FINANCE
NEW·YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

DEPARTMENT OF FINANCE
AUDIT DIVISION

005-GCT/UBT

STATEMENT OF AUDIT PROCEDURE

AUDITS OF TAXPAYERS HAVING RECEIPTS FROM "DOCK SALES"

I. BACKGROUND

For purposes of calculating a business allocation percentage, current New York City tax law requires taxpayers subject to the General Corporation Tax and Unincorporated Business Tax to include in the numerator of the receipts or gross income factor receipts from sales of tangible personal property where shipment is made to a point within the City. Ad. Code §11-604.3(a)(2)(A) and §11-508(c)(3).

The New York State Department of Taxation and Finance recently adopted amendments to section 4-4.2 of the Business Corporation Franchise Tax Regulations relating to the receipts factor addressing situations where a purchaser of tangible personal property picks up the property at the seller's location. Such sales are commonly referred to as "dock sales". Under the new regulations, receipts from sales of tangible personal property are allocated to New York State under the following circumstances: (i) where shipment is made to a point within the State; (ii) where possession of the property is transferred to the purchaser or the purchaser's designee within the State unless the destination of the property is a point outside the State; or (iii) where possession of the property is transferred to the purchaser or the purchaser's designee outside the State where the destination of the property is within the State. The new regulations establish presumptions that the destination of property is where the possession of the property is transferred unless the taxpayer provides sufficient evidence to establish the destination of the property. The new regulations also give examples of evidence ordinarily sufficient to establish the destination of property. The new regulations apply to taxable years beginning on or after January 1, 2000.

II. SCOPE

This Statement of Audit Procedure provides guidance to GCT and UBT auditors in auditing and resolving GCT and UBT tax liabilities of taxpayers having dock sales for tax periods beginning on or after January 1, 2000.

III. PROCEDURE FOR REQUESTING PERMISSION TO USE DOCK SALES RULE

Prior to filing a return for tax periods beginning on or after January 1, 2000, a taxpayer having dock sales will be allowed to request advance permission to allocate receipts from dock sales in a manner consistent with the new New York State Business Corporation Franchise Tax Regulations. Such a request should contain a statement setting forth the reasons why the taxpayer believes the use of the dock sales rule is necessary to properly reflect the taxpayer's income within and outside the City, a detailed explanation of how the business allocation percentage would be calculated using the dock sales method and a comparison of the receipts or gross income factor calculated using the dock sales rule and using the point of shipment rule.

Taxpayers should submit requests for advance permission to use the dock sales rule to the Deputy Commissioner for Audit & Enforcement, NYC Department of Finance, Audit Division, 345 Adams Street, 10th Fl., Brooklyn, NY 11201. The Audit Division will review the application to determine whether the use of the dock sales rule results in a more appropriate allocation of the taxpayer's business income within and outside the City and may request additional information if necessary. The taxpayer will be advised in writing as to whether permission to use the dock sales rule is granted. Taxpayers who have received permission to use the dock sales rule must attach a copy of the Department's response to their return when filed.