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This Week in State Tax (TWIST)

February 9, 2026

New York City: Broker-dealer apportionment method denied by ALJ

The New York City Tax Appeals Tribunal, Administrative Law Judge (ALJ) Division, recently determined that a New York partnership is not permitted to include its distributive share of tax attributes (i.e., income, gain, loss and deduction) or factors from its interest in partnerships with no connection to the city for unincorporated business income tax (UBT) purposes.

The taxpayer is a New York partnership operating as a broker-dealer in the city. It owned interests in several partnerships, including partnerships that did not engage in business in the city (Non-city Subsidiaries). On its UBT return, the taxpayer calculated its unincorporated business income (UBI) and allocated it to the city by including its distributive share of tax attributes and factors from its Non-city Subsidiaries as well as those within the city. The Department of Finance disallowed the inclusion, and instead calculated and allocated UBI separately for each entity doing business in the city before aggregating them, effectively removing the Non-city Subsidiaries from the UBT calculation and increasing the taxpayer's UBI allocated to the city. The key issues on appeal were whether the taxpayer's methods for calculating and allocating UBI were correct, and whether the Partnership Allocation Rule was valid.

The City imposes the UBT on every unincorporated business wholly or partly carried on within the city. If an unincorporated entity conducts two or more unincorporated businesses, then it must report all its unincorporated business activity on an aggregate basis. A business conducted by an unincorporated entity must be considered an unincorporated business subject to UBT before it is attributed to an upper tier unincorporated business for UBT purposes. In addition, the City ordinance allocates UBI to the city using a three-factor formula based on property, payroll, and gross income, determined at the unincorporated entity level.

The ALJ determined that the Non-city Subsidiaries did not conduct an unincorporated business in the city and thus, their tax attributes cannot be included in calculating taxpayer's UBI. Unlike the "unitary business" principle applicable for corporation income tax, the business of the Non-city Subsidiaries did not constitute an unincorporated business merely because the taxpayer owned an interest in them. In addition, the City administrative rules do not allow for attribution of factors for an unincorporated entity that did not conduct unincorporated business in the city. Thus, the Non-city Subsidiaries' factors could not be included in allocating the taxpayer's UBI to the city.

The taxpayer had also contended that the City Partnership Allocation Rule was invalid. The ALJ determined the

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rule was consistent with the statute and within the Finance Commissioner's rule promulgation authority. The taxpayer also argued that the U.S. Supreme Court decision in *Loper Bright* called for negating the rule. The ALJ found that argument was misplaced in that *Loper Bright* did not govern City ordinances and rules. Moreover, promulgation of the rule was within the authority of the Commissioner, and the rule was consistent with the statute. Finally, New York law gives deference to the technical expertise of promulgating authorities in certain instances. Please contact Aaron Balken or Alec Schwartz with questions on Cantor Fitzgerald Securities.