

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171, subsection (a) of section 697, and subdivision (a) of section 1096 of the Tax Law, the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner of Taxation and Finance, hereby proposes to make and adopt the following amendments to the Business Corporation Franchise Tax Regulations, as published in Subchapter A of Chapter I of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, and the New York State Personal Income Tax Regulations under Article 22 of the Tax Law, as published in Subchapter A of Chapter II of such Title, such amendments to read as follows:

Section 1. The ending unnumbered paragraph of paragraph (1) of subdivision (a) of section 3-13.5 of the Business Corporation Franchise Tax regulations is amended to read as follows:

The term “corporate group” means the corporate limited partner itself or, if it is a member of an affiliated group, the corporate limited partner and all other members of such affiliated group. The term “affiliated group” shall have the same meaning as provided in section [3-13.2(c)(1)] 3-13.2(d)(1) of this Subpart.

Section 2. Section 117.5 of the Personal Income Tax regulations is REPEALED and a new section 117.5 is added to read as follows:

Section 117.5 New York State personal income tax avoidance or evasion. (Tax Law, section 617(c))

(a) If a partnership agreement provides for an allocation of any item of partnership income, gain, loss or deduction to a partner but the allocation does not have substantial economic effect in accordance with section 704(b) of the Internal Revenue Code, the allocation shall be disregarded for Federal income tax purposes. In such a case, a partner's distributive share of such item is determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances). This treatment and distribution of the item is reflected in each partner's Federal adjusted gross income and therefore in each partner's New York adjusted gross income, even if no New York State personal income tax avoidance or evasion may be involved.

(b) An allocation of an item, amount or activity, even if recognized for Federal income tax purposes, will not be recognized where it has as a principal purpose the avoidance or evasion of New York State personal income tax. Where an allocation is not recognized, the partner's distributive share shall be determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances).

(c) The determination of whether a principal purpose of an allocation of an item, amount or activity is the avoidance or evasion of New York State personal income tax depends on all the surrounding facts and circumstances. Among the relevant circumstances to be considered are the following:

- (1) whether the partnership or a partner individually has a business purpose for the allocation;
- (2) whether the allocation has substantial economic effect, that is, whether the allocation may actually affect the dollar amount of the partners' shares of the total partnership income or loss independently of the New York State personal income tax consequences;
- (3) whether the related items of partnership income, gain, loss or deduction from the same source are subject to the same allocation;

(4) whether the allocation was made without recognition of normal business factors and only after the amount of the allocated item could reasonably be estimated;

(5) the duration of the allocation; and

(6) the overall New York State personal income tax consequences of the allocation.

Dated: Albany, New York
January 15, 2008

Barbara G. Billet
Acting Commissioner and Executive Deputy
Commissioner of Taxation and Finance