



Amendments to the Personal Income Tax Regulations Regarding the Allocation of Business Income

This memorandum summarizes amendments to the Personal Income Tax Regulations regarding the allocation of income from a business carried on partly in and partly outside New York State, the Metropolitan Commuter Transportation District (MCTD), or Yonkers.

The Personal Income Tax Regulations have been amended to clarify that rented tangible personal property must be included in the property percentage for taxpayers who are required to allocate income from a business carried on partly in and partly outside New York State, the MCTD, or Yonkers.

Background

Personal income tax. Tax Law § 601(e) imposes a personal income tax for each tax year on a nonresident individual's taxable income that is derived from New York sources.

Tax Law § 631(a) defines the New York source income of a nonresident as the sum of:

- the net amount of items of income, gain, loss, and deduction entering into the taxpayer's federal adjusted gross income, as defined by the laws of the United States for the tax year, derived from or connected with New York sources (as defined in section 631(b) of the Tax Law); and
- any modifications applicable to these items.

Under Tax Law § 631(c), if a nonresident carries on a business, trade, profession, or occupation partly in and partly outside New York State, the items of income, gain, loss, and deduction derived from or connected with New York sources must be allocated as provided by the personal income tax regulations.

Metropolitan Commuter Transportation District Mobility Tax (MCTMT). Tax Law § 801(a)(2) provides that a self-employed individual engaging in a business in the MCTD may be subject to the MCTMT. Tax Law § 801(b)(1) provides that an individual who has net earnings from self-employment from activity both in and outside the MCTD must allocate the net earnings to the MCTD in the manner required under Article 22 of the Tax Law (the personal income tax).

City of Yonkers earnings tax on nonresidents. Tax Law § 1340(c)(4) provides that a fair and equitable portion of net earnings from self-employment must be allocated to Yonkers if the net earnings from self-employment are derived from services performed, or from sources, in and outside Yonkers.

Personal Income Tax Regulations. Section 132.15 of the Personal Income Tax Regulations provides guidance on the allocation of income from a business carried on partly in

and partly outside New York State. Tax Law § 806(a) requires that these same allocation rules be used to allocate net earnings from self-employment from a business carried on both in and outside the MCTD. Section 262.2 of the Personal Income Tax Regulations provides guidance on the allocation of net earnings from self-employment to Yonkers.

Under these regulations, if the allocation of the income of the business cannot be determined from its books and records, the income from the business carried on both in and outside New York State, the MCTD, or Yonkers must be determined using a formula allocation or an alternative method approved by the Commissioner.

The formula for allocation of income is the average of a property percentage, a payroll percentage, and a gross income percentage. The formula applies to:

- the business items of income, gain, loss, and deduction from a business carried on partly in and partly outside New York State;
- the net earnings from self-employment attributable to the activities of a business carried on partly in and partly outside the MCTD; and
- the net earnings from self-employment attributable to the activities of a business carried on partly in and partly outside the city of Yonkers.

Summary of the amendments

The amendments to the Personal Income Tax Regulations clarify that under the formula allocation method, rented tangible personal property must be included in the property percentage of the formulas when allocating business income, including net earnings from self-employment, for purposes of the New York State personal income tax, the MCTMT, and the city earnings tax on Yonkers nonresidents.

Accordingly, when calculating the property percentage, **both** real and tangible personal property owned by or rented to the taxpayer that is connected with the business or used in the business must be included for allocation purposes.

The fair market value of real and tangible personal property both in and outside New York State, the MCTD, or Yonkers, that is rented to the taxpayer, is determined by multiplying the gross rents payable during the tax year by eight.

Under the amendments to the Personal Income Tax Regulations, gross rent includes:

- any amount payable for the use or possession of real and tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise;
- any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement;
- a proportionate part of the cost of any improvement to real and tangible personal property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement. However, if a building is erected on leased land by or on behalf of the taxpayer, the value of the building is determined in the same manner as if it were owned by the taxpayer.

For additional information on allocating income using the formula, see:

- [Form IT-203-A](#), *Business Allocation Schedule*, for allocating business income from both in and outside New York State and for allocating net earnings from self-employment from both in and outside the MCTD,
- [Form Y-203](#), *Yonkers Nonresident Earnings Tax Return*, for allocating net earnings from self-employment from both in and outside Yonkers,
- [Form Y-206](#), *Yonkers Nonresident Fiduciary Earnings Tax Return*, for allocating net earnings from self-employment from both in and outside Yonkers, and
- [IT-204](#), *Partnership Return*, for allocating business income from both in and outside New York State and for allocating net earnings from self-employment from both in and outside the MCTD.

For tax years beginning on or after January 1, 2016, Form IT-203-A, Form Y-203, Form Y-206, and Form IT-204 have instructions on the form on how to enter *Tangible personal property rented from others* in the property percentage section. For tax years prior to 2016, taxpayers should have included tangible personal property rented from others when calculating the property percentage.

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