

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

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Income Tax
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Stockbrokerage Industry

Unincorporated Business Tax Audit Policy

The New York State Tax Commission has adopted an audit policy to be applied against all open unincorporated business tax audit cases concerning stockbrokerage firms for all taxable periods commencing before January 1, 1978.

The new audit policy affects the computation of unincorporated business gross income within and without the State for stockbrokerage firms. In determining the New York portion of unincorporated business gross income, the following audit policy will apply:

- A. Separate accounting principles will apply.
- B. Commissions derived from the execution of purchase or sales orders for the account of customers, commission income from over-the-counter transactions and gross income from the management of underwriting syndicates by securities and commodity brokers must be allocated to New York State as follows:

<u>Conditions</u>	<u>% of commission to be allocated to N.Y.S.</u>
1. the order originates at the New York State place of business and is executed on an exchange located in New York State	100%
2. the order originates at a bona fide established office of the taxpayer located outside New York State and is transmitted to the New York State place of business for execution on an exchange located in New York State.	not less than 20%*
3. the order originates at the New York State place of business and is transmitted to a bona fide established office of the taxpayer outside New York State for execution on an exchange located outside New York State.	not more than 80%*
4. the order originates at a bona fide established office of the taxpayer located outside New York State and is executed on an exchange located outside New York State.	0%

*Based on the Court's decision in the J.C. Bradford & Co. and G.H. Walker & Co. cases, a change in the allocation of income under the original 60-40 rule will be allowed where the taxpayer can substantiate that such rule does not reflect the actual execution rate in effect for the taxable period.

Commission income on over-the-counter transactions will be allocated to New York State in the same manner as commission income on the purchase or sale of stocks, bonds and commodities for the account of customers.

Gross income from the managing of an underwriting syndicate by a security and commodity broker are to be allocated to New York State as follows:

<u>Conditions</u>	<u>% of manager's fees to be allocated to New York State</u>
1. the management services are performed wholly at or through a regular place of business of the taxpayer located in New York State	100%
2. a portion of the management services is performed at or through a regular place of business of the taxpayer located outside New York State	the percentage is determined by dividing N.Y.S. direct net costs* by total direct net costs*
3. the management services are performed wholly at or through a regular place of business of the taxpayer that is located outside New York State	0%

*Direct Net Costs includes those costs directly connected with the management activity of the manager such as research, investigation, syndication expense, accounting, legal, market surveys, compensation and underwriting overhead less any reimbursement received from the issuing corporation.

C. Gross income attributable to the primary spread and gross income attributable to the selling concession (secondary fees) from the participation of security and commodity brokers in an underwriting syndicate must be allocated to New York State in the following manner:

<u>Conditions</u>	<u>% of receipts to be allocated to New York State</u>
Retained Securities -	
when all of the retained securities are retained and sold wholly at or through a regular place of business of the taxpayer located within New York State	100%
when a portion of the securities retained by the taxpayer are sold at or through a regular place of business of the taxpayer located outside New York State	the percentage is determined by dividing the number of underwritten shares sold at or through a New York State office of the taxpayer by the total number of underwritten shares sold by the taxpayer
when all of the retained securities are sold wholly at or through a regular place of business of the taxpayer located outside New York	0%
Group Sales-	
principal office of the managing underwriter is located in New York State	100%
if there are co-managers and the principal office of one of the co-managers is located outside New York State	the percentage is determined by dividing the number of managing underwriters whose principal office is located in New York State by the total number of managing underwriters
principal office of the managing underwriter or all co-managers is located outside New York State	0%
	<u>% of receipts to be allocated to New York State</u>
<u>Conditions</u>	
Directed or Designated Sales -	
when the regular place of business of the member which is responsible for the sale is located within New York State	100%
when the regular place of business of the member which is responsible for the sale is located <u>outside</u> New York State	0%

Schedules showing the basis and computation of each category of receipts within and without New York State for paragraphs B and C of this memorandum must be obtained to help resolve the open audit cases.

On September 12, 1979 the Tax Commission promulgated regulations pertaining to the computation of unincorporated business gross income for stockbrokerage firms. For more precise information, the updated regulations (Section 207.8 of the Unincorporated Business Tax Regulations and Section 131.19 of the Personal Income Tax Regulations) should be consulted.

In addition to the above, a stockbrokerage firm may elect to use the three factor formula method of allocation. The election must be made by the due date (including extensions) of the return for the first taxable year beginning on or after January 1, 1978*.

* If a taxpayer has filed a return for taxable year 1978 prior to the promulgation of this regulation, the Tax Commission will accept an amended return which exercises the election provided it is filed on or before April 15, 1980.