

MAXIMUM TAX ON PERSONAL SERVICE INCOME

The Appellate Division of the Supreme Court has ruled, in the matter of Edward Wolfe et al. vs the State Tax Commission, that the New York City Unincorporated Business Tax, which must be added to federal adjusted gross income in computing total New York income on the personal income tax return, is to be included in personal service income when computing the maximum tax.

As a result of the court's ruling, it will be the position of the department that any of the additions and subtractions under Sections 612(b) and 612(c) of the Tax Law that are required to be made in computing total New York income on the personal income tax return must also be used when computing the maximum tax if they relate to personal service income.

In the case of a trade or business where both personal services and capital are material income producing factors, the amount to be reported as personal service income is a reasonable allowance as compensation for personal services actually rendered. When the Sections 612(b) and 612(c) modifications relate to income derived from such a trade or business, the modifications are to be included in personal service income in the same proportion as the income to which they relate was included in personal service income.

Example #1 - Addition Modification:

A partner in a partnership subject to the New York City Unincorporated Business Tax is required to make an addition modification on the New York State personal income tax return for that partner's share of the New York City Unincorporated Business Tax deducted by the partnership. When the partner's income from the partnership is 100% personal service income, the partner's share of the New York City Unincorporated Business Tax is to be included in personal service income when computing the maximum tax.

However, if for instance only 45% of the partner's income derived from the partnership was considered from personal services and included in the maximum tax computation, then only 45% of the New York City Unincorporated Business Tax modification would be included in personal service income when computing the maximum tax.

Example #2 - Addition and Subtraction Modifications:

A partner in a partnership doing business in New York State is required to make modifications on the New York State personal income tax return for that partner's share of the partnership's ACRS and New York State depreciation deductions. When the partner's income from the partnership is 100% personal service income, the partner's share of both modifications would be included in personal service income when computing the maximum tax.

However, if for instance only 65% of the partner's income derived from the partnership was considered from personal services and included in the maximum tax computation, then only 65% of the ACRS and New York State depreciation modifications would be included in personal service income when computing the maximum tax.

This memorandum takes effect immediately. Taxpayers may file amended returns for prior years within the statute of limitations.