Stockbrokerage Industry

Corporation Franchise Tax Audit Policy

The New York State Tax Commission has adopted an audit policy to be applied against all open corporation franchise tax audit cases concerning stockbrokerage corporations for all taxable periods commencing before January 1, 1978.

The new audit policy affects the receipts factor of the business allocation percentage for stockbrokerage corporations. In determining the New York portion of the receipts derived from the compensation received for services and of the other business receipts relating to stockbrokerage corporations, the following audit policy will apply:

A. Commissions derived from the execution of purchase or sales orders for the account of customers, commission income from over-the-counter transactions and receipts from the management of underwriting syndicates by securities and commodity brokers is deemed to be "Receipts from Compensation for Services".

The commission income on the sale of stocks, bonds or commodities will be allocated to New York State as follows:

Conditions	% of commission to be allocated to N.Y.S.
1. the order originates at the New York State place of business and is executed on an exchange located in New York State.	100%
2. the order originates at a bona fide established office of the taxpayer located outside New York State and is transmitted to the New York State place of business for execution on an exchange located in New York State.	not less than 20%*
3. the order originates at the New York State place of business and is transmitted to a bona fide established office of the taxpayer for execution on an exchange located outside New York State.	not more than 80%*
4. the order originates at a bona fide established office of the taxpayer located outside New York State and is executed on an exchange located outside New York State.	0%

* A change in the allocation of commission income under the original 60-40 rule will be allowed where the taxpayer can substantiate that such rule does not reflect the actual execution rate in effect for the taxable period.

Commission income on over-the-counter transactions will be allocated to New York State as follows:

Conditions	% of commission allocated to N.Y.S.
1. the order originates at or through a New York State office of the taxpayer	100%
2. the order originates at or through an office of the taxpayer located outside New York State	0%

Receipts from the managing of an underwriting syndicate by a security and commodity broker are to be allocated to New York State as follows:

Conditions	% of manger's fees to be allocated to New York State
1. the management services are performed wholly at or through a New York State office of the taxpayer	100%
2. a portion of the management services is performed at or through an office of the taxpayer located outside New York State	the percentage is determined by dividing N.Y.S. direct net costs* by total direct net costs*
3. the management services are performed wholly at or through an office of the taxpayer that is located outside New York State	0%

*Direct Net Costs includes costs directly connected with the management activity of the manager, such as research, investigation, syndication expense, accounting, legal, market surveys, compensation and underwriting overhead less any reimbursement received from the issuing corporation.

B. Gross receipts attributable to the primary spread and gross receipts attributable to the selling concession (secondary fees) from the participation of security and commodity brokers in an underwriting syndicate are deemed to be "Other Business Receipts". They are to be allocated to New York State in the following manner:

Conditions	% of receipts to be allocated to New York State
Retained Securities -	
when all of the retained securities are retained and sold wholly at or through a New York State office of the taxpayer	100%
when a portion of the securities retained by the taxpayer are sold at or through an office of the taxpayer located outside New York State	the percentage is determined by dividing the number of underwritten share sold at or through a New York State Office of the taxpayer by the total number of underwritten shares sold by the taxpayer
when all of the retained securities are sold wholly at or through a office of the taxpayer outside New York State	0%
Group Sales -	
principal office of the managing underwriter is located in New York State	100%
if there are co-managers and the principal office of one of the co-managers is located outside New York State	the percentage is determined by dividing the number of managing under-writers whose principal office is located in New York State by the total number of managing under-writers
principal office of the managing underwriter or all co-managers is located outside New York State	0%

Conditions	% of receipts to be allocated to New York State
Directed or Designated Sales -	
when the office of the member which is responsible for the sale is located within New York State	100%
when the office of the member which is responsible for the sale is located outside New York State	0%

Schedules showing the basis and computation of each category of receipts within and without New York State for paragraphs A and B of this memorandum must be obtained to help resolve the open audit cases.

On September 12, 1979, the Tax Commission promulgated regulations pertaining to the receipts factor of the business allocation percentage for stockbrokerage corporations. For more precise information, the updated regulations (Section 4-4.3 and Section 4-4.6 of Part 4 of the Regulations pertaining to Business Corporation taxed under Article 9-A) should be consulted.