

Allocation of Receipts from services provided to a Regulated
Investment Company (Mutual Fund) and
Similar Investment Companies

Chapter 345 of the Laws of 1988 revises the method used in the computation of the receipts factor of the Business Allocation Percentage regarding receipts from providing services to an investment company (mutual fund) by amending Section 210.3(a)(2)(B) of Article 9-A of the Tax Law and adding Section 210.3(a)(6) to Article 9-A of the Tax Law. Such receipts were previously allocated on the basis of where the services were performed. For taxable years beginning in 1988, the new formula (based upon domicile of shareholder) applies to 75% of the taxpayers receipts from management, administration and distribution services. The remaining 25% of receipts must be allocated by the old formula (based upon where the service is performed). For taxable years beginning on or after January 1, 1989, the new formula will apply to 100% of receipts from management, administration and distribution services.

Effective with taxable years beginning in 1988, receipts of a corporation providing management, administration or distribution services to an investment company will be allocated within New York State by multiplying such receipts by a percentage. The percentage will be determined by the sum of the monthly percentages, determined for each month, divided by the number of monthly percentages. The monthly percentages will be determined by a fraction based upon the number of shares owned by shareholders in the mutual fund who are domiciled in New York at the end of the month (the domicile of a shareholder shall be its mailing address on the records of the investment company). The numerator for the monthly percentage will be the number of shares in the investment company which are owned on the last day of the month by shareholders which are domiciled in New York State and the denominator of the monthly percentage will be the total number of shares in the investment company outstanding on the last day of the same month. Any month during which the investment company had no outstanding shares is excluded from the computation of the percentage applied against receipts from management, administration and distribution services.

Example 1: Mutual Fund Management Corporation X had receipts of \$1,000,000 from services to a regulated investment company (mutual fund) for the taxable period beginning January 1, 1989. X will allocate its receipts within and without New York State by first determining its monthly percentage, determined for each month, as follows:

number of shares owned by shareholders domiciled
in New York State on the last day of the month = monthly percentage total number of shares
owned by shareholders in the investment company on the last day of the month

In January there were no outstanding shares. For the remaining months in the taxable period the monthly percentages were 47%, 51%, 46%, 45%, 48%, 50%, 49%, 47%, 50%, 49% and 46% respectively.

$$* \frac{528\%}{11} \text{ sum of monthly percentages} = 48\% \text{ Allocation Percentage}$$

$$\begin{array}{r} \$1,000,000 \text{ receipts of X} \\ \underline{\quad \times 48\% \quad} \text{ allocation percentage} \\ 480,000 \text{ receipts of X allocated to New York State and included in the receipts factor of} \\ \text{Business Allocation Percentage} \end{array}$$

Example 2: Assume the same facts as in Example 1, except the \$1,000,000 of receipts from services to a regulated investment company was for the taxable period beginning January 1, 1988. X would allocate only 75% of its receipts by the new method and the remaining 25% of its receipts would be allocated by the old method based on where the services were performed (Chapter 345 provides that for taxable periods beginning in 1988 only 75% of receipts will be allocated by the sum of the monthly percentages divided by the number of monthly percentages, and for taxable periods beginning in 1989 and thereafter 100% of receipts will be allocated by this method). If all of X's services were performed in New York State, X would allocate its receipts as follows:

$$\begin{array}{r} \$1,000,000 \text{ receipts of X} \\ \underline{\quad \times 75\% \quad} \\ \$ 750,000 \text{ receipts of X eligible to be allocated by new method} \\ \underline{\quad \times 48\% \quad} \text{ allocation percentage} \\ \$ 360,000 \text{ receipts of X allocated to NYS by new method} \\ \$ 250,000 \text{ 100\% of receipts of X allocated to NYS by old method} \\ \$ 610,000 \text{ receipts of X allocated to New York State and included in the receipts} \\ \text{factor of the Business Allocation Percentage} \end{array}$$

For purposes of this amendment, the following terms shall have the following meanings:

Investment Company - a regulated investment company (mutual fund) as defined in section 851 of the Internal Revenue Code and certain publicly traded partnerships which are substantially similar in operation to regulated investment companies and which are subject to taxation as corporations for Federal income tax purposes.

Management Services - those services related to the management of the investment portfolio of an investment company including both the rendering of advice and the determining upon and effectuating of sales and purchases of securities on behalf of the investment company, but only when such activity or activities are performed pursuant to a contract entered into under the provisions of Section 15(a) of the federal Investment Company Act of 1940, as amended.

Distribution Services - include the service of selling shares as well as such ancillary services as advertising, servicing investor accounts and marketing shares of the investment company, but only when the ancillary services are performed by a person who is or was also engaged in the service of selling such shares. An open end company which sells shares must perform such service pursuant to Section 15(b) of the federal Investment Company Act of 1940, as amended.

*Since X had no outstanding shares during January 1989, this month is excluded from the computation of the allocation percentage.

Administrative Services - include clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services, but only when performed by a corporation which also provides management or distribution services to the investment company to which the administrative services are provided.

The new formula provided by Chapter 345 of the Laws of 1988 does not apply to any taxable year beginning before January 1, 1988.