does not address the issue of whether the use of formula allocation will fairly and equitably reflect the Taxpayer's income from the City.

## DISCUSSION

The unincorporated Business Tax ("UBT") is imposed on the unincorporated business taxable income ("UBTI") of every unincorporated business carried on within New York City. Code §11-503(a). Code section 11-502(a) defines an unincorporated business as "any trade, business, profession, or occupation conducted, engaged in or being liquidated by ... an unincorporated entity..."

An unincorporated business carried on both within and without the City must allocate to the City a fair and equitable portion of its business income. Code section 11-508(a). The portion allocable to the City should be determined from the books of the business if the Department determines that the method of keeping those books fairly and equitably reflects the taxpayer's income from the City. However, if allocation by books is not applicable to a taxpayer, then the portion allocable to the City shall be determined by multiplying the taxpayer's business income by the average of the property, payroll and gross income percentages. If the Commissioner of Finance determines that a taxpayer's income from the City is not fairly and equitably reflected using either the books and records method or formula allocation, the taxpayer's business income will be allocated to the City under the rules promulgated by the Department. Code §11-508(d).

For purposes of the gross income percentage, sales or charges allocated to the City include all "charges for services performed by an employee, agent, agency or independent contractor chiefly situated at, connected by contract or otherwise with, or sent out from, offices of the unincorporated business, or other agencies, situated within the City." Code §11-508(c).

A determination of whether an employee or partner is "chiefly situated at, connected by contract or otherwise with, or sent out from" a particular office requires a factual determination, which primarily is an audit function. The same is true of a determination of whether an amount of gross income represents charges for services rendered by a particular individual. Charges for services performed by others at the direction of, on behalf of or for clients of an employee or partner chiefly situated at or connected to an

office of the taxpayer outside the City will not be treated as charges for services performed directly by that individual. However, assuming that an employee or partner is determined to be chiefly situated at or connected with an office of the Taxpayer outside the City and that the charges for services performed directly by that individual can be determined, those charges will be allocable outside the City for purposes of the gross income allocation factor of the Taxpayer.

However, if the Department determines that neither the books and records method nor the formula allocation method allocates a fair and equitable portion of the Taxpayer's income to the City, the Commissioner may allocate under rules promulgated by the Department. *See*, Title 19 Rules of the City of New York §28-07(e).

The Department reserves the right to verify the information submitted.

Sincerely,

/S/ Devora B. Cohn  
Associate Commissioner for Legal Affairs