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PLEASE NOTE

The NYC Department of Finance’s Tax Audit Division and Conciliations Bureau have moved. They are now located at 375 Pearl Street, New York, NY 10038.



Commissioner’s Message



Welcome to the first edition of the Department of Finance’s *Business Tax Practitioner Newsletter*.

The newsletter will present information that is meant to be useful to tax professionals and business owners who must file city taxes. This will include interpretations of city, state, and federal tax laws, tips for practitioners to better serve their clients, and answers to the questions most frequently asked of our agency.

In this issue, you will find feature articles on the Voluntary Disclosure and Compliance Program, single-factor allocation, and the deduction of business interest expense. You will also be introduced to “Dear DOF,” a recurring feature of the *Business Tax Practitioner Newsletter*. If you have questions that you would like DOF to address, please send them to us via the “submit a question” button. We would love to hear from you.

Thank you for your work on behalf of the individuals and businesses who make our city great. We hope you will enjoy your newsletter.

Sincerely,

Jacques Jiha, Ph.D., Commissioner
New York City Department of Finance

Save the Date: TaxRAPP 2019

Join us for an informative day of panel discussions, presentations, tips & insights from leading tax professionals & top government officials at TaxRAPP 2019.

October 31, 2019

SUBMIT PANEL IDEAS

Voluntary Compliance a Good Option for Non-Filers

Taxpayers (individuals, corporations, partnerships, etc.) who owe taxes to New York City and have not filed the necessary tax returns may be eligible to participate in the Voluntary Disclosure and Compliance Program (VDCP). If a taxpayer is accepted into VDCP, the Department of Finance will waive penalties and may limit the number of periods that the taxpayer is required to file. Once accepted into the VDCP, a taxpayer will receive a written commitment to waive penalties and a list of the periods for which returns must be filed.

Taxpayers who do not come forward voluntarily, either through the VDCP or by appropriately filing their tax returns, may face penalties, interest, and possible criminal prosecution, in addition to owing the tax amount due.

Eligibility

Any taxpayer who has already been contacted by the New York City Department of Finance for the taxes due, or any taxpayer currently under audit, is not eligible for the Voluntary Disclosure and Compliance Program. Also, the applicant may not be a party to any criminal investigation being conducted by the state of New York or any of its political subdivisions, and the liability must not be related to a tax avoidance transaction that is a state or federal reportable transaction.

Unified Program (UP)

Eligible taxpayers who owe taxes to both the city and state may contact the New York State Department of Taxation and Finance to apply to the Unified Program, or UP. Under this program, the taxpayer submits the request only to the state. As of January 1, 2018, each jurisdiction issues its own voluntary disclosure agreement, and taxpayers accepted into UP receive

separate agreements from the city and state. Note that taxpayers granted VDCP status by the state may not automatically be granted VDCP status by the city.

Initial Contact and Next Steps

The taxpayer or a designated representative may make a written request to the NYC Department of

Finance at any time to participate in the VDCP. The initial contact with the department may be anonymous. Taxpayers are required to affirm that they have not been previously contacted by the department regarding their specific liabilities and that they are not currently under audit by the department. Applicants must provide year-by-year estimated tax liability for all the delinquent periods. Additional

Dear DOF,

“ I recently founded a company registered as a corporation in the state of New York. Our headquarters is in New York City, and I am the company's sole employee. I am trying to determine exactly which business tax forms I need to file with New York City, and whether I need to file them quarterly or annually. To my understanding, I must file an NYC-400 for estimated city taxes and a 3-L for my annual income tax return. Is that correct? Anything else? Thank you.

Dear Entrepreneur,

Congratulations on starting your new business! The business income tax forms you will file depend on whether you registered your business as an S corporation or C corporation.

Generally, S corporations are subject to New York City's general corporation tax and must file forms NYC-3L, NYC-4S, or NYC-4S-EZ annually, and Form NYC-400 on a quarterly basis. C corporations are generally subject to the business corporation tax and must file forms NYC-2 and NYC-300 annually, and Form NYC-400 on a quarterly basis. These forms' instructions will help you determine whether you are required to file additional forms.

The Department of Finance also administers a number of excise taxes, including the commercial rent tax, which may apply to your business. Visit our [business tax page](#) for more information. For information about state taxes that you may be required to file, visit the [New York State Department of Taxation and Finance](#).

Finally, if you have not done so already, we encourage you to check out the many helpful resources offered by the New York City [Department of Small Business Services](#). Good luck with your business, and much continued success!

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information regarding the nature of the delinquency must also be provided.

Limited Look-Back Period

A three-year limited look-back period for tax payment may be requested during the initial contact and during the ongoing process. The department takes several factors into consideration in deciding the periods required to be filed and has full discretion in determining the extent of the look-back tax payment period. Some taxpayers may qualify for a three-year look-back, while others may qualify for a six-year look-back.

Notes for UP filers: For NYC taxes administered by the state on behalf of the city, the “unified voluntary disclosure” box on the state application should be marked “no.”

Certain filers should apply only to the state, because certain types of taxes are administered by the state. Those seeking VDCP status for personal income, sales, or beer and liquor taxes should apply only to the state, as it is the state that administers these taxes. Fiduciaries of a New York City resident’s estate or trust IT-205 should also apply only to the state. Personal income tax and unincorporated business tax filers may be eligible for UP. ■

Three-Factor Formula Gone for Tax Year 2018

In 2009, and again in 2015, New York City substantially changed its tax laws for city business taxes to bring them into a greater degree of conformity with state law. One of the most significant changes that occurred in 2009 was the shift from three-factor allocation, consisting of wages, receipts, and property, equally weighted, to allocation using only the receipts factor. Also, although there is no state counterpart, the New York City unincorporated business tax was modified so that its allocation and sourcing mechanisms are consistent with those found in the general corporation tax. The three-factor allocation scheme was phased out incrementally, from 2009 to 2017, in favor of single-factor allocation.

Taxpayers and practitioners should be aware that in general, beginning with tax year 2018, GCT and UBT taxpayers who allocate business income inside and outside of New York City must do so using single-receipts factor allocation, i.e., the portion of the total gross sales or charges for services performed in New York City. The 2015 change moved C corporations and most banks into the business corporation tax, which provides for allocation using only the receipts factor in most instances, and also included a preference for sourcing receipts to the location of a taxpayer’s customers. However, a BCT taxpayer with New York City receipts of \$50 million or less may make a one-time election to allocate business income and business capital using the three-factor weighted formula applicable to the 2017 tax year. That election must be made on an original or amended BCT return filed for the 2018 taxable year, and remains in effect until revoked.

Until recently, using three equally weighted factors to apportion a taxpayer’s income within and without New York City was considered the

Dear DOF,

“ We are a condominium association located in NYC and with no federal taxable income. We file an 1120-H at the federal level. Are we required to file a New York City tax return? And if so, which taxes are applicable?

Dear Taxpayer,

Yes, your association is required to file a New York City tax return.

Condominium associations based in New York City are subject to the city’s business corporation tax and must file [Form NYC-2](#), even if the association files Form 1120-H at the federal level. Using Form NYC-2, condominium associations are required to calculate their tax liabilities under all three potential tax bases: business income tax, capital tax, or gross receipts tax.

In your case, the business income base will not apply, as you have no federal taxable income. The capital tax base would probably not apply either, because of the \$10,000 deduction applied to the capital tax calculations and typical activities of condo associations. Therefore, the gross receipts base (also known as the “fixed dollar minimum base”) would likely be the most applicable tax base.

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fairest and most accurate reflection of a taxpayer's business activity. Other allocation methods were available, at the discretion of the commissioner of the New York City Department of Finance, if a taxpayer was able to show that the statutory formula did not fairly and equitably reflect income from doing business in the city.

Why has there been this shift toward one-factor apportionment, using only the receipts factor, in many states and jurisdictions, including New York City? For most of the 20th century, the favored view was that the tax base should be split among states in a way that recognized the benefits and protections that the various states provided to the taxpayer. The Massachusetts Formula—three-factor apportionment by property, wages, and receipts—was thought of as the most equitable way to split the tax base. This type of apportionment worked particularly well for manufacturing companies.

However, the three-factor formula could discourage a company from locating its operations in a jurisdiction. It is likely that including property, particularly real property, and personnel in the allocation formula will increase a company's business allocation percentage and tax liability. Also, the U.S. economy has shifted away from manufacturing toward services, leading jurisdictions to revisit how apportionment formulas should be structured. As a means of encouraging businesses to stay in or move to a location, states and cities have responded to the changing circumstances by either weighting the receipts factor more heavily, or changing to a single-factor, receipts-only formula, as New York City has done with the BCT. An additional benefit to businesses that sell products or services to out-of-city markets was to couple the emphasis on the receipts factor with customer-based sourcing of those receipts. ■

New IRC Limitation on Deduction for Business Interest Expense

The new Internal Revenue Code section 163(j) limits the deduction for business interest expense to an amount equal to the sum of business interest income, 30% of adjusted taxable income from a trade or business, and floor plan financing interest expense. Any excess interest expense is carried forward to the following year.

This limitation does not apply to small businesses or certain enumerated types of businesses. New York City's business corporation tax, general corporation

tax, banking corporation tax, and unincorporated business tax all use federal taxable income as a starting point and will be affected by this new limitation.

All New York City taxes divide a taxpayer's capital and income into categories that generally include business, investment, and (for GCT only) subsidiary. Each category of income is subject to its own allocation rules and tax rate, and therefore it is important to correctly calculate them. Interest expense is generally attributed among the different categories by, first, directly attributing interest expense traceable to specific types of

Dear DOF,

“ If a business entity has a foreign corporate-limited partner who is able to make the “separate accounting election” for New York state reporting, can this election also be applied to New York City? With the election, the company only computes tax on its distributive share of income and proportionate share of assets, liabilities, and capital. Please confirm if New York City follows the state for this election.

Dear Business Entity,

New York City's corporate tax regulations do not specifically provide for a “separate accounting election” like the one provided under the state's regulations. However, it is possible to [request permission](#) to compute an entity's tax in a similar fashion. You can submit your request by mail to:

Attention: Alternate BAP Coordinator
New York City Department of Finance
Tax Audit and Enforcement Division
375 Pearl St., 30th Floor
New York, NY 10038

Thank you all for your inquiries!

[SUBMIT A QUESTION](#)

capital, and, second, attributing the rest of the interest indirectly using a formula. Because the IRC does not have correlating income categories and applies the limitation on the total amount of business interest expense, New York City taxpayers must determine which category of income will receive a reduced deduction. The Department of Finance is working on a memorandum which will address each tax type and guide taxpayers in this endeavor.

Generally, the department will adopt an approach consistent with the state's, whereby interest, to the extent of the limitation, will first be allocated directly, with any excess attributed indirectly by formula. If the amount of directly attributable expense exceeds the limitation, that excess becomes part of the pool that will be the subject of indirect attribution for the following year.

A more involved method will be required for GCT and BTX, because these taxes are applicable only to S corporations, but treat such corporations as if they had not made the S election for federal purposes. For the purposes of section 163(j), the IRS treats all income and interest expenses of a C corporation as business income, regardless of the actual activity that generated the income or expense, while S corporations may have investment and business interest (though this does not correlate to the investment and business income for NYC purposes).

To provide consistent treatment, GCT and BTX taxpayers will have to convert their investment interest into business and recalculate their 163(j) limitation after making the conversion. This has been addressed on the NYC-ATT-S-Corp form, with more detailed guidance upcoming in the Finance Memorandum. ■

E-Service Payment Plans Made Easy

Practitioners with e-Service accounts can now set up installment payment agreements on behalf of clients who are unable to immediately resolve their business or excise tax debts.

Who is eligible?

Taxpayers who are in compliance with the filing of their tax returns and who have not previously defaulted on a payment plan are eligible.

What is the minimum amount due?

Taxpayers with a minimum amount due of \$500 in business or excise taxes may apply.

What is the minimum down payment?

Taxpayers must make an initial minimum down payment of 25%. Larger down payments are encouraged to limit the extent to which interest will increase on the outstanding balance.

How are payments made?

Payments can be made by ACH debit or credit, credit card, or Fedwire. A processing fee of 2% will be added to credit card transactions. Automatic payments can be set up on a monthly, weekly, or biweekly basis.

How much time do taxpayers have to pay in a payment plan?

Payment plans can range from six to 18 months.

How can taxpayers apply?

Taxpayers wishing to apply for a payment plan can visit www.nyc.gov/eservices.

What happens next?

Once you submit an application, you will receive confirmation within 24 hours informing you whether your application has been approved.

For more information or to register for an e-Service account, visit www.nyc.gov/eservices.

The Department of Finance has prepared this newsletter for the purpose of highlighting some of DOF's current positions and procedures. It is for informational purposes only and is not binding on the Department of Finance, tax practitioners, or taxpayers.

If due to a disability you need an accommodation in order to apply for and receive a service or participate in a program offered by the Department of Finance, please contact the Disability Service Facilitator at www.nyc.gov/contactdofeeo or by calling 311.