

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

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Income Tax
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New York Tax Treatment of Gains and Losses from the
Sale by a Nonresident or Part-Year Resident
of an Interest in a New York Partnership

It has been the position of the Department that an interest in a New York partnership* represented an interest in real or tangible personal property in this State, or constituted an intangible employed in a business, trade, profession or occupation carried on in this state. Accordingly, any gain or loss realized upon its sale was held to be gain or loss derived from or connected with New York sources pursuant to sections 631(b) (1) and (2) of the New York State Tax Law.

Upon reviewing the matter, the Department has decided that a gain or loss (whether treated as capital or ordinary for federal income tax purposes) from the sale of an interest in a New York partnership, except in the situation described below, does not constitute gain or loss derived from or connected with New York sources and is not includible in the New York source income (the numerator of the tax allocation fraction) of a nonresident individual, estate or trust. In the case of a part-year resident individual or trust, the gain or loss will be includible in New York source income only if the interest is sold in the resident period, or if the gain or loss is properly accruable to the resident period under section 638(c) of the Tax Law.

This new policy applies to all open tax years, and will apply regardless of the type of activity (e.g., real estate, business, etc.) that the partnership is engaged in. Taxpayers who paid tax in a prior year may file an amended return within the statutory period and claim a refund.

* A New York partnership means any partnership which owns an interest in real or tangible personal property located in this State or which is conducting a business, trade, profession or occupation in this state.

The new policy does not apply to a situation where a partnership interest is itself employed in some other trade or business carried on in New York State. In this case, any gain or loss upon its sale would, subject to any allowable allocation, constitute income derived from New York sources to a nonresident or part-year resident. For example, if a nonresident broker-dealer in securities conducts business in New York and holds as an asset of the business an interest in a partnership, a gain or loss from the sale of that interest constitutes income derived from New York sources. This holding, which reflects our current policy, applies regardless of the location of the partnership or the activity in which it is engaged.

This new policy also does not in any way affect the tax treatment of a partner's distributive share (including guaranteed payments) of partnership income, gain, loss or deduction from a New York partnership. Such amounts remain taxable to the extent the partnership's income is derived from or connected with New York sources. In addition, a nonresident or part-year resident partner who sells an interest in a New York partnership must still recapture that portion of his or her share of a partnership investment credit, retail enterprise credit, research and development credit, or Economic Development Zone investment credit taken in a prior year if the partnership interest is sold or disposed of before the useful life or qualified holding period of the credit property ends.