

November 4, 1999

Re:

Request for Ruling
Unincorporated Business Tax
FLR-994754-005

Dear _____ :

This is in response to your request for a ruling on behalf of _____ (the "Taxpayer") dated _____, 1999, with respect to the application of the Unincorporated Business Tax ("UBT") to the sale on an installment basis of the Taxpayer's business. This office received additional information with respect to this ruling on _____, 1999.

Facts:

The facts presented are as follows:

The Taxpayer is a partnership that had a computer training service in New York City. The business was sold in _____ on an installment basis with the note payable to the partnership. Since that time, it has been receiving interest and principal payments on the note that it received upon the sale of the business and on a new note given after the purchasers defaulted on the original note. The original note called for principal payments of \$ _____ on signing, \$ _____ on _____ and \$ _____ each six months thereafter until a total of \$ _____ had been paid. Interest was to be paid monthly on the unpaid balance. After paying \$ _____, the purchasers defaulted on the note and a new note was negotiated effective _____. The new note calls for three principal payments of \$ _____ each, due on _____ of this year and each of the _____ succeeding years and for monthly interest payments at an annual rate ranging from _____ percent to _____ percent for the _____ years.

The partnership's general partner is located outside New York City. Certain of its limited partners are New York City residents.

Issue:

You have requested a ruling that only operating income and related expenses up to, but not including, the sale should have been reported on a final return on Form NYC-204 for and that no portion of the principal and interest on the installment notes is subject to the UBT.

Conclusion:

The UBT applies to liquidations of unincorporated businesses. The gain on the sale of the business and the interest income received with respect to the notes should be included in the Taxpayer's unincorporated business income in the same manner that it is included in the Taxpayer's federal income.

Discussion:

Section 11-503(a) of the Administrative Code of the City of New York (the "Code") imposes the UBT on the unincorporated business taxable income of every unincorporated business wholly or partly carried on within the City. Code section 11-502 defines an unincorporated business as "any trade business, profession or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity..."

The starting point for calculating the unincorporated business taxable income of an entity is an unincorporated business' gross income for the taxable year for federal income tax purposes, subject to certain modifications. Code §11-506. Code section 11-506 provides:

Unincorporated business gross income of an unincorporated business means the sum of the items of income and gain of the business of whatever kind and in whatever form paid, includible in gross income for the taxable year for federal income tax purposes, including income and gain from any property employed in the business, or from liquidation of the business or from collection of installment obligations of the business...

Under Section 28-05 of the Rules of the City of New York ("RCNY"), income and gain from the collection or other disposition of installment obligations of the business is includible in the unincorporated business' gross income without regard to when such obligations were acquired.

Code section 11-513 provides that the taxpayer's method of accounting for determining the UBT shall be the same as that used for federal income tax purposes.

Under Code section 11-502, the Taxpayer is an unincorporated business in the process of being liquidated and is subject to the UBT. Under Code section 11-506 and RCNY section 28-05, the gain from the liquidation of the business and the interest income that

the Taxpayer receives on the installment notes are includible in its unincorporated business gross income. The gain and other income from the sale must be reported for purposes of the UBT in the same manner in which it is reported for federal income tax purposes. Thus, the Taxpayer should have filed a return for including the amount of the sale price recognized for federal income tax purposes during that year. Furthermore, it must file a UBT return for each year that it receives principal and interest on the notes.

The Department reserves the right to verify the information submitted.

Very truly yours,

Devora B. Cohn
Assistant Commissioner
for Legal Affairs

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