

Instructions for Form NYC-202S

NEW YORK CITY DEPARTMENT OF FINANCE



Unincorporated Business Tax Return For fiscal years beginning in 2008 or for calendar year 2008

Highlights of Recent Tax Law Changes for Unincorporated Businesses

- For tax years beginning on or after January 1, 2008, the maximum amount that may be deducted for compensation for a taxpayer's personal services has been raised to \$10,000.

GENERAL INFORMATION

WHO MUST FILE A UBT RETURN

1. Any individual or unincorporated entity, other than a partnership, that carries on or liquidates a trade, business, profession or occupation wholly or partly within New York City and has a total gross income from all business regardless of where carried on of **more than \$75,000** (prior to any deduction for cost of goods sold or services performed) must file an Unincorporated Business Tax Return. See Finance Memorandum 99-1 for information regarding the treatment of single-member limited liability companies owned by individuals that are disregarded for federal income tax purposes.
2. **In addition**, every unincorporated business, other than a partnership, that has unincorporated business gross income of \$75,000 or less, but has *unincorporated business taxable income of more than \$35,000* must file a return for each taxable year in which it carries on business in the City to any extent. **Unincorporated business taxable income** is the excess of unincorporated business gross income over the aggregate of unincorporated business deductions, allocated to New York City, less the allowance for taxpayer's services and unincorporated business exemptions.

If an individual or an unincorporated entity carries on **two or more unincorporated businesses, in whole or in part within the City, all such businesses shall be treated as one unincorporated business for purposes of this tax.** The gross income and deductions from all such businesses must be combined and reported on one return.

However, an individual member of a partnership who carries on his own separate and independent unincorporated business is not required or permitted to include his distributive share of partnership income in computing his separate unincorporated business taxable income.

ELIGIBILITY TO FILE FORM NYC-202S

If you are an individual who meets the following criteria, you may file Form NYC-202S:

1. you do not allocate business income;
2. you have no investment capital or income at any time during the taxable year;
3. you do not modify your federal depreciation deduction;

4. you do not owe a penalty for underpaying your estimated tax;
5. you are filing your return on or before the due date of the return (including extensions) and do not owe any late filing or late payment penalties;
6. you do not claim any credits other than the business tax credit (see instructions to Schedule A, line 7);
7. you are not claiming an NOL deduction;
8. you did not take a deduction for salaries, wages, withdrawals or interest paid to the proprietor of the unincorporated business or a deduction for contributions to a pension plan on your federal return;
9. you are not claiming a partial exemption for the holding, leasing and management of real property; and
10. you do not have any New York City modifications to federal taxable income other than the adding back of income and unincorporated business taxes paid this year and deducted on your federal return. (See pages 7 through 9 of the instructions to form NYC-202 for a complete discussion of NYC modifications to federal taxable income.)

SEE THE INSTRUCTIONS FOR FORM NYC-202 FOR A COMPLETE DISCUSSION OF THE VARIOUS UBT FORMS AND OTHER PROVISIONS OF THE UBT LAW

If you are required to file a return but do not owe any tax you may be eligible to file Form NYC-202EZ.

WHO IS SUBJECT TO THE TAX

- 1) The Unincorporated Business Tax is imposed on any individual or unincorporated entity (including a partnership, fiduciary or corporation in liquidation and including any incorporated entity treated as a partnership for federal income tax purposes) engaged in any trade, business, profession, or occupation wholly or partly carried on within New York City.
- 2) Income received from the practice of law, medicine, dentistry, architecture, or any other profession is subject to the Unincorporated Business Tax.
- 3) S Corporations are not subject to the Unincorporated Business Tax. S Corporations are subject to the General

Corporation Tax.

- 4) An individual, trust or estate, except a dealer as defined in Admin. Code §11-501 (l) will not be deemed engaged in an unincorporated business solely by reason of the conduct of the following activities for the taxpayer's own account: the purchasing, holding or selling of property (defined below), engaging in transactions in positions in property, the acquisition, holding or disposition, other than in the ordinary course of business, of interests in unincorporated entities also eligible for this exemption, and any other activity not constituting an unincorporated business subject to the Unincorporated Business Tax.

Property Defined. Property for this purpose includes real and personal property, including property qualifying as investment capital (see instructions for Schedule D of this form) and other stocks and securities, notional principal contracts, derivative financial instruments and other positions in property but excluding property and positions in property held by a dealer, and excluding debt instruments acquired in the ordinary course of a trade or business and certain other property. See Admin. Code §11-502 (c) (1) (A).

Notwithstanding anything to the contrary, the receipt of \$25,000 or less of gross receipts during the taxable year (determined without regard to any deductions) from an unincorporated business will not disqualify the taxpayer for this exemption.

- 5) A person that is an owner, lessee or fiduciary will not be deemed to be engaged in an unincorporated business solely by reason of the holding, leasing or managing of real property. If an individual or unincorporated entity is carrying on an unincorporated business in whole or in part in the City, and is also holding, leasing or managing real property as an owner, lessee or fiduciary, the holding, leasing or managing of the property will not be considered an unincorporated business to the extent that the real property is held for the purposes of producing rental income or gain on the disposition of the real property.

NOTE: If you are engaged exclusively in an activity exempt from Unincorporated Business Tax, you are not required to file a return.

OTHER FORMS YOU MAY BE REQUIRED TO FILE

FORM NYC-5UBTI - Declaration of Estimated Unincorporated Business Tax must be filed by every individual, estate or trust carrying on an unincorporated business or profession in New York City and whose estimated tax can reasonably be expected to exceed \$1,800 for the calendar year or fiscal year immediately following the year covered by this return.

The declaration must cover a full calendar or fiscal year and is due on the 15th day of the fourth month of the taxable year. (A partnership declaration should be filed on Form NYC-5UB.)

For further information about estimated tax payments and due dates, see Form NYC-5UBTI.

FORM NYC-EXT - Application for Automatic 6-Month Extension of Time to File Business Income Tax Return. File it on or before the due date of the return.

FORM NYC-113 - Unincorporated Business Tax Claim for Credit or Refund is used to claim a refund of Unincorporated Business Tax.

FORM NYC-115 - Unincorporated Business Tax Report of Change in Taxable Income made by the Internal Revenue Service and/or New York State Department of Taxation and Finance must be used for reporting adjustments in taxable income resulting from an Internal Revenue Service audit of your federal income tax return and/or a New York State Department of Taxation and Finance audit of your State income tax return.

FORM NYC-221 - Underpayment of Estimated Unincorporated Business Tax will help you determine if you have underpaid an estimated tax installment and, if so, compute the penalty due.

FORM NYC-CR-A - Commercial Rent Tax Annual Return must be filed by every tenant that rents premises for business purposes in Manhattan south of the center line of 96th Street **and** whose annual or annualized gross rent for any premises is at least \$200,000.

WHEN TO FILE

Form NYC-202S is due on or before April 15, 2009, or, for fiscal year taxpayers, on or before the 15th day of the fourth month following the close of the taxable year.

An automatic extension of six months for filing this return will be allowed if, within the time pre-

scribed for filing, the taxpayer files with the Department of Finance an Application for Extension on Form NYC-EXT and pays the amount properly determined as its tax. See the instructions for Form NYC-EXT for information regarding what constitutes a properly estimated tax for this purpose. Failure to pay a properly estimated amount will result in a denial of the extension.

No additional extension for filing a return will be granted beyond the six-month extension, unless the taxpayer is outside the United States. (Taxpayers outside the United States should refer to 19 RCNY Section 28-18(c) for additional extensions.)

WHERE TO FILE

Returns with remittances:
NYC Department of Finance
P.O. Box 5040
Kingston, NY 12402-5040

Returns claiming refunds:
NYC Department of Finance
P.O. Box 5050
Kingston, NY 12402-5050

All others:
NYC Department of Finance
P.O. Box 5060
Kingston, NY 12402-5060

NOTE: If a Declaration of Estimated Unincorporated Business Tax (Form NYC-5UBTI) is being filed, DO NOT mail it to any address listed here. It should be mailed to the address indicated on Form NYC-5UBTI.

ACCESSING NYC TAX FORMS

By Computer - Download forms from the Finance website at nyc.gov/finance

By Phone - Order forms through Finance's form ordering service, by calling 212-504-4035, and receive forms in the mail.

IDENTIFYING INFORMATION

In the space provided on the front of the return, enter your correct Social Security Number and a New York State Sales Tax ID Number, if applicable. The Sales Tax ID number can be 9, 10 or 11 digits. Enter the same business code entered on federal Schedule C or Schedule C-EZ. Individuals licensed and/or regulated by the NYC Taxi and Limousine Commission use business code 999999 in lieu of the federal code.

If this is an amended return, check the box on page 1.

BUSINESS TERMINATED DURING TAXABLE YEAR

If the business was terminated during 2008, attach a statement to Form NYC-202S showing disposition of the business property and how it was reported on the return. Check the box on page 1 of the return.

USE OF FEDERAL FIGURES

Except where otherwise indicated, items of business income, gain, loss or deduction are to be entered on the return as reportable for federal tax purposes. All items reported on Form NYC-202S, however, are subject to verification, audit and revision by the Department of Finance.

FEDERAL OR NEW YORK STATE CHANGES

If, on audit of your return, the federal or New York State tax authorities change any item of income or deduction reported to the Internal Revenue Service or the New York State Department of Taxation and Finance, or an item of income or deduction is changed as a result of a renegotiation of a contract with the United States or New York State, or you execute a waiver of the restrictions on assessment by either authority under IRC section 6213(d) or NYS Tax Law section 681(f) and the change pertains to the unincorporated business income or deductions reported on the Unincorporated Business Tax return, you must report the change to the Department of Finance within 90 days. Form NYC-115 should be used for this purpose and may be obtained from the sources listed in these instructions.

Form NYC-115 must be filed separately and should not be attached to any return.

If an amended federal or New York State return is filed reflecting a change in unincorporated business income or deductions, an amended Unincorporated Business Tax return must be filed within 90 days. Use Form NYC-202 or NYC-202S and check the box at the top of page 1.

ACCOUNTING PERIODS AND METHODS

The accounting period for which Form NYC-202S is filed and the method of accounting used are the same as for federal income tax purposes. If a taxpayer's taxable year or method of accounting is changed for federal income tax purposes, the same changes must be made for purposes of the Unincorporated Business Tax.

PENALTIES

The law imposes penalties for failure to file a return or to pay any tax when due, or for making, rendering, signing, certifying or filing a false or fraudulent return. The mere fact that the figures reported on Form NYC-202 are taken from the federal return will not relieve the taxpayer from the imposition of penalties because of negligence or for filing a false or fraudulent return.

TAX PREPARERS

Anyone who prepares a return for a fee must sign the return as a paid preparer and enter his or her Social Security Number or PTIN. Include the company or corporation name and Employer Identification Number, if applicable.

Preparer Authorization: If you want to allow the Department of Finance to discuss your return with the paid preparer who signed it, you must check the "yes" box in the signature area of the return. This authorization applies only to the individual whose signature appears in the "Preparer's Use Only" section of your return. It does not apply to the firm, if any, shown in that section. By checking the "Yes" box, you are authorizing the Department of Finance to call the preparer to answer any questions that may arise during the processing of your return. Also, you are authorizing the preparer to:

- Give the Department any information missing from your return,
- Call the Department for information about the processing of your return or the status of your refund or payment(s), and
- Respond to certain **notices that you have shared with the preparer** about math errors, offsets, and return preparation. The notices **will not** be sent to the preparer.

You are not authorizing the preparer to receive any refund check, bind you to anything (including any additional tax liability), or otherwise represent you before the Department. The authorization cannot be revoked, however, the authorization will automatically expire no later than the due date (without regard to any extensions) for filing next year's return. **Failure to check the box will be deemed a denial of authority.**

SPECIFIC INSTRUCTIONS

If this is an amended return, check the box on page 1 of the return.

SCHEDULE A

Computation of Tax

LINE 1 - BUSINESS INCOME

Enter on line 1 the total from page 2, Schedule B, line 6.

CURRENT YEAR'S UNINCORPORATED BUSINESS NET OPERATING LOSS

If line 1 shows a net loss from business, this loss is the 2008 unincorporated business net operating loss.

Only the first \$10,000 of each year's loss may be carried back. The carryback period for City purposes generally corresponds to the federal carryback period available for individuals. Whichever carryback period, if any, the taxpayer

elects for federal purposes, the same carryback period must be used for City purposes. If the taxpayer elects to carry back the first \$10,000 of the loss, any excess net operating loss may be carried forward as if the taxpayer had elected to relinquish the entire carryback period for all but the first \$10,000 of the loss. If the taxpayer elects to forego the federal carryback period, no amount of the net operating loss may be carried back for City purposes and the entire net operating loss may be carried forward for City purposes.

Losses that are not permitted to be carried back may be carried forward and used to offset income for the period permitted for Federal tax purposes, generally 20 years for losses from years beginning after 8/5/97.

If a "carryback" results in an overpayment of a prior year's tax, a claim for refund on Form NYC-113 accompanied by a copy of the Unincorporated Business Tax Return for the taxable year for which the refund is claimed, should be filed within the limitation period prescribed by law. A detailed computation of the net operating loss deduction for that year must accompany the refund claim.

LINE 2 - ALLOWANCE FOR TAXPAYER'S SERVICES

A deduction may be claimed for reasonable compensation for taxpayer's personal services. The allowable deduction is:

- 1) 20% of line 1 *or*
- 2) \$10,000,

whichever is *lower*. If line 1 is a loss, enter "0" on line 2.

LINE 4 - EXEMPTION

An unincorporated business exemption of \$5,000 is allowed against net income reported on line 3. If more than one business was carried on by a taxpayer, only one exemption of \$5,000 is allowed against the combined net income derived from all business activities.

The exemption of \$5,000 must be prorated on a \$13.70 daily basis if the business was carried on for a period of less than a full taxable year of 12 months, unless the business was carried on and the return is filed for a number of whole months. In that case, the proration is to be on a \$416.67 per month basis.

EXAMPLE

- #1 If the sole proprietorship carried on business for a full 9 months, the exemption amount to be entered on line 4 is \$3,750.03 (9 months X \$416.67 per full month).
- #2 If the sole proprietorship carried on business for 263 days, the exemption amount to be entered on line 4 is \$3,603.10 (263 days X \$13.70 per day).

Taxpayers filing a short period return should fill in the dates at the top of page 1 of the return and prorate the exemption as described above.

LINE 5 - TAXABLE INCOME

Enter here the amount of line 3 less line 4. (*If loss, refer to the instructions for Schedule A, line 1.*)

LINE 6 - TAX

Enter on line 6 the amount obtained by multiplying the amount entered on line 5 by 4%.

LINE 7 - BUSINESS TAX CREDIT

- If the amount entered on line 6 is \$3,200 or over, no credit is allowable; enter "0" on line 7.
- If the amount entered on line 6 is \$1,800 or less, your credit is the entire amount of tax on line 6. No tax will be due.
- If the amount of tax entered on line 6 exceeds \$1,800 but is less than \$3,200, a credit is allowed in the amount determined by multiplying the tax on line 6 by a fraction, the numerator of which is \$3,200 minus the amount of the tax on line 6 and the denominator of which is \$1,400. *Use the following formula:*

FORMULA

$$\frac{\text{tax on line 6} \times (\$3,200 - \text{tax on line 6})}{\$1,400} = \begin{matrix} \text{Unincorporated} \\ \text{Business Tax} \\ \text{Credit} \end{matrix}$$

EXAMPLE

If the tax on line 6 is \$2,800, the business tax credit is calculated as follows:

- 1) $\$2,800 \times \frac{(\$3,200 - 2,800)}{\$1,400} = \800
- 2) Enter \$800 on line 7.
- 3) Enter \$2,000 (\$2,800 - 800) on line 8 (Unincorporated Business Tax)

LINE 8 - UNINCORPORATED BUSINESS TAX

Enter on line 8 the unincorporated business tax due. If the credit on line 7 equals the tax shown on line 6, enter "0" on line 8.

LINE 9 - PAYMENT OF ESTIMATED TAX

Enter on line 9 the sum of all payments of estimated tax made for calendar year 2008 or fiscal year beginning in 2008 including carryover credit from the preceding taxable year, and payment with extension, NYC-EXT. Complete table on page 2 of this return.

LINE 12 - LATE PAYMENT/ INTEREST

If the tax is not paid on or before the due date (determined without regard to any extension of time), interest must be paid on the amount of the underpayment from the due date to the date paid. For information as to the applicable rate of interest, see the Department of Finance website at: http://home2.nyc.gov/html/dof/html/business/business_tax_interest.shtml or call *Customer Assistance at: (212) 504-4036*.

LINE 13 - OVERPAYMENT

If there is an overpayment on line 11, enter on line 13a the amount of overpayment to be refunded. Enter on line 13b the amount to be credited to the 2008 estimated tax on Form NYC-5UBTI.

LINE 14 - TOTAL REMITTANCE DUE

After completing this return, enter the amount of your remittance on line A. This must be the full amount as shown on line 14. All remittances must be payable in U.S. dollars drawn on a U.S. bank. Checks drawn on foreign banks will be rejected and returned. Remittances must be payable to:

NYC Department of Finance

LINE 15 - GROSS RECEIPTS OR SALES FROM FEDERAL RETURN

Enter the amount from line 3 of Schedule C (Gross receipts or sales less returns and allowances) or from line 1 of Schedule C-EZ (Gross Receipts) of Federal form 1040.

SCHEDULE B

Computation of Total Income

ITEMS OF BUSINESS INCOME, GAIN, LOSS OR DEDUCTION

LINE 1 - NET PROFIT (OR LOSS) FROM BUSINESS

Enter here the amount reported for federal tax purposes. This amount should be the amount reported on federal Schedule C or C-EZ, Form 1040.

LINE 2 - OTHER BUSINESS INCOME OR LOSS

Enter the sum of: (a) the total gain or loss from the sale or exchange of real or personal property carried as business assets and reported on federal Schedule D or federal Form 4797; (b) the net amount of rental and royalty income derived from real and personal business property reported on federal Schedule E; and (c) the net amount of income or loss derived from other business activities, other than those reported above (such as interest and dividends from securities connected with the business or carried as business assets).

LINE 3 - INCOME AND UNINCORPORATED BUSINESS TAXES

Enter the amount of income and unincorporated business taxes imposed by New York City, New York State or any other taxing jurisdiction that were deducted in computing line 1.

LINE 5 - CHARITABLE CONTRIBUTIONS

Deductions are allowed for charitable contributions made by the unincorporated business, as a tax entity separate and distinct from its owners or proprietors, to the extent they would be deductible by a corporation for federal income tax purposes, but not in excess of 5% of line 4. In general, contributions deductible by a corporation are the same as those for individuals, except that:

- 1) contributions to fraternal societies, orders and associations operating under the lodge system are not deductible; and
- 2) contributions to a trust, chest, fund or foundation

are deductible only if they are to be used within the United States or its possessions.

SCHEDULE C

Additional Required Information

All questions in this schedule (Questions 1 through 6) must be answered.

COMPOSITION OF PREPAYMENTS SCHEDULE

Enter the payment date and the amount of all prepayments made for this tax period.

CUSTOMER ASSISTANCE

For interest calculations and account information, contact Customer Assistance, Monday through Friday, 8:30am to 5:30 pm.

Call: (212) 504-4036

You can speak to a Customer Assistance Representative between the hours of 9:00 am and 4:30 pm.

You can also visit our Internet website at nyc.gov/finance

PRIVACY ACT NOTIFICATION

The Federal Privacy Act of 1974, as amended, requires agencies requesting Social Security Numbers to inform individuals from whom they seek this information as to whether compliance with the request is voluntary or mandatory, why the request is being made and how the information will be used. The disclosure of Social Security Numbers for taxpayers is mandatory and is required by section 11-102.1 of the Administrative Code of the City of New York. Such numbers disclosed on any report or return are requested for tax administration purposes and will be used to facilitate the processing of tax returns and to establish and maintain a uniform system for identifying taxpayers who are or may be subject to taxes administered and collected by the Department of Finance, and, as may be required by law, or when the taxpayer gives written authorization to the Department of Finance for another department, person, agency or entity to have access (limited or otherwise) to the information contained in his or her return.