THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York New York City Charter and section 11-537 of the Administrative Code of the City of New York, I hereby promulgate the within amendment to the Rules Relating to the New York City Unincorporated Business Tax.

/S/ Andrew S. Eristoff
Commissioner of Finance

Section 1. Paragraph 1 of subdivision (a) of section 28-02 of the Rules of the City of New York Relating to the Unincorporated Business Tax, promulgated August 23, 1985, is amended to read as follows:

(a) *General*. (Administrative Code §11-502(a)). (1) Except as otherwise specifically provided in this chapter of these [regulations] rules, an unincorporated business means any trade, business, profession or occupation conducted, engaged in or being liquidated by an individual or by an unincorporated entity, including a partnership or fiduciary, [or] a corporation in liquidation, or an unincorporated entity that has elected under section 11-602(1)(b) of the Administrative Code to continue to be subject to the tax imposed by Chapter 5 of Title 11 of the Administrative Code for the period during which such election is in effect, but not including any entity subject to any City corporate business tax imposed pursuant to Chapter 6 of Title 11 of the Administrative Code.

§2. Subparagraph (i) of paragraph 4 of subdivision (a) of such section is amended to read as follows:

(4) (i) Where an individual or other unincorporated entity carries on in whole or in part in the City, two or more distinct unincorporated businesses, all such businesses carried on in whole or in part in the City shall be treated as one unincorporated business for the purposes of Chapter 5 of Title 11 of the Administrative Code. The gross business income and the unincorporated business deductions of all such businesses must be reported in one return. The deductions for the compensation for services of the proprietor or the active partners and the unincorporated business exemptions must be computed without regard to the fact that more than one business activity is carried on by the entity.

§3. Subdivision (a) of such section of such rules is amended to add a new paragraph 7 to read as follows:

(7) (i) An individual will not be treated as engaged in any trade, business, profession or occupation carried on within or without the City by an unincorporated entity in which such individual owns an interest.

(ii) For taxable years beginning on or after January 1, 1996, and for purposes of Chapter 5 of Title 11 of the Administrative Code, if an unincorporated entity owns an interest in another unincorporated entity that is carrying on any trade, business, profession or occupation in whole or in part in the City, the first unincorporated entity will be treated as carrying on that same trade, business, profession or occupation in whole or in part in the City, regardless of whether that trade, business, profession or occupation constitutes an unincorporated business for purposes of Chapter 5 of Title 11 of the Administrative Code. If an unincorporated entity owns an interest in another unincorporated entity that is not carrying on any trade, business, profession or occupation in whole or in part in the City, the first unincorporated entity will not be considered engaged in an unincorporated business based solely on such ownership. The provisions of this subparagraph (ii) may be illustrated by the following examples:

Example 1: Partnership A is engaged in the purchase and sale of stocks and securities for its own account in the City. In 1997, Partnership A is a limited partner in Partnership B that operates a hotel located outside the City and is not engaged in any other trade, business, profession or occupation in whole or in part in the City. Partnership A will not be considered to be carrying on a business in the City by reason of its ownership of an interest in B.

Example 2: The facts are the same as in Example 1 except that the hotel is located in the City. Because Partnership B is engaged in a business in the City, under the provisions of paragraph (7) above, Partnership A will be considered engaged in the business carried on in the City by Partnership B.

§4. Paragraph 1 of subdivision (c) of such section is amended to read as follows:

(1) *Partnership defined.* The word "partnership" as used in these [regulations]rules, includes, in addition to its ordinary meaning, a syndicate, group, pool, joint venture or other unincorporated organization, including a subchapter K limited liability company as defined in section 11-126 of the Administrative Code, through or by means of which any business, financial operation, or venture is carried on and which is not a trust, estate, corporation, or other entity subject to the tax imposed by Chapter 6 of Title 11 of the Administrative Code. See §28-02(a)(1) for the treatment of unincorporated entities that elected to be subject to the unincorporated business tax under Administrative Code §11-602(1)(b).

§5. The existing text of paragraph 1 of subdivision (g) of such section is designated as subparagraph (i) and amended to read as follows:

(g) *Purchase and sale of property for own account.* (Administrative Code §11-502(c)). (1) *Full self-trading exemption.* (i) *Taxable years beginning before July 1, 1994.* Notwithstanding the provisions of §28-02(a), for taxable years beginning before July 1, 1994, an individual or unincorporated entity, other than a dealer holding property primarily for sale to customers in the ordinary course of his, her, or its trade or business, shall not be deemed engaged in an unincorporated business solely by reason of the purchase and sale of property (real or personal), and, for taxable years beginning after 1976, the purchase, writing or sale of stock option contracts, for his, her, or its own account. [For purposes of this subdivision (g), a dealer in real or personal property is an individual or an unincorporated entity with an established place of business, regularly engaged in the purchase of property and its resale to customers; that is, one who (as a merchant) buys property and sells it to customers with a view to the gains and profits that may be derived therefrom. The trading by an individual in securities and commodities, including, for taxable years beginning after December 31, 1976, the purchase, sale or writing of stock option contracts, will ordinarily be deemed the purchase and sale of property for his own account unless such transactions are connected with a business regularly carried on by the individual. A builder or real estate developer who regularly subdivides real

property and sells it as improved or unimproved lots likewise is considered to be a dealer for unincorporated business tax purposes.] Where the purchase and sale of real or personal property is connected with an unincorporated business otherwise regularly carried by the individual or entity, the profits and income from such purchases and sales will ordinarily be includible in the unincorporated business gross income of the individual or [other] entity.

Example: [A] For taxable years beginning before July 1, 1994, a partnership holding a stock exchange seat, which buys and sells securities for its own account and executes orders on the floor of the exchange for other securities brokers for which it receives commissions, must include in its unincorporated business income both its trading profits and its commissions.

§6. Paragraph 1 of subdivision g of such section is amended to add subparagraphs (ii) through (vi) to read as follows:

(ii) *Taxable years beginning after June 30, 1994 and before 1996.* Notwithstanding the provisions of §28-02(a), for taxable years beginning after June 30, 1994, and before 1996, an individual or unincorporated entity, other than a dealer holding property primarily for sale to customers in the ordinary course of a trade or business, shall not be deemed engaged in an unincorporated business if the individual's or entity's activities consist exclusively of the purchase and sale of property, or the purchase, writing or sale of stock option contracts, for his, her, or its own account or consist exclusively of such activities and the conduct of any other activity or activities not otherwise subject to the tax imposed by Chapter 5 of Title 11 of the Administrative Code. See subparagraph (iv) of this paragraph for the treatment of individuals and entities receiving $25,000 or less of gross receipts from an unincorporated business in addition to the purchase and sale of property.

(iii) *"Dealer" defined for taxable years beginning before January 1, 1996.* For purposes of subparagraphs (i), (ii) and (iv) of this paragraph for taxable years beginning before January 1, 1996, a dealer in real or personal property is an individual or an unincorporated entity with an established place of business, regularly engaged in the purchase of property and its resale to customers; that is, one who (as a merchant) buys property and sells it to customers with a view to the gains and profits that may be derived therefrom. A builder or real estate developer who regularly subdivides real property and sells it as improved or unimproved lots likewise is considered to be a dealer for such purposes.

(iv) *$25,000 test*. Notwithstanding anything to the contrary, for taxable years beginning after June 30, 1994, if an individual or unincorporated entity is engaged in the purchase and sale of real or personal property, or the purchase, writing and sale of stock option contracts, other than as a dealer, for his, her, or its own account, and that individual or unincorporated entity also is engaged in one or more unincorporated businesses carried on in whole or in part in the City, such individual or entity will continue to be treated as engaged solely in the purchase and sale of property for the individual's or entity's own account and, therefore,

eligible for the full exemption, provided such individual or entity does not receive more than $25,000 of gross receipts during the taxable year (determined without regard to any deductions) from all such unincorporated businesses wholly or partly carried on within the City.

(v) *Taxable years beginning after 1995.* For taxable years beginning on or after January 1, 1996, an individual or unincorporated entity, other than a dealer as defined in paragraph (2) of this subdivision (g), shall not be considered engaged in an unincorporated business solely by reason of:

(A) the purchase, holding, and sale for his, her, or its own account of property as defined in paragraph (3) of this subdivision (g);

(B) the entry into, assumption, offset, assignment, or other termination of a position in any property as defined in paragraph (3) of this subdivision (g);

(C) the acquisition, holding or disposition, other than in the ordinary course of a trade or business, of interests in unincorporated entities engaged solely in the activities described in subparagraphs (v)(A) through (v)(D) of this paragraph (1); or

(D) any combination of the activities described in subparagraphs (v)(A) through (v)(C) of this paragraph and any other activity not constituting an unincorporated business subject to the tax imposed by Chapter 5 of Title 11 of the Administrative Code.

(vi) *Self-trading activities of individuals.* An individual, other than a dealer as defined in paragraph (2) of this subdivision (g), engaged in the purchase and sale of real or personal property for his or her own account, including, for taxable years beginning after December 31, 1976, the purchase, sale or writing of stock option contracts, and, for taxable years beginning after December 31, 1995, the activities described in subparagraphs (v)(A) and (v)(B) of this paragraph, will not be deemed to be engaged in an unincorporated business wholly or partly in the City for purposes of this paragraph (1) unless (A) such transactions and activities are connected with a business regularly carried on wholly or partly in the City by the individual himself or herself and (B) for taxable years beginning after June 30, 1994, the individual receives more than $25,000 in gross receipts during the taxable year from such business regularly carried on. *See* §28-02(a)(7)(i) and 28-02(g)(1)(iv) of these rules. For purposes of this paragraph (1), such transactions and activities will be considered to be connected with a business regularly carried on wholly or partly in the City if such transactions are effected in the name of the business, are effected using funds held in banks or other financial institutions in the name of the business or if the assets resulting from such transactions are held in the name, or for the account, of the business. Where the purchase and sale of real or personal property or, for taxable years beginning after December 31, 1995, the activities described in subparagraphs (v)(A) and (v)(B) of this paragraph, are connected with an unincorporated business otherwise regularly carried on by the individual, the profits and income from such transactions will be includible in the unincorporated business gross income of the individual.

§7. Subdivision (g) of such section is amended to designate existing paragraph 2 as paragraph 5 and to add new paragraphs 2 through 4 to read as follows:

(2) *"Dealer" defined for taxable years beginning on or after January 1, 1996.* For purposes of this subdivision (g) for taxable years beginning on or after January 1, 1996, a dealer in real or personal property is an individual or an unincorporated entity that (A) purchases, holds, or disposes of property that is stock in trade of the individual or entity, inventory or is otherwise held for sale to customers in the ordinary course of the individual's or the entity's trade or business, or (B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in property with customers in the ordinary course of the individual's or entity's trade or business. For taxable years beginning on or after January 1, 1996, an individual or unincorporated entity shall not be treated as a dealer for purposes of Chapter 5 of Title 11 of the Administrative Code based exclusively on the fact that such individual or unincorporated entity owns an interest in an entity that is a dealer, as defined above, and an unincorporated entity shall not be treated as a dealer based exclusively on the fact that an individual or other entity that is a dealer, as defined above, owns an interest in such unincorporated entity. This paragraph is illustrated below:

Example 1: In 1996, Partnership A is a securities dealer in the City. Partnership A also is a limited partner in Partnership B that is engaged directly in the purchase and sale of stocks and securities for its own account in the City. Partnership B is not treated as a dealer based solely on the ownership by Partnership A of an interest in Partnership B.

Example 2: The facts are the same as in example 1 except that Partnership A is the sole general partner in Partnership B and causes Partnership B to regularly take positions in stocks and securities with respect to which Partnership A is a dealer and Partnership B regularly engages in stock lending transactions with Partnership A. Based on the facts and circumstances, a portion of Partnership B's activities is engaged in wholly or partly to further the dealer activities of Partnership A and, therefore, Partnership B is considered a dealer.

(3) *"Property" defined for taxable years beginning on or after January 1, 1996.* For taxable years beginning on or after January 1, 1996, and for purposes of paragraphs (2) and (4) of this subdivision g, "property" shall mean:

(i) real and personal property, including but not limited to, property qualifying as investment capital as defined in subdivision (h) of section 11-501 of the Administrative Code of these rules, other stocks, notes, bonds, debentures, or other evidences of indebtedness, interest rate, currency, or equity notional principal contracts and foreign currencies,

(ii) interests in, or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in, any property described in

subparagraph (i), and

(iii) any commodity traded on, or subject to the rules of, a board of trade or commodity exchange,

provided, however, "property" shall not include:

(iv) debt instruments issued by the taxpayer,

(v) accounts receivable held by the taxpayer as a factor,

(vi) stock in trade, inventory or property otherwise held for sale to customers in the ordinary course of the taxpayer's trade or business,

(vii) debt instruments acquired in exchange for funds loaned, services rendered, or for the sale, rental or other transfer of property by the taxpayer in the ordinary course of the taxpayer's trade or business,

(viii) interests in unincorporated entities, or

(ix) positions in any item described in subparagraphs (i) through (viii) entered into, assumed, offset, assigned or terminated by the taxpayer as a dealer in such positions or item.

(4) *Partial exemption for entities for taxable years beginning on or after January 1, 1996*. (i) *General*. For taxable years beginning on or after January 1, 1996, if an unincorporated entity is primarily engaged in either activities that would qualify the entity for the full self-trading exemption provided in paragraph (1) of this subdivision (g), or holding certain passive investments in other unincorporated entities as described below, or both, the self-trading activities of the taxpayer, and of any unincorporated entity separately eligible for this partial exemption in which the taxpayer holds an interest, will not be considered an unincorporated business carried on by the taxpayer and, therefore, the income, gains, losses and deductions from such self-trading activities will be excluded from the unincorporated business gross income of the taxpayer. Specifically, if an unincorporated entity is primarily engaged in:

(A) activities described in subparagraphs (v)(A) through (v)(D) of paragraph (1) of this subdivision (g);

(B) the acquisition, holding or disposition, other than in the ordinary course of a trade or business, of interests as an investor, as defined in subparagraph (iii) of this paragraph (4), in unincorporated entities carrying on one or more unincorporated businesses in whole or in part in the City; or

(C) any combination of the activities described in subparagraphs (i)(A) and (i)(B) of this paragraph (4);

the activities described in subparagraph (i)(A) of this paragraph (4), (*i.e.*, the self-trading activities), carried on either by the taxpayer, or by any unincorporated entity that separately qualifies for the full exemption provided in paragraph (1) of this subdivision (g) or for the partial exemption under this subparagraph in which the taxpayer owns an interest, shall not be considered an unincorporated business carried on by the taxpayer and, therefore, the income, gains, losses, and deductions from those activities will be excluded from the unincorporated business gross income of the taxpayer. The income, gains, losses, and deductions from activities described in subparagraph (i)(B) of this paragraph (4) will not be excluded from the unincorporated business gross income of the taxpayer.

(ii) *"Primarily engaged" defined.* For purposes of subparagraph (i), a taxpayer that is an unincorporated entity shall be treated as primarily engaged in activities described in subparagraphs (i)(A), (i)(B) and (i)(C) of this paragraph if at least 90 percent of the total value of the taxpayer's assets is represented by assets described in subparagraphs (ii)(A) through (ii)(C) below:

(A) "property" as defined in paragraph (3) of this subdivision (g);

(B) interests in unincorporated entities not engaged in the conduct of any unincorporated business in whole or in part in the City; and

(C) interests held by the taxpayer as an investor, as defined in subparagraph (iii) of this paragraph, in unincorporated entities engaged in the conduct of one or more unincorporated businesses in whole or in part in the City.

(iii) *"Investor" defined.* For purposes of this paragraph (4), a taxpayer that is an unincorporated entity shall be considered to acquire, hold or dispose of an interest in another unincorporated entity as an investor if:

(A) that other unincorporated entity meets the requirements of subparagraph (i) of this paragraph (*i.e.*, that other unincorporated entity qualifies for the partial self-trading exemption under this paragraph) and the taxpayer does not receive a distributive share of that other unincorporated entity's income, gain, loss, deductions, credits or basis from a business carried on in whole or in part in the City that is materially greater than its distributive share of any other item of income, gain, loss deduction, credit or basis of such unincorporated entity; or

(B) with respect to any other unincorporated entity not meeting the requirements of subparagraph (i) of this paragraph, *i.e.*, not qualifying for the partial self-trading exemption, the taxpayer is not a general partner, is not authorized under the governing instrument to manage or participate in the day-to-day business of such unincorporated entity, and is not managing or participating in the day-to-day business of such unincorporated entity. For purposes of this subparagraph (iii)(B), the fact that the taxpayer is represented on a general oversight body, or is authorized to review or reject periodic budgets or veto major management decisions such as a major refinancing or sale of the unincorporated entity's assets other than in the ordinary

course of business and exercises such authority, will not cause the taxpayer to be considered to be participating in day-to-day management. In addition, if a taxpayer is authorized to participate in day-to-day management only upon the occurrence of a particular event, or after the occurrence of such an event only upon the election by the taxpayer to so participate, the taxpayer will be considered to participate in day-to-day management only upon the occurrence of the event and, where applicable, after the taxpayer elects to so participate. Management activities of employees, officers and partners of the taxpayer will be imputed to the taxpayer for purposes of this subparagraph (iii)(B) only if such activities are performed by such persons in their capacity as employees, officers or partners of the taxpayer. For purposes of the preceding sentence, a determination as to whether management activities of an individual employee, officer or partner of the taxpayer, or of an employee, officer, partner or shareholder of a partner of the taxpayer, will be imputed to the taxpayer will be based on the facts and circumstances of each case, including but not limited to, whether the individual receives reasonable compensation for management services from the unincorporated business.

(iv) For purposes of subparagraph (ii) of this paragraph, the value of the assets of the taxpayer will be the average monthly gross value of the taxpayer's assets, unless the Commissioner determines that the use of gross values results in an improper or inaccurate reflection of the primary activities of the taxpayer. In that event, the Commissioner may exercise his or her discretion, in such manner as he or she may determine, to reduce the gross value of the taxpayer's assets by liabilities attributable thereto or to exclude assets so as to properly and accurately reflect the primary activities of the taxpayer. See examples 4 and 5 of subparagraph (vi) of this paragraph. The value of the assets of the taxpayer consisting of real property or marketable securities is the fair market value thereof and the value of assets other than real property or marketable securities is the value shown on the books and records of the taxpayer in accordance with generally accepted accounting principles, provided, however, that such values will be adjusted, if necessary, so as to produce the gross value thereof. In addition, where the use of monthly values is impractical or inappropriate, for example in the case of real property, the Commissioner may permit the use of less frequent valuations, but not less than annual.

(v) For purposes of subparagraph (iii)(A) of this paragraph, a taxpayer will be considered to receive a distributive share of another unincorporated entity's income, gain, loss, deduction, credit or basis that is materially greater than its share of any other item if it appears that the taxpayer has received a special allocation of one or more items of income, gain, loss, deduction, credit, or basis under an arrangement designed to avoid the tax.

(vi) The provisions of this paragraph (4) are illustrated below:

Example 1: In 1996, Partnership A is engaged directly in the purchase and sale of stocks and securities for its own account in the City. Partnership A also is a limited partner in Partnership B, which is engaged in the purchase and sale of securities for its own account in the City. Partnership A also is a non-managing member of Limited Liability Company C (a subchapter K limited liability company as defined in Administrative Code section 11-126), which is a securities dealer in the City. C is

subject to tax on all of its income. Partnership B is wholly exempt from tax. Partnership A is not eligible for the full self-trading exemption under paragraph (1); however, Partnership A qualifies as primarily engaged in activities described in subparagraphs (i)(A), (i)(B) or (i)(C) of this paragraph (4). Therefore, A is not taxable on its own self-trading activity or on its share of B's income from self-trading. A is taxable on its share of C's income, gains, losses and deductions, including any income, etc. from C's own self-trading activity. Partnership A is not treated as a dealer solely by reason of its membership in C.

Example 2: The facts are the same as in example 1 except that C is also a limited partner in Partnership D which is engaged solely in the purchase and sale of securities for its own account in the City. C's interest in Partnership D represents less than 90 percent of C's gross assets. Partnership D is exempt from tax because it is solely trading for its own account. C is taxable on its share of D's self-trading income because C does not qualify as primarily engaged in the activities described in subparagraphs (i)(A), (i)(B) or (i)(C) of this paragraph 4. A is taxable on its share of C's income, gains, losses and deductions, including C's share of D's self-trading income, etc.

Example 3: The facts are the same as in example 2 except that C's interest in Partnership D represents 95 percent of C's gross assets. C qualifies as primarily engaged in the activities described in subparagraphs (i)(A), (i)(B) or (i)(C) of this paragraph, *i.e.*, C qualifies for the partial self-trading exemption. Therefore, C is not taxable on its share of D's self-trading income, gains, losses and deductions. A is taxable on its share of C's income, gains, losses and deductions, other than C's share of D's self-trading income, etc.

Example 4: In 1996, Partnership A is a general partner in Partnerships B, C and D, each of which engages in an unincorporated business in the City. Partnership A also purchases and sells stocks and securities for its own account. The gross value of A's partnership interests in Partnerships B, C and D is $1,000,000. Partnership A enters into a number of repurchase agreements and reverse repurchase agreements. The gross value of A's securities portfolio excluding the reverse repurchase agreements is $1,000,000. The repurchase agreements represent liabilities on Partnership A's balance sheet of $8,500,000 while the reverse repurchase agreements have a gross value of $8,500,000. Based on the gross value of Partnership A's assets, including the reverse repurchase agreements but excluding the repurchase agreements, it is primarily engaged in activities described in subparagraphs (i)(A), (i)(B) or (i)(C) of this paragraph; however, the Commissioner may exercise his or her discretion to either offset the value of the reverse repurchase agreements by the amount of the repurchase agreements or to exclude the value of the reverse repurchase agreements from the determination as to whether A meets the 90-percent-of-assets requirement of subparagraph (ii) because the use of gross values does not accurately represent the activity of Partnership A in the City.

Example 5: Partnership A manufactures machine parts in the City at a factory building that it owns. The building has a gross value of $30x and is subject to a mortgage of $10x. Partnership A also has inventory worth $2x and a portfolio of stocks and securities worth $1x. Because the building is property as defined in paragraph (3) of subdivision (g) of this section, 90% of A's assets are assets described in subparagraphs (ii)(A) through (ii)(C) of this paragraph (4) ($30x (building) + $1x (stocks and securities).) However, because the building is used principally in A's business, the Commissioner may determine that including the value of the building in the calculation does not accurately reflect A's primary activities and may exercise his or her discretion to exclude the value of the building.

Example 6: Partnership A is a 60% general partner in Partnership B, which is engaged in the operation of a business in the City. Partnership B also owns a portfolio of stocks that it trades for its own account. The value of B's portfolio is $30x. The gross value of B's other assets, none of which is described in subparagraphs (ii)(A) through (ii)(C) of this paragraph (4), is $20x. Therefore the value of B's portfolio assets is only 60% of the value of B's assets and B does not qualify for the partial exemption. Because A is a general partner in B, A does not qualify as an investor with respect to its interest in B and is subject to the UBT on its share of the self-trading income of B. Partnership A also owns a 90% limited partnership interest in Partnership C, which is engaged solely in trading stocks and securities for its own account in the City. The value of A's interest in C is $175x. Partnership A contributes its interest in C to Partnership B to enable Partnership B to qualify for the partial exemption. However, following the contribution, the partnership agreement for Partnership B is amended to allocate to A all of the income, gains, losses and deductions from the interest in Partnership C. After the contribution, the value of B's assets described in subparagraphs (ii)(A) through (ii)(C) of paragraph (4) will be $205 or 91% of B's total assets. As a result, B will qualify for the partial exemption and A would qualify as an investor with respect to Partnership B and would not be taxed on its share of B's self-trading income. However, A's distributive share of the income, etc. from Partnership C is materially greater than its distributive share of all other items of income, etc. of Partnership B. Because A contributed its interest in C to Partnership B solely to permit A to avoid tax on its share of B's self trading income, A is not considered to hold its interest in Partnership B as an investor and, consequently, A does not qualify for the partial self-trading exemption with respect to its distributive share of the self-trading income of B.

(vii) The provisions of this paragraph (4) do not apply to individuals. See §28-02(a)(7)(i), which provides that an individual is not considered to be engaged in activities carried on by unincorporated entities in which the individual holds an interest.

§8. Paragraph 5 of subdivision (g) of such section, as redesignated, is amended to read as follows:

([2]5) The provisions of this subdivision (g) do not apply where an unincorporated entity is taxable as a corporation for Federal income tax purposes. Where such an entity is not taxable under Chapter 6 of Title 11 of the Administrative Code, its status as an unincorporated business under Chapter 5 of Title 11 of the Administrative Code will be determined under other subdivisions of this section without regard to the provisions of this [section] subdivision (g).

§9. Paragraph 1 of subdivision (h) of such section is amended to read as follows:

(h) *Holding, leasing or managing real property*. (Administrative Code §11-502(d)). (1) *General*. Notwithstanding the provisions of §28-02(a), an owner of real property, a lessee or a fiduciary shall not be deemed engaged in an unincorporated business solely by reason of holding, leasing or managing (including operating) real property for his, her or its own account. This provision does not apply to any individual or other unincorporated entity who or which manages and operates real property as an agent of an owner or lessee of the property or to a dealer holding real property primarily for sale to customers in the ordinary course of a trade or business.

§10. Paragraph 2 of subdivision (h) of such section is amended to designate the existing text as subparagraph (i) and to amend such subparagraph (i) to read as follows:

(2) *Application of this subdivision.* (i) For taxable years beginning before July 1, 1994, [Where] where the holding, leasing or managing of real property relates to property used in or connected with an unincorporated business otherwise regularly carried on by an individual or [other] unincorporated entity, any gains, profits, rents and other income from the property will be includible in the unincorporated business gross income of the individual or [other] entity.

§11. Paragraph 2 of subdivision (h) of such section is amended to add subparagraphs (ii) through (iv) to read as follows:

(ii) For taxable years beginning on or after July 1, 1994, if an owner of real property or lessee or fiduciary who is holding, leasing or managing real property, other than as a dealer, is also carrying on an unincorporated business in whole or in part in the City, the holding, leasing or managing of the real property will not be considered an unincorporated business if, and only to the extent that, the real property is held, leased or managed for the purpose of producing rental income or gain on the sale of such property other than in the ordinary course of a trade or business. For purposes of this subparagraph (ii), the operation at such real property of a trade, business, profession or occupation, including, but not limited to, a garage, restaurant, laundry or health club, shall be considered incidental to the holding, leasing or managing of such real property and shall not be considered an unincorporated business, provided such trade, business, profession or occupation is conducted solely for the benefit of, and as an incidental service to, tenants at such real property, and such trade, business, profession or occupation is not open or available to the general public.

(iii) For taxable years beginning on or after January 1, 1996, if an owner, lessee or fiduciary that is holding, owning or leasing or managing real property operates a garage, parking lot or other similar facility at such real property that is open or available to the general public, the provision of parking, garaging or motor vehicle storage services on a monthly or longer term basis at such garage or other facility shall not be considered an unincorporated business carried on by the taxpayer if, and only to the extent that, such services are provided to tenants at such real property as an incidental service to such tenants. See paragraphs (8) and (9) of §28-06(d) of these rules regarding the exclusion of income and the disallowance of expenses relating to the provision of parking services to tenants. Notwithstanding the foregoing provisions of this subparagraph (iii), if an owner, lessee or fiduciary holding leasing or managing real property who operates a garage or other similar facility at the property that is open to the public, does not satisfy the reporting requirements of §28-18(j) of these rules, the provision of monthly or longer term parking services to tenants at the property will be considered the conduct of an unincorporated business subject to tax and will not be considered incidental to the holding, leasing or managing of the property.

(iv) For purposes of subparagraphs (ii) and (iii) above, a determination of whether a trade, business, profession or occupation carried on at real property is open to the general public shall be based on all of the facts and circumstances. Among the facts and circumstances indicating that a business is open to or available to the general public is the presence of a sign identifying, or signifying the presence of, such business of sufficient size and location as to be readily visible to the public, unless such sign clearly indicates that such business is private and not open to the public. However, if the business is in fact open to the public, the absence of a sign is not relevant.

§12. Example (i) of paragraph 2 of subdivision (h) of such section is redesignated as Example 1 and example (ii) is redesignated as example 2 and both examples are amended to read as follows:

Example [i]1): An individual, not otherwise engaged in an unincorporated business, who owns an apartment house leased unfurnished to 150 tenants and who, in consideration of the payment of rent received from tenants, supplies janitor service, elevator service and such other services as are generally incident to the operation of an apartment house in addition to the usual rights of occupancy, is not deemed to be engaged in an unincorporated business by reason of his activities relating to the ownership and management of the apartment house. On the other hand, the operation of a hotel open to the public for accommodations of short duration is not the holding, leasing or management of real property and would constitute an unincorporated business activity the income from which would be subject to the unincorporated business tax. [Furthermore,]In taxable years beginning before July 1, 1994, rents from store properties located in [a]the hotel building are includible in the unincorporated business gross income of the individual where such individual is in the business of hotel keeping in such building However, in taxable years beginning on or after July 1,

1994, while the operation of the hotel will constitute the conduct of an unincorporated business, rents from store properties located in the hotel would not be includible in the unincorporated business gross income from that unincorporated business.

Example ([ii]2): In a taxable year beginning before July 1, 1994, [An] an individual is engaged in a manufacturing business which is carried on in a building owned by him. His business requires the use of one-half of the building, and the unused portion of the building is rented to tenants. The rental income is subject to the unincorporated business income tax since such income results from the use of an asset connected with the taxpayer's business. In taxable years beginning on or after July 1, 1994, the rental income would not be subject to tax; however, the income from the manufacturing business would be taxable and not excluded as part of the rental activity because it is not carried as an incidental service to the tenants in the property even though the manufacturing business is not generally open to or available to the general public. No deduction would be allowed for one-half of the expenses relating to the property and, on a sale of the building, one-half of the gain would be taxable. *See* §28-05(b)(12) and (c)(11) and §28-06(d)(8)of these rules.

§13. Paragraph 2 of subdivision (h) of such section is amended to add new examples 3 and 4 to read as follows:

Example (3): Partnership A owns a rental office building in the City. Partnership A operates a garage adjacent to the building that is intended solely for the use of tenants in the building and not open to the general public. There is a sign, clearly visible from the street reading "Private Garage" at the door to the garage, which is kept open during the day. Tenants are assigned a prearranged number of parking spots at no additional rent. The operation of the garage at the building is not considered an unincorporated business because it is operated as an incidental service to the tenants in the building and is not considered to be open to the public. The result would be the same if the tenants paid additional rent for the parking spaces or if the number of, and amount paid for, parking spaces were separately negotiated with the landlord.

Example (4): The facts are the same as in example 3 except that the sign at the garage door reads "Park," the door is open and inside the garage are posted parking rates for public and tenant parking. The garage is considered to be open to the general public. Certain tenants receive a fixed number of parking spaces for a term coextensive with their lease in the building at no additional rent. Other tenants are not given parking spaces pursuant to their leases but may separately contract for monthly or longer term parking spaces. Tenants who do not receive or contract for monthly or longer term parking spaces may enter the garage and park on an hourly, daily, weekly or monthly basis. Employees of tenants may also individually enter the garage and park on an hourly, daily, weekly or monthly basis. Income from parking services rendered on a monthly or longer term basis

received from tenants is excluded from unincorporated business gross income provided the reporting requirements of Administrative Code section 11-502(d) and §28-18(j) of these rules are met. See §28-05(c)(11). Income from parking services rendered on a less than monthly basis rendered to tenants and income from all parking services rendered to tenants' employees and the public on any basis is included in unincorporated business gross income. If garage space is provided to tenants either as part of their lease or under separate long-term contracts, the fact that the tenant permits the spaces to be used by its employees does not render the parking income taxable; however, parking services provided under long-term contracts with persons who are not tenants will be taxable notwithstanding that those persons are employees of tenants.

§14. Subdivision (b) of section 28-03 of such rules is amended to designate the existing text as paragraph (1), to amend such paragraph (1) and to add new paragraphs (2) and (3) to read as follows:

(b) *Credit against tax [of less than $200.]* (Administrative Code §11-503(b)). (1) A credit is allowed against the tax computed under §28-03(a) for taxable years beginning after 1986 but before 1996 determined in the following manner:

([1]i) If the tax computed under such section is [$100] $600 or less, the amount of the credit is the entire amount of such tax.

([2]ii) If the tax computed under such section exceeds [$100] $600 but is less than [$200] $800, the credit is an amount determined by multiplying the tax by a fraction the numerator of which is $800 less the amount of the tax and the denominator of which is $200[the amount by which such tax is less than $200. For example, if the tax under §28-03(a) amounts to $145, the credit is $55 ($200 minus $145)].

([3]iii) If the tax computed under such section is [$200] $800 or more, no credit is allowed.

(2) A credit is allowed against the tax computed under §28-03(a) for taxable years beginning in 1996 determined in the following manner:

(i) If the tax computed under such section is $800 or less, the amount of the credit is the entire amount of the tax.

(ii) If the tax computed under such section exceeds $800 but is less than $1000, the credit is an amount determined by multiplying the tax by a fraction the numerator of which is $1000 less the amount of the tax and the denominator of which is $200.

(iii) If the tax computed under such section is $1000 or more, no credit is allowed.

(3) A credit is allowed against the tax computed under §28-03(a) for taxable years beginning after 1996 determined in the following manner:

(i) If the tax computed under such section is $1,800 or less, the amount of the credit is the entire amount of the tax.

(ii) If the tax computed under such section exceeds $1,800 but is less than $3,200, the credit is an amount determined by multiplying the tax by a fraction the numerator of which is $3,200 less the amount of the tax and the denominator of which is $1,400.

(iii) If the tax computed under such section is $3,200 or more, no credit is allowed.

§15. Such section is amended to add a new subdivision (d) to read as follows:

(d) *Unincorporated business tax paid credit.* NOTE: In this subdivision (d) for simplicity and clarity, the term "partner" is used to refer to any individual or entity owning an interest in an unincorporated business, and the term "partnership" is used to refer to any such unincorporated business.

(1) *General*. The additional exemption available to an unincorporated business pursuant to Administrative Code §11-510(2) is repealed for taxable years of the unincorporated business beginning after June 30, 1994. For taxable years beginning on or after July 1, 1994, if an individual or unincorporated entity is a partner in a partnership carrying on an unincorporated business in the City of New York and is required to include all or a portion of the income of the partnership in the partner's own unincorporated business gross income, or receives a guaranteed payment from the partnership includible in the partner's own unincorporated business gross income, the partner is allowed a credit against the partner's own unincorporated business tax liability for the partner's share of the unincorporated business tax paid by the partnership, subject to certain limitations (the "UBT Paid Credit"). The UBT Paid Credit is not allowed to a partner owning an interest in a partnership for any unincorporated business tax paid by the partnership with respect to any taxable year of the partnership beginning before July 1, 1994.

For taxable years of a partner beginning after 1995, the UBT Paid Credit allowed to a partner may exceed the amount of UBT Paid Credit that the partner may take in that year. In that event, the excess may be carried forward for up to seven years subject to certain limitations. However, for taxable years of a partner beginning on or after July 1, 1994 but before 1996, the amount of UBT Paid Credit allowed to the partner for a taxable year is the same as the amount of UBT Paid Credit that the partner may take against the partner's unincorporated business tax liability that year and no carryover is available.

A corporation subject to the general corporation tax or the banking corporation tax that is a partner in a partnership carrying on an unincorporated business in the City is allowed a comparable credit against those taxes. See Ad. Code §§11-604.18 and 11-643.8 and §11-50 of these rules.

(2) *Calculation of the UBT Paid Credit.*

(i) *General.* The partner's UBT Paid Credit allowed with respect to a specific partnership is the lesser of the amounts calculated in subparagraphs (ii)(A) ("Measure 1") and (ii)(B) ("Measure 2") of this paragraph (2), subject to the limitation in subparagraph (ii)(C) of this paragraph (2). Measure 1 is based on the partner's share of the unincorporated business tax liability of the partnership for its taxable year ending within or with the partner's taxable year. Measure 2 is based on the incremental effect on the unincorporated business tax liability of the partner attributable to partnership items entering into the calculation of the partner's unincorporated business tax liability. If a taxpayer is a partner in more than one partnership, Measures 1 and 2 must be determined and compared separately with respect to each partnership.

Subparagraph (ii)(C) limits the total amount of the UBT Paid Credit that a partner may take in a taxable year to the partner's unincorporated business tax liability for that year. Unlike Measures 1 and 2, in the case of a partner that is a partner in more than one partnership, this measure is not applied separately to each partnership but rather to the sum of all of the UBT Paid Credits calculated with respect to all partnerships in which the partner is a partner.

(ii) *Measures of the UBT Paid Credit and limitations*

(A) *Measure 1. Partner's share of the partnership's unincorporated business tax liability plus certain credits.* Measure 1 is the product of the amount determined in subparagraph (ii)(A)*(a)* and the partner's distributive share percentage determined in subparagraph (ii)(A)*(b)* below:

(a) Partnership's unincorporated business tax liability plus certain credits. The amount determined in this subparagraph (ii)(A)*(a)* is the sum of:

(1) the unincorporated business tax imposed on, and paid by, the partnership for its taxable year ending within or with the taxable year of the partner, and

(2)(i) for taxable years of the partner beginning on or after July 1, 1994, and before 1996, the amount of any UBT Paid Credit taken by the partnership for its taxable year ending within or with the taxable year of the partner, or

(ii) for taxable years of the partner beginning after 1995, the sum of all credits taken by the partnership under section 11-503 of the Administrative Code, other than subdivision (b) of that section, for its taxable year ending within or with the taxable year of the partner, but only to the extent that those credits do not reduce the partnership's unincorporated business tax below zero. The amount determined under this subparagraph (ii)(A)*(a)(2)(ii)* does not include the amount of any credit refundable to the partnership.

(b) Partner's distributive share percentage. (i) The partner's distributive share percentage is the sum of the partner's distributive shares of income, gain, loss and deductions of the partnership and any guaranteed payment received from the partnership (the partner's "net distributive share") divided by the sum of the net distributive shares of all partners of the partnership for whom such amounts are greater than zero. If the partner's net distributive share is less than zero, it is deemed to be zero and the partner is not allowed a UBT Paid Credit for the taxable year with respect to that partnership. *See* example 1 of paragraph (8) of this subdivision.

(ii) For purposes of this calculation, the net distributive shares should be based upon items of income, gain, loss and deductions and guaranteed payments as calculated by the partnership for purposes of computing its unincorporated business taxable income.

(iii) For purposes of this calculation, the net distributive share of each corporate partner is determined separately regardless of whether that partner files its general corporation tax return as a member of a combined group with one or more other corporations. *See* example 2 of paragraph (8) of this subdivision.

(iv) If a partner owns more than one type of interest in a partnership *e.g.*, a general and a limited partnership interest, the partner's distributive shares and guaranteed payments with respect to all such interests are combined in determining the partner's net distributive share.

(B) *Measure 2. Incremental tax effect of distributive share and guaranteed payments*. Measure 2 is the excess of the amount determined in subparagraph (ii)(B)*(a)* over the amount determined in subparagraph (ii)(B)*(b)* below, modified as provided in subparagraph (ii)(B)*(c)* below.

(a) Partner's tax liability. The amount determined in this subparagraph (ii)(B)*(a)* is the tax liability of the partner determined under this §28-03 without allowance of any of the credits allowed under section 11-503 of the Administrative Code.

(b) Partner's tax liability without distributive share. The amount determined in this subparagraph (ii)(B)*(b)* is the tax liability of the partner determined under this §28-03, excluding any partnership items entering into the calculation of the partner's unincorporated business taxable income such as the partner's distributive share of the partnership's income, gain, loss, and deductions, any guaranteed payments from the partnership, and excluding partnership allocation factors, if taken into account in calculating the partner's allocation to the City, (See §28-07(j)(2)(i)(C)(a) of these rules) and determined without allowance of any of the credits allowed under section 11-503 of the Administrative Code.

(c) Partner's modified tax liability . For taxable years of the partner beginning after 1995, the amounts computed in subparagraphs (ii))(B)*(a)* and (ii)(B)*(b)* above are computed with the following modifications:

(1) the amounts are computed without taking into account any deduction for a net operating loss carried to the taxable year of the partner.

(2) if, prior to taking into account any distributive share or guaranteed payments from the partnership or any net operating loss deduction, the unincorporated business taxable income of the partner is less than zero, the partner's unincorporated business taxable income is deemed to be zero.

(3) if the partner's net total distributive share of income, gain, loss and deductions of, and guaranteed payments from, any unincorporated business, other than the partnership with respect to which the amount of credit is being calculated, is less than zero, such net total distributive share is deemed to be zero.

(C) *Credit limited to partner's unincorporated business tax.* For taxable years of the partner beginning before 1996, the sum of the UBT Paid Credits that a partner is allowed and may take against its tax liability in any given taxable year under this subdivision (d) with respect to all unincorporated businesses in which the partner is a partner shall not exceed the tax on the partner's unincorporated business taxable income determined under this §28-03 without allowance of any of the credits allowed under section 11-503 of the Administrative Code. For taxable years of the partner beginning after 1995, the sum of the UBT Paid Credits that a partner may take for the taxable year under this subdivision (d) with respect to all unincorporated businesses in which the partner is a partner shall not exceed the tax on the partner's unincorporated business taxable income determined under this §28-03, reduced by the credit allowed under subdivision (b) of section 11-503 of the Administrative Code, but without the allowance of any of the other credits allowed under such section 11-503.

(3) *Carryover of UBT Paid Credit after 1995.*

(i) For taxable years beginning after 1995, if the amount of UBT Paid Credit or Credits allowed to a partner with respect to one or more partnerships as determined under paragraph (2) of this subdivision (d) exceeds the amount of credit or credits that may be taken as determined under subparagraph (ii)(C) of paragraph (2) of this subdivision (d), the partner may carry the excess forward to each of the seven immediately succeeding taxable years of the partner subject to certain limitations as provided in subparagraph (3)(ii) *infra*. In applying the provisions of the preceding sentence, for each taxable year of a partner, the UBT Paid Credit or Credits determined under paragraph (2) of this subdivision (d) for the current taxable year shall be taken before taking any credit carryforward pursuant to this paragraph

(3), and the amount of any credit carryforward available under this paragraph (3) attributable to the earliest taxable year shall be taken before a credit carryforward attributable to a subsequent taxable year.

(ii) Notwithstanding anything to the contrary in subparagraph (i) of this paragraph, *supra*, in the case of a partner that is a partnership, no credit carryforward shall be allowed to any taxable year pursuant to this paragraph (3) unless one or more of the partners therein during the taxable year to which the credit would be carried also owned at least an 80 percent interest in the unincorporated business gross income and unincorporated business deductions of the partnership during the taxable year of the partnership in which the credit was originally allowed. The carryforward allowable pursuant to this subparagraph (ii) shall not exceed the portion of the amount of the credit carryforward determined under subparagraph (i) of this paragraph determined by multiplying such credit carryforward by the sum of the proportionate interests in the unincorporated business gross income and unincorporated business deductions of the partnership for the year to which the credit is to be carried belonging to such partners. The amount by which the credit carryforward determined under subparagraph (i) of this paragraph exceeds the amount determined pursuant to the preceding sentence cannot be carried forward to any other taxable year.

(iii) *Credits from multiple partnerships*. If, in a taxable year, a partner is allowed a UBT Paid Credit with respect to more than one partnership and the total amount of UBT Paid Credits allowed exceeds the amount that may be taken under subparagraph (ii)(C) of paragraph (2) of this subdivision (d), the amount of the UBT Paid Credit with respect to each partnership that may be taken is an amount that bears the same ratio to the total UBT Paid Credit allowed for the current year with respect to that partnership as the total amount of UBT Paid Credits that may be taken in the current year under subparagraph (ii)(C) of paragraph (2) of this subdivision bears to the total UBT Paid Credit allowed for the current year with respect to all partnerships. The remainder of the UBT Paid Credit allowed with respect to that partnership is available as a carryover.

(4) *Multiple tiers of partnerships.* A partner may only take a credit with respect to distributive shares from partnerships in which it is a direct owner, *i.e.*, the partner is identified as a partner in the partnership agreement and on Schedule K-1 of IRS Form 1065 filed by the partnership.

Example: Partnership C is a partner in Partnership B, which, in turn, is a partner in Partnership A. Partnership C calculates its UBT Paid Credit only with respect to Partnership B and is not entitled to a UBT Paid Credit with respect to Partnership A. NOTE: Because the calculation of the UBT Paid Credit allowed for Partnership C with respect to Partnership B reflects credits claimed by Partnership B, including its UBT Paid Credit with respect to Partnership A (see subparagraph (d)(2)(ii)*(a), supra*), Partnership C will get the benefit of Partnership B's UBT Paid Credit with respect to Partnership A, subject to the limitations applicable in determining C's UBT Paid Credit allowed. (See

example 7 *infra*.)

(5) The UBT Paid Credit allowed under this provision shall not be allowed to a partner in a partnership with respect to any unincorporated business tax paid by the partnership for any taxable year beginning before July 1, 1994.

(6) The UBT Paid Credit shall be taken after the credit allowed by subdivision (b) of section 11-503 of the Administrative Code is taken, but before any other credit allowed by such section is taken.

(7) *Reporting requirements for partnerships*. In order for a partner to calculate the UBT Paid Credit with respect to a distributive share or guaranteed payment from a specific partnership, certain information is necessary from the partnership. To facilitate this calculation, each partnership having partners that are subject to the taxes imposed under Chapter 5 or subchapter 2 or part 4 of subchapter 3 of Chapter 6 of Title 11 of the Administrative Code of the City of New York should complete a schedule on a form specified by the Commissioner of Finance in which the following information is provided:

(i) the names and taxpayer identification numbers of all partners in the partnership;

(ii) the net distributive share, as defined in subparagraph (2)(ii)(A)*(b)* of this subdivision (d), for each partner, provided, however, that if a partner's net distributive share is less than zero, it should be treated and reported as zero for purposes of this subparagraph (ii) and subparagraph (iii), *infra*;

(iii) the total of all net distributive shares of all partners; and

(iv) the distributive share percentage as defined in subparagraph (2)(ii)(A)*(b)* of this subdivision (d) calculated for each partner by dividing the amount in subparagraph (ii) above by the amount in subparagraph (iii) *supra*.

(8) The provisions of paragraphs (1) through (7) of this subdivision (d) are illustrated by the following examples. The facts of the examples have been simplified and do not reflect the deduction allowed by Administrative Code §11-509(a) or the exemption allowed by Administrative Code §11-510(a)(1)). The effect of other credits allowed under §11-503 of the Administrative Code is not reflected except as specifically noted. All of the examples below involve entities having business allocation percentages of 100 percent and no investment income. For examples of the calculation of the credit with respect to entities that allocate business or investment income outside the City, see subdivision (j) of §28-07 of these rules.

Example 1: Calculation of distributive share percentage ("DSP")

Partnership ABCD has four partners. Partners A,B,C and D share equally in income of

$800x from ABCD. Partner D also has a special allocation of a loss of ($300x) from ABCD.

	I Distributive Share (DS)	II DS--Modified for Calculation of DSP	III Distributive Share Percentage (DSP) (col. II ÷ col. II total)
A	$200x	$200x	33.33%
B	$200x	$200x	33.33%
C	$200x	$200x	33.33%
D	($100x)	$0	0%
Total	$500x	$600x	100%

Example 2: DSP for members of a combined group

Assume the same facts as in example 1, above, except that B, C, and D are corporations that file a combined return for purposes of the general corporation tax as group CG. The membership of B, C, and D in the combined group does not affect the reporting by Partnership ABCD of the distributive share information required by these rules. CG's distributive share percentage is the sum of the distributive share percentages of B, C, and D or 66.67% (33.33% + 33.33% + 0%).

Example 3: Basic credit calculation

AB is a partnership doing business in New York City. AB has two partners, A and B. Partner A is a partnership doing business in New York City with a 100% business allocation percentage. Partner B is an individual who does not independently do business in New York City.

AB's unincorporated business taxable income ("UBTI") for calendar year 1995 is $400x. AB pays unincorporated business tax of $16x. AB's Form NYC-204 for 1995 indicates that A's distributive share from AB is $300x and that B's distributive share is $100x. (B is not entitled to a UBT Paid Credit with respect to AB because B does not include any portion of his distributive share from AB in any unincorporated business gross income reported by him. *See* §28-05(a)(1) of these rules.) A has UBTI of $200x without regard to its distributive share of income, gain, loss or deduction from AB ("Separate UBTI"). A is subject to the unincorporated business tax and is entitled to a UBT Paid Credit with respect to tax paid by AB. A's UBT Paid Credit is determined as follows:

	Separate UBTI	DS	DSP	Total	TAX

				UBTI	w/o credit
AB	NA	NA	NA	$400x	$16x
A	$200x	$300x	75%	$500x	$20x
B	NA	$100x	25%	NA	NA

Measure 1: A's distributive share percentage is 75%. ($300x/$400x.) Measure 1 is $12x determined by multiplying AB's tax of $16x by A's distributive share percentage (75%).

Measure 2: A's total UBTI is $500x, on which the tax would be $20x before any UBT Paid Credit. The tax on A's separate UBTI of $200x would be $8x. Thus the incremental tax effect on A's total UBTI of A's distributive share from AB is $12x ($20x-$8x=$12x.)

Therefore, A's UBT Paid Credit is $12x.

Example 4: Treatment of partner's losses and carryover of credit

The facts are the same as in example 3 except that for A's taxable year beginning January 1, 1995, A also has an operating loss of ($100x) without regard to its distributive share from AB. For the taxable year beginning January 1, 1996, the facts are the same as for 1995. For the taxable year beginning January 1, 1997, AB's UBTI is $400x. A's distributive share from AB is $300x. A's separate UBTI is $50x. A's UBT Paid Credits for 1995, 1996, and 1997 are calculated as follows:

1995

	Separate UBTI	DS	DSP	Total UBTI	UBT Liability w/o credit
AB	NA	NA	NA	$400x	$16x
A	($100x)	$300x	75%	$200x	$8x

Measure 1: A's distributive share percentage of AB's tax liability is the same as in Example 3 above, $12x (75% X $16x).

Measure 2: A's total UBTI is $200x, on which the tax liability would be $8x. A's separate UBTI is a loss of ($100x) resulting in no tax. The incremental tax effect on A's total UBTI of A's distributive share from AB is $8x ($8x-0=$8x.)

Therefore, A's UBT Paid Credit allowed for 1995 is $8x. No part of the unused credit may be carried forward from years beginning before January 1, 1996.

1996

	Separate UBTI	DS	DSP	Total UBTI	UBT Liability w/o credit
AB	NA	NA	NA	$400x	$16x
A	($100x)	$300x	75%	$200x	$8x

Measure 1: For 1996, Measure 1 for Partner A is the same as for 1995, $12x.

Measure 2: A's total UBTI is $200x, on which the tax liability would be $8x. However, for taxable years beginning after 1995 for purposes of this calculation, A's separate UBTI as modified is treated as $0 rather than ($100x). There would be no tax liability on its separate UBTI as modified. A's total UBTI as modified is treated as $300x (separate modified UBTI of $0 + $300x of A's distributive share.) A's tax liability on this amount would be $12x. Thus, the incremental tax effect of the inclusion in A's total modified UBTI of its distributive share from AB is $12x ($12x-0).

A is **allowed** a credit of $12x. However, because A's actual tax liability for 1996 would be $8x before any UBT Paid Credit, A can only **take** a credit of $8x in 1996. The remaining credit **allowed** of $4x is eligible to be carried over by A to the next seven taxable years.

1997

	Separate UBTI	DS	DSP	Total UBTI	UBT Liability w/o credit
AB	$400x	NA	NA	$400x	$16x
A	$50x	$300x	75%	$350x	$14x

Measure 1: For 1997, Measure 1 for Partner A is the same as for 1995, $12x.

Measure 2: A's total UBTI is $350x, on which the tax liability would be $14x. A's separate UBTI would be $50x on which the tax would be $2x. Thus, the incremental tax effect on A's total UBTI of its distributive share from AB is $12x ($14x-$2x).

Therefore, A is **allowed** a credit of $12x in 1997. Assuming that there were no changes in the ownership of A in 1997, A may also carry over to 1997 the excess credit allowed in 1996 of $4x

that it could not take. Therefore, the total credit available to A in 1997 is $16x. However, because A's tax liability in 1997 is $14x, the total credit that A may take in 1997 is $14x. A must first take its $12x credit from 1997, thereby reducing its tax liability to $2x. A may then take $2x of its credit from 1996 to reduce its liability to $0. The remaining credit of $2x from 1996 is eligible to be carried over by A to the next six taxable years.

Example 5: The facts are the same as in example 4 except that on January 1, 1997, one of the two 50% partners in A sells his interest in A to a third party. Because the partners in A in 1997 only owned 50% of A in 1996, A is not entitled to use any portion of the $4x credit carryover from 1996 in 1997. See subdivision (d)(3)(ii) of this §28-03.

Example 6: Partners in multiple partnerships.

AB and BC are partnerships doing business in New York City. B is a partner in both AB and BC. B is a partnership doing business in New York City with a 100% business allocation percentage.

For each of its taxable years 1995 and 1996, B's separate UBTI is a loss of ($400x).

For each of the taxable years 1995 and 1996, AB's UBTI is $400x. AB pays tax of $16x on that income each year. AB's unincorporated business tax return for each of those years indicates that B's distributive share from AB is $300x and that B's distributive share percentage is 75%.

For each of the taxable years 1995 and 1996, BC's UBTI is $1000x. BC pays tax of $40x on that income each year. BC's unincorporated business tax return for each of those years indicates that B's distributive share from BC is $500x and that B's distributive share percentage is 50%.

B is subject to the unincorporated business tax and is entitled to a UBT Paid Credit for 1995 and 1996 related to its distributive shares from AB and BC determined as follows:

1995

	Separate UBTI	DS from AB	DS from BC	Total UBTI	UBT Liability w/o credit
AB	NA	NA	NA	$400x	$16x
BC	NA	NA	NA	$1000x	$40x
B	($400x)	$300x	$500x	$400x	$16x

B's credit with respect to AB:

Measure 1: B's distributive share percentage of AB's tax is $12x, determined by multiplying AB's tax of $16x by B's distributive share percentage, 75%.

Measure 2: B's tax liability on its total UBTI is $16x before any UBT Paid Credit. B's tax liability on its UBTI of $100x without its distributive share from AB ($400x - $300x), would be $4x. The incremental tax effect on B's total UBTI of its distributive share from AB is $12x ($16x-$4x.)

Therefore, B's UBT Paid Credit allowed with respect to AB is $12x.

B's credit with respect to BC:

Measure 1: B's distributive share percentage of BC's tax liability is $20x, determined by multiplying BC's tax liability of $40x by B's distributive share percentage of 50%.

Measure 2: B's tax liability on its total UBTI of $400x would be $16x. Without its distributive share from BC, B would have a loss of ($100x) on which there would be no tax. The incremental tax effect on B's total UBTI of its distributive share from BC is $16x. ($16x-0.)

Thus, B's UBT Paid Credit allowed with respect to BC is $16x.

Total Credit for 1995:

B's total UBT Paid Credit with respect to AB and BC is $28x. However, because B's tax liability on its total UBTI without the credit would be only $16x, the total UBT Paid Credit allowed to B in 1995 is limited to $16x. There is no carryover of the remaining $12x credit to any subsequent year.

1996

	Separate UBTI	DS -- DSP AB-	DS -- DSP BC	Total UBTI	UBT Liability w/o credit
AB	NA	NA	NA	$400x	$16x
BC	NA	NA	NA	$1000x	$40x
B	($400x)	$300x--75%	$500x--50%	$400x	$16x

B's credit with respect to AB:

Measure 1: For 1996, Measure 1 for B is the same as for 1995, $12x.

Measure 2: B's total UBTI is $400x, on which the tax liability would be $16x. For purposes of calculating Measure 2 in 1996, B's operating loss of ($400x) is treated as zero so that its total modified UBTI is treated as $800x, on which the tax would be $32x. Without its distributive share of $300x from AB, B's modified UBTI would be $500x on which the tax would be $20x. The incremental tax effect on B's modified UBTI of B's distributive share from AB is $12x ($32x-$20x.)

Therefore, B's UBT Paid Credit allowed with respect to AB is $12x.

Calculation of B's credit with respect to BC:

Measure 1: For 1996, Measure 1 for B is the same as for 1995, $20x.

Measure 2: B's total UBTI is $400x, on which the tax would be $16x. For purposes of calculating Measure 2 in 1996, B's operating loss of ($400x) treated as zero so that its total modified UBTI is treated as $800x, on which the tax would be $32x. Without its distributive share of $500x from BC, B's UBTI would be $300x, on which the tax would be $12x. Thus, the incremental tax effect of B's distributive share from BC is $20x. ($32x-$12x.)

Thus, B's UBT Paid Credit allowed with respect to BC is $20x.

Total Credits for 1996:

B's total UBT Paid Credit allowed with respect to AB and BC is $32x ($12x + $20x). However, because B's tax liability without the credits would be only $16x, the credit that B can take in the taxable year 1996 is limited to $16x, B's tax liability. The $16x of credits taken in 1996 is deemed to be composed of $6x of the UBT Paid Credit allowed with respect to AB ($16x X $12x/$32x) and $10x of the UBT Paid Credit allowed with respect to BC ($16x X $20x/$32x). *See* subparagraph (3)(iii) of this subdivision (d). B can carry the $16x excess of the amount of credit

allowed over the amount that may be taken to the succeeding seven years. The credit carryover is deemed to be composed of $6x of the UBT Paid Credit allowed with respect to AB and $10x of the UBT Paid Credit allowed with respect to BC.

Example 7: Multiple tiers of partnerships and flow through of credits.

Partnership C is a partner in Partnership B. B is a partner in partnership A. For each of the years 1995, 1996, 1997 and 1998, A's UBTI is $1000x, and A's tax liability is $40x, before a credit of $10x allowed to A pursuant to 11-503(i) (the REAP credit).

The following chart summarizes the information relevant to A for the four taxable years.

A	1995	1996	1997	1998
UBTI	$1000x	$1000x	$1000x	$1000x
Tax after REAP credit	$30x	$30x	$30x	$30x

For each year, B's distributive share from A is $400x Its distributive share percentage with respect to A is 40%. In 1995 and 1996 B has separate UBTI of $200x. In 1997 B has separate UBTI is a loss of ($300x). In 1998 B has separate UBTI of $600x.

The following chart summarizes the information relevant to B for the four taxable years:

B	1995	1996	1997	1998
Separate UBTI	$200x	$200x	($300x)	$600x
DSP in A	40%	40%	40%	40%
DS from A	$400x	$400x	$400x	$400x
Total UBTI	$600x	$600x	$100x	$1000x
Tax w/o UBT Paid Credit	$24x	$24x	$4x	$40x

For each year, C's distributive share percentage in B is 50% and C has separate UBTI of $400x.

The following chart summarizes the information relevant to C for the four taxable years:

C	1995	1996	1997	1998
Separate UBTI	$400x	$400x	$400x	$400x
DSP in B	50%	50%	50%	50%
DS from B	$300x	$300x	$50x	$500x
Total UBTI	$700x	$700x	$450x	$900x
Tax w/o UBT Paid Credit	$28x	$28x	$18x	$36x

Calculation of the Credit for 1995:

B's Credit:

Measure 1: B's distributive share percentage of the sum of A's tax and applicable credits is $12x (B's distributive share percentage of 40% multiplied by A's tax liability after the REAP credit ($30x)). (Note: A's REAP credit is not added to A's tax liability in 1995 for purposes of this calculation. The effect of this is that B does not get the benefit of A's REAP credit in 1995. In 1996 and later years, B will get the benefit of A's REAP credit.)

Measure 2: B's tax liability on its total UBTI of $600x would be $24x. The tax on B's separate UBTI of $200x would be $8x. Thus, the incremental tax effect on B's total UBTI of its distributive share of $400x from A is $16x. ($24x-$8x.)

Therefore, B's UBT Paid Credit allowed is $12x. B's tax liability after the credit is $12x.

C's Credit:

Measure 1: C's distributive share percentage of the sum of B's tax and UBT Paid Credit is $12x (C's distributive share percentage of 50% multiplied by the sum of B's tax liability ($12x) and B's UBT Paid Credit with respect to A ($12x).

Measure 2: C's tax liability on its total UBTI of $700x would be $28x. The tax on C's separate UBTI of $400x would be $16x. Thus, the incremental tax effect on C's total UBTI of its distributive share of $300x from B is $12x. ($28x-$16x.)

Therefore, C's UBT Paid Credit allowed with respect to B is $12x.

Calculation of the Credit for 1996:

B's Credit:

Measure 1: B's distributive share percentage of the sum of A's tax and applicable credits is $16x (B's distributive share percentage of 40% multiplied by the sum of A's tax liability and A's REAP credit ($40x)). (Note: the REAP credit is added here to A's tax liability for purposes of calculating B's credit. The effect of this is that A's REAP credit will flow through to B.)

Measure 2: B's tax liability on its total UBTI of $600x would be $24x. The tax on B's separate UBTI of $200x would be $8x. Thus, the incremental tax effect on B's total UBTI of its distributive share of $400x from A is $16x. ($24x-$8x.)

Therefore, B's UBT Paid Credit allowed is $16x. B's tax liability after the credit is $8x.

C's Credit:

Measure 1: C's distributive share percentage of the sum of B's tax and applicable credits is $12x (C's distributive share percentage of 50% multiplied by the sum of B's tax liability ($8x) and B's UBT Paid Credit with respect to A ($16x).)

Measure 2: C's tax liability on its total UBTI of $700x would be $28x. The tax on C's separate UBTI of $400x would be $16x. Thus, the incremental tax effect on C's total UBTI of its distributive share of $300x from B is $12x. ($28x-$16x.)

Therefore, C's UBT Paid Credit allowed with respect to B is $12x.

Calculation of the Credit for 1997:

B's Credit:

Measure 1: B's distributive share percentage of the sum of A's tax and applicable credits is $16x (B's distributive share percentage of 40% multiplied by A's tax liability plus A's REAP credit ($40x).

Measure 2: B's separate loss is ignored and B's separate UBTI is treated as $0 on which there would be no tax. B's tax liability on its total modified UBTI of $400x would be $16x. Thus, the incremental tax effect on B's total modified UBTI of its distributive share of $400x from A is $16x. ($16x-$0x.)

Therefore, B's UBT Paid Credit allowed for 1997 is $16x. However, because B's pre-credit tax liability is only $4x, B may only take a UBT Paid Credit of $4x in 1997. B may carry forward $12x, the excess of the $16x credit allowed over the $4x credit taken, to the next seven years subject to the applicable limitations.

C's Credit:

Measure 1: C's distributive share percentage of the sum of B's tax and applicable credits is $2x (C's distributive share percentage of 50% multiplied by B's tax liability ($0x) plus B's UBT Paid Credit taken ($4x).)(Note: for purposes of calculating C's UBT Paid Credit, only the credit taken by B is included, not the total credit **allowed**. See the discussion of C's credit for 1998 below in this example.)

Measure 2: C's tax liability on its total UBTI of $450x would be $18x. The tax on C's separate UBTI of $400x would be $16x. Thus, the incremental tax effect on C's total UBTI of its distributive share of $50x from B is $2x. ($18x-$16x.)

Therefore, C's UBT Paid Credit allowed with respect to B for 1997 is $2x.

Calculation of the Credit for 1998:

B's Credit:

Measure 1: B's distributive share percentage of the sum of A's tax and applicable credits is $16x (B's distributive share percentage of 40% multiplied by A's tax liability plus A's REAP credit ($40x).

Measure 2: B's tax liability on its total UBTI of $1000x would be $40x. The tax on B's separate UBTI of $600x would be $24x. Thus, the incremental tax effect on B's total UBTI of its distributive share of $400x from A is $16x. ($40x-$24x.)

Therefore, B's UBT Paid Credit allowed for 1998 is $16x. It may also carry over to 1998 the excess credit allowed in 1997 of $12x that it could not take. Therefore, the total credit that is available to B in 1998 and that B may take is $28x. B's tax liability after the credit is $12x.

C's Credit:

Measure 1: C's distributive share percentage of the sum of B's tax and applicable credits is $20x (C's distributive share percentage of 50% multiplied by B's tax liability ($12x) plus B's UBT Paid Credit taken ($28x).) The credit taken includes the amount of $12x **allowed** to B in 1997 but carried forward and **taken** by B in 1998.

Measure 2: C's tax liability on its total UBTI of $900x would be $36x. The tax on C's separate UBTI of $400x would be $16x. Thus, the incremental tax effect on C's total UBTI of its distributive share of $500x from B is $20x. ($36x-$16x.)

Therefore, C's UBT Paid Credit allowed with respect to B for 1998 is $20x.

§16. Subdivision (a) of section 28-04 of such rules amended to read as follows:

(a) [*General]* *Unincorporated Business Entire Net Income*. (Administrative Code §11-501(g)). For taxable years beginning on or after July 1, 1994, the unincorporated business entire net income of a taxpayer means its unincorporated business gross income, as computed under §28-05 of these rules, over the unincorporated business deductions allowable under Administrative Code §11-507 and §28-06 of these rules.

§17. The existing text of subdivision (a) of such section is designated as subdivision (b) and is amended to read as follows:

(b) *Unincorporated Business Taxable Income*. (Administrative Code §11-505).[The] For taxable years beginning before July 1, 1994, the unincorporated business taxable income of a taxpayer for unincorporated business tax purposes means the excess of the unincorporated business gross income, as computed under §28-05(d) of these [regulations]rules, over the unincorporated business deductions allowable under §28-06 of these [regulations]rules, allocated to New York City in accordance with §28-07 of these [regulations]rules, minus the deductions allowable, without allocation, under §28-08 of these [regulations]rules, for reasonable compensation for personal services of the proprietor or the partners actively engaged in the unincorporated business and minus the unincorporated business exemptions permitted under §28-09 of these [regulations]rules. For taxable years beginning on or after July 1, 1994, the unincorporated business taxable income of a taxpayer for unincorporated business tax purposes means its unincorporated business entire net income, allocated to the City, less the amount of:

(1) its deductions allowable, without allocation, under §28-08 of these rules and;

(2) its unincorporated business exemption permitted under section 28-09(a) of these rules.

§18. The existing text of subdivision (a) of section 28-05 of such rules is designated as paragraph 1 and is amended to read as follows:

§28-05 Unincorporated Business Gross Income. (a)(1) *General*.

(Administrative Code §11-506(a)). Subject to the modifications prescribed below in [§§28-05] §28-05(b) [(b)] and [2813](c), the unincorporated business gross income of an unincorporated business engaged in or being liquidated by an individual or unincorporated entity means the sum of the items of income and gain (of whatever kind and in whatever form paid) [which] that are includible in the gross income of the individual or unincorporated entity for Federal income tax purposes for the taxable year and [which] that are derived from the carrying on or liquidation of the business or from any source whatever connected therewith, including, without limitation, income and gain

([1]A) from any property of the individual or unincorporated entity, or a member thereof, employed in the business,

([2]B) from liquidation of the business or disposition of the assets thereof, [or]

([3]C) from collection or other disposition of installment obligations of the business without regard to when such obligations were acquired, or

(D) in the case of an unincorporated entity, from the sale or other disposition of an interest in another unincorporated entity if and to the extent such income or gain is attributable to a trade, business, profession or occupation carried on in whole or in part in the City by such other unincorporated entity.

An individual member of a partnership who also carries on his or her own separate and independent unincorporated business is not required or permitted to include his distributive share of partnership income or his or her gain or loss on the sale or other disposition of his or her interest in the partnership in computing his or her separate unincorporated business gross income.

Example: Doctor A is a member of a medical partnership which provides medical services to members of a group health plan. In addition, Doctor A carries on his own separate and independent medical practice. Doctor A may not include his distributive share of partnership income in his computation of his own unincorporated business gross income. (Furthermore, the medical partnership may not claim the statutory additional exemption described in §28-09(b) of these [Regulations]rules for the amount distributed to Doctor A and Doctor A is not entitled to a credit against his unincorporated business tax liability for any unincorporated business tax paid by the medical partnership for its taxable years beginning on or after July 1, 1994. See §28-09(b)(1) and §28-03(d).

§19. Subdivision (a) of section 28-05 of such rules is amended to add a new paragraph 2 to read as follows:

(2) For taxable years beginning on or after January 1, 1996, the character of a partner's distributive share of gross income, gains, losses and deductions of an unincorporated entity shall be determined as if such gross income, gains, losses and deductions were realized directly by such partner to the extent permitted for federal income tax purposes regardless of how the interest in the unincorporated entity was acquired and regardless of whether the distributive share is proportionate to the partner's capital interest in the unincorporated entity, provided, however, this paragraph (2) shall not apply to payments to a partner treated as occurring between the unincorporated entity and one who is not a partner under Internal Revenue Code section 707, and provided, further, this paragraph (2) shall not affect the determination of whether gross income, gains, losses, or deductions of an unincorporated entity are subject to the tax imposed under Chapter 5 of Title 11 of the Administrative Code. This paragraph (2) is illustrated by the following:

Example: Partnership X is the sole general partner in Partnership A. X contributed one percent of the capital of Partnership A. X is responsible for the day to day

management of the business of Partnership A, which is the purchase and sale of stocks and securities for the account of Partnership A. X is paid a fee each year of $100,000 qualifying as a guaranteed payment under Internal Revenue Code section 707. In addition, X is entitled to receive 20 percent of the income, gains, losses, and deductions of Partnership A. X's entire distributive share of the income, gains, losses, and deductions of Partnership A retains its character in X's hands, *i.e.*, as dividends, interest and gains and losses from stocks and securities. X's $100,000 fee is compensation for services rendered and X's performance of those services may be considered an unincorporated business under the provisions of §28-02 of these rules without regard to this paragraph (2).

§20. Paragraphs 8 and 9 of subdivision (b) of such section are amended to read as follows:

(8) For taxable years beginning after December 31, 1981, any amount which would properly be includible in Federal gross income had the taxpayer not made the election permitted pursuant to §168(f)(8) of the Internal Revenue Code as it was in effect for safe harbor lease agreements entered into prior to January 1, 1984, except with respect to property which is a qualified mass commuting vehicle described in §163(f)(8)(D) of the Internal Revenue Code; [and]

(9) Upon the disposition of recovery property to which §28-06(n) of these [regulations]rules applies, the amount, if any, by which the aggregate of the deductions for depreciation attributable to such property allowable pursuant to such §28-06(n) exceeds the aggregate accelerated cost recovery system deduction attributable to such property, described in §28-06(m) of these [regulations.]rules;

§21. Subdivision (b) of such section is amended to add new paragraphs 10 through 13 to read as follows:

(10) Notwithstanding any other provision of these rules to the contrary, for taxable years beginning on or after January 1, 1996, the amount allowed as an exclusion or deduction in determining federal gross income or any loss, including but not limited to, losses from notional principal contracts, losses, other than losses realized by the taxpayer as a dealer as defined in §28-02(g)(2) of these rules, from the holding, sale or disposition, assumption, offset or termination of a position in, property, as defined in §28-02(g)(3) of these rules, or other substantially similar losses from ordinary and routine trading or investment activity to the extent determined by the Commissioner of Finance, realized in connection with activities described in §28-02(g)(1)(v) of these rules if, and to the extent that, such activities are not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of §28-02(g) of these rules;

(11) Notwithstanding any other provision of these rules to the contrary, for taxable years beginning on or after January 1, 1996, in the case of a taxpayer that is an unincorporated entity eligible for the partial self-trading exemption described in section §28-02(g)(4) of these rules, the

amount allowed as an exclusion or deduction in determining federal gross income or any loss realized from the sale or other disposition of an interest in another unincorporated entity if, and to the extent that, such loss is attributable to activities of such other unincorporated entity not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of §28-02(g) of these rules;

(12) Notwithstanding any other provision of these rules to the contrary, for taxable years beginning on or after July 1, 1994, the amount allowed as an exclusion or deduction in determining federal gross income or any loss realized from the holding, leasing or managing of real property if, and to the extent that, such holding, leasing or managing of real property is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of §28-02(h)(2)(ii) of these rules; and

(13) Notwithstanding any other provision of these rules to the contrary, for taxable years beginning on or after January 1, 1996, the amount allowed as an exclusion or deduction in determining federal gross income or any loss realized from the provision by an owner, lessee or fiduciary holding, leasing or managing real property of the service of parking, garaging or storing of motor vehicles on a monthly or longer term basis to tenants at such real property if, and to the extent that, the provision of such services to such tenants is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of §28-02(h)(2)(iii) of these rules.

§22. Paragraphs 6 and 7 of subdivision (c) of such section are amended to read as follows:

(6) For taxable years beginning after December 31, 1981, any amount properly includible in federal gross income solely as a result of an election made pursuant to §168(f)(8) of the Internal Revenue Code as it was in effect for safe harbor lease agreements entered into prior to January 1, 1984, except with respect to property which is a qualified mass commuting vehicle described in §168(f)(8)(d) of the Internal Revenue Code; [and]

(7) Upon the disposition of recovery property to which §28-06(n) of these [regulations] rules applies, the amount, if any, by which the aggregate accelerated cost recovery system deduction attributable to such property, described in §28-06(m) of these [regulations] rules, exceeds the aggregate of the deductions for depreciation attributable to such property allowable pursuant to such §28-06(n);

§23. Subdivision (c) of such section is amended to add new paragraphs 8 through 12 to read as follows:

(8) For taxable years beginning on or after July 1, 1994, 50 percent of the amount of dividends (to the extent includible in gross income for federal income tax purposes and not subtracted under paragraph (2) or (3) of this subdivision (c)), other than

(i) the amounts described in subparagraph 13 or 15 of paragraph (b) of Administrative Code §11-602.8, and

(ii) dividends from stock described in paragraph (b) or (c) of Administrative Code §11-602.3,

provided, however, no portion of a dividend from stock with respect to which a dividend deduction would be disallowed by §246(c) of the Internal Revenue Code if the unincorporated business were subject to federal income tax as a corporation shall be subtracted under this paragraph (8). For purposes of subparagraphs (i) and (ii) of this paragraph (8), references in Administrative Code §11-602 to "acquiring person" or "acquiring corporation" are deemed to refer to the unincorporated business;

(9) Notwithstanding any other provision of these rules to the contrary, for taxable years beginning on or after January 1, 1996, the amount of any income or gain (to the extent includible in gross income for federal income tax purposes), including but not limited to, dividends, interest, payments with respect to securities loans, income from notional principal contracts, income and gains, other than as a dealer, from the holding, sale or disposition, assumption, offset or termination of a position in, property as defined in §28-02(g)(3) of these rules, or other substantially similar income from ordinary and routine trading or investment activity to the extent determined by the Commissioner of Finance, realized in connection with activities described in §28-02(g)(1)(v) of these rules if, and to the extent that, such activities are not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of §28-02(g) of these rules;

(10) Notwithstanding any other provision of these rules to the contrary, for taxable years beginning on or after January 1, 1996, in the case of a taxpayer that is an unincorporated entity eligible for the partial self-trading exemption described in §28-02(g)(4) of these rules, the amount of any income or gain (to the extent includible in gross income for federal income tax purposes) realized from the sale or other disposition of an interest in another unincorporated entity if, and to the extent that, such income or gain is attributable to activities of such other unincorporated entity not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of §28-02(g) of these rules;

(11) Notwithstanding any other provision of these rules to the contrary, for taxable years beginning on or after July 1, 1994, the amount of any income or gain (to the extent includible in gross income for federal income tax purposes) realized from the holding, leasing or managing of real property if, and to the extent that, such holding, leasing or managing of real property is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of §28-02(h)(ii) of these rules; and

(12) Notwithstanding any other provision of these rules to the contrary, for taxable years beginning on or after January 1, 1996, the amount of any income or gain (to the extent includible in gross income for federal income tax purposes) realized by an owner, lessee or fiduciary holding, leasing or managing real property from providing parking, garaging or motor vehicle storage

services on a monthly or longer term basis to tenants at such real property if, and to the extent that, the provision of such services to such tenants is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of §28-02(h)(iii) of these rules.

§24. Section 28-05 of such rules is amended to add a new subdivision (d) thereto to read as follows:

(d) For purposes of subdivisions (b)(10) and (c)(9) of this section, ordinary and routine trading or investment activity will include entering into an agreement to participate in a transaction described in subparagraphs (v)(A) through (v)(D) of §28-02(g)(1) of these rules. Consequently, for taxable years beginning on or after January 1, 1996, losses incurred in connection with, or as a result of, entering into such an agreement must be added back to federal gross income in determining unincorporated business gross income, and income and gains realized in connection with, or as a result of, entering into such an agreement, such as commitment fees or breakup fees, must be excluded from federal gross income in determining unincorporated business gross income to the extent that any such transaction is not considered to be pursuant to an unincorporated business carried on by the taxpayer pursuant to section 28-02(g) of these rules.

§25. Paragraph 3 of subdivision (d) of section 28-06 of such rules is amended to read as follows:

(3) *Certain interest, amortizable bond premiums and expense.* No deductions shall be allowed for

(i) interest on indebtedness incurred or continued to purchase or carry obligations or securities, the [income from] interest on which is exempt from tax under Chapter 5 of Title 11 of the Administrative Code,

§26. Subdivision (d) of section 28-06 of such rules is amended to add new paragraphs 6 through 9 read as follows:

(6) Notwithstanding any other provision of these rules to the contrary, for taxable years beginning on or after January 1, 1996, no deduction shall be allowed for any expenses directly or indirectly attributable to activities described in §28-02(g)(1)(v) of these rules if, and to the extent that, such activities are not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of §28-02(g) of these rules.

(7) Notwithstanding any other provision of these rules to the contrary, for taxable years beginning on or after January 1, 1996, in the case of a taxpayer that is an unincorporated entity eligible for the partial self trading exemption described in §28-02(g)(4) of these rules, no deduction shall be allowed for any losses or expenses directly or indirectly attributable to the sale or other disposition of an interest in another unincorporated entity if, and to the extent that, the activities of such other unincorporated entity are not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of §28-02(g) of these rules.

(8) Notwithstanding any other provision of these rules to the contrary, for taxable years beginning on or after July 1, 1994, no deduction shall be allowed for interest, depreciation or any other expense directly or indirectly attributable to the holding, leasing or managing of real property if, and to the extent that, such holding, leasing or managing of real property is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of §28-02(h)(2)(ii) of these rules.

(9) Notwithstanding any other provision of these rules to the contrary, for taxable years beginning on or after January 1, 1996, no deduction shall be allowed for interest, depreciation or any other expense of an owner, lessee or fiduciary holding, leasing or managing real property that are directly or indirectly attributable to parking, garaging or motor vehicle storage services provided on a monthly or longer term basis to tenants at such real property if, and to the extent that, the provision of such services to such tenants is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of §28-02(h)(2)(iii) of these rules.

§27. Paragraph 1 of subdivision (h) of such section is amended to read as follows:

(1) A deduction shall be allowed (to the extent not allowable for federal income tax purposes) for:

(i) interest on indebtedness incurred or continued to purchase or carry obligations or securities, the [income from] interest on which is subject to tax under Chapter 5 of Title 11 of the Administrative Code, but exempt from Federal income tax,

(ii) ordinary and necessary expenses paid or incurred for the production or collection of such taxable income or for the management, conservation or maintenance of property held for the production of such taxable income, and

(iii) the amortizable bond premium for the taxable year on any bond, the interest on which is subject to tax under Chapter 5 of Title 11 of the Administrative Code, but exempt from Federal income tax.

§28. Subdivision (h) of such section is amended to add a new paragraph 3 thereto to read as follows:

(3) For taxable years beginning on or after July 1, 1994, notwithstanding the provisions of paragraph (2), deductions allowable for Federal income tax purposes that are directly or indirectly attributable to investment income or investment capital as defined in Administrative Code §11-501 subdivisions (h) and (i) must be subtracted from income, gains and losses from investment capital in determining investment income.

§29. Subdivision (m) of such section is amended to read as follows:

(m) *Accelerated cost recovery system deductions.* (Administrative Code §11-507(14)). For taxable years beginning after December 31, 1981, except with respect to recovery property subject to the provisions of §280-F of the Internal Revenue Code, and recovery property placed in service in New York in taxable years beginning after December 31, 1984, and before 1994, no deduction shall be allowed for the amount allowable as the accelerated cost recovery system deduction pursuant to §168 of the Internal Revenue Code. Note that for years prior to 1994, the disallowance of accelerated cost recovery deductions for property placed in service outside New York has been held to be unconstitutional.

§30. Subdivision (n) of such section is amended to read as follows:

(n) *Recovery property depreciation.* (Administrative Code §11-507(15)). For taxable years beginning after December 31, 1981, except with respect to recovery property subject to the provisions of §280-F on the Internal Revenue Code, and recovery property placed in service in New York in taxable years beginning after December 31, 1984, and before 1994, and provided a deduction has not been disallowed by §28-06(l)(2), a taxpayer shall be allowed with respect to [recover] recovery property the amount allowable as the depreciation deduction pursuant to §167 of the Internal Revenue Code as such section would have applied to property placed in service on December 31, 1980. Note that for years prior to 1994, the disallowance of accelerated cost recovery deductions for property placed in service outside New York has been held to be unconstitutional.

§31. Subdivision (a) of section 28-07 of such rules is amended to read as follows:

(a) *General.* (Administrative Code §11-508(a)). If an unincorporated business is carried on both within and without New York City, for taxable years beginning before July 1, 1994 there shall be allocated to the City a fair and equitable portion of the excess of its unincorporated business gross income as determined under §28-05 of these [regulations]rules over its unincorporated business deductions subject to allocation as determined under §28-06 of these [regulations] rules, and, for taxable years beginning after June 30, 1994, there shall be allocated to the City a fair and equitable portion of the taxpayer's business income. If, for taxable years beginning before July 1, 1996, the unincorporated business has no regular place of business outside the City, all of such [excess] amounts shall be allocated to the City. The deductions under §28-08 of these [regulations]rules and the unincorporated business exemptions allowable under §28-09 of these [regulations]rules are not subject to allocation.

§32. Paragraph 2 of subdivision (b) of such section is amended to read as follows:

(2) If, for taxable years beginning before July 1, 1996, the unincorporated business has no regular place of business outside New York City, all of the excess of its unincorporated business gross income over its allocable unincorporated business deductions shall be allocated to the City. An unincorporated business does not have a regular place of business outside the City merely because sales may be made to, or services performed for or on behalf of, persons or corporations located without the City, or because such sales or services are made by or performed by an

independent factor, agent or contractor having a regular place of business without New York City.

§33. Paragraph 1 of subdivision (c) of such section is amended to read as follows:

(1) [The] Except as otherwise provided in paragraph (3) of subdivision (d) of this §28-07, the portion of the excess of the unincorporated business gross income over the deductions allocable to New York City may be determined from the books of the business if the methods used in keeping such books are approved by the Commissioner of Finance as fairly and equitably reflecting the income from the City.

§34 Paragraph 3 of subdivision (c) of such section is amended to read as follows:

(3) [Where,] Except as otherwise provided in paragraph (3) of subdivision (d) of this §28-07, where upon audit of the books and records of the taxpayer, the sources of the unincorporated business gross income within and without New York City, and the sources of the deductions, are ascertainable from such books and records, the proper tax due, or determined to be due, shall be arrived at by allocating items of income and deduction to the source of such items within and without the City. Thus, for example, for taxable years beginning before July 1, 1996, income from sales of tangible personal property is allocable to the office from which the sales arose (see: §28-07(d)). Items of expense (except for items of expense under §28-08 of these [regulations]rules for which no allocation is allowed) will, like items of income, also be allocated in accordance with the place of business to which such expenses are attributable. Thus, payroll and office expenses are attributable to the office to which the employee was assigned or where the expenses were incurred. Certain indirect items, however, which are not attributable to any one office or place of business will be apportioned among the various offices. For example, legal and auditing expenses, which are attributable to the unincorporated business entity in its entirety, will be apportioned among the various places of business in accordance with the gross income allocable to each such place of business.

§35. Paragraph 1 of subdivision (d) of such section is amended to read as follows:

(1) *Computation*. If [§28-07(c) does not apply to the taxpayer] the Commissioner of Finance determines that the methods used in keeping the books of the unincorporated business do not fairly and equitably reflect the taxpayer's income from the City for taxable years beginning before July 1, 1994, the portion of the excess of the unincorporated business gross income (computed under §28-05 of these [regulations]rules) over the unincorporated business deductions (allowable under §28-06 of these [regulations]rules,)and for taxable years beginning after June 30, 1994, the portion of the taxpayer's business income defined in Administrative Code §11-501.1(k), allocable to the City is determined by multiplying such [excess] amount by [the average of the following three percentages] a business allocation percentage determined by adding the following percentages and dividing the total by the

number of percentages, unless the taxpayer elects to use a double-weighted gross income percentage as provided in paragraph (2) of this subdivision (d), in which event the taxpayer's business allocation percentage is determined as provided in paragraph (2) of this subdivision (d):

(i) *Property percentage.* the percentage computed by dividing

(A) the average of the values, at the beginning and end of the taxable year, of real and tangible personal property connected with the unincorporated business and located within New York City, by

(B) the average of the values, at the beginning and end of the taxable year, of real and tangible personal property connected with the unincorporated business and located both within and without New York City. For this purpose, real property shall include real property rented to the unincorporated business. (See: §28-07(f).)

(ii) *Payroll percentage.* The percentage computed by dividing

(A) the total wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the unincorporated business carried on within New York City, by

(B) the total of all wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the unincorporated business carried on both within and without New York City.

(iii) *Gross income percentage.* (A) The percentage computed by dividing

[(A)](1) the gross sales or charges for services performed by or through an agency located within New York City, by

[(B)] (2) the total of all gross sales or charges for services performed within and without New York City. The sales or charges to be allocated to New York City shall include all sales negotiated or consummated, and charges for services performed, by an employee, agent, agency or independent contractor chiefly situated at, connected by contract or otherwise with, or sent out from, offices of the unincorporated business, or other agencies, situated within New York City. For taxable years beginning on or after July 1, 1996, the foregoing sentence shall not apply to the allocation of gross income from sales of tangible personal property. For taxable years beginning on or after July 1, 1996, sales of tangible personal property to be allocated to New York City shall include only sales where shipment is made to points within New York City.

(B) For taxable years beginning on or after January 1, 1996, in the case of a taxpayer engaged in publishing newspapers or periodicals, the sales or charges for services arising from sales of subscriptions to, and advertising contained in, such newspapers and periodicals will be allocated to New York City to the extent such newspapers or periodicals are delivered to points within the

City.

(C) For taxable years beginning on or after January 1, 1996, in the case of a taxpayer engaged in broadcasting radio or television programs, whether through the public airwaves, by cable, direct or indirect satellite transmission or other means of transmission, the sales and charges for services arising from the sale of subscriptions to such programs or from the broadcasting of such programs and of commercial messages in connection therewith, will be allocated to New York City according to the ratio of the number of listeners or viewers within the City to the total number of such listeners or viewers within and outside the City.

§36. Paragraphs 2, 3 and 4 of subdivision (d) of such section are designated as paragraphs 4, 5 and 6 and new paragraphs 2 and 3 are added to such subdivision to read as follows:

(2) *Double-weighted gross income percentage for manufacturing businesses*. (i) For taxable years beginning on or after July 1, 1996, a taxpayer that is a manufacturing business as defined below may elect to determine its business allocation percentage by adding together the percentages determined under subparagraphs (i), (ii), and (iii) of paragraph (1) of this subdivision (d) and adding to that sum an additional percentage equal to the percentage determined in subparagraph (iii) of paragraph (1) and dividing the total by the number of percentages. See paragraph (5) of this subdivision (d) for the determination of the business allocation percentage where one or more factors is missing.

(ii) For purposes of this paragraph (2), a "manufacturing business" is defined as an unincorporated business engaged primarily in the manufacturing and sale of tangible personal property. The term manufacturing includes the process, including assembly,

(A) of working raw materials into wares suitable for use by the use of machinery, tools, appliances or other similar equipment, or

(B) that gives new shapes, new qualities or new combinations to matter that has already been subjected to some artificial process, by the use of machinery, tools, appliances or other similar equipment.

For this purpose, an unincorporated business shall be deemed to be primarily engaged in manufacturing if more than 50 percent of its gross receipts for the taxable year are attributable to manufacturing. If an unincorporated entity is engaged in more than one unincorporated business, all such businesses shall be treated as a single business for purposes of determining whether more than 50 percent of the gross receipts for the taxable year of that business are from manufacturing. See §28-02(a)(4)(ii) of these rules.

(iii) An election to use the double-weighted gross income percentage must be made on a timely-filed original return (including extensions) for the taxable year. A separate election must be made for each taxable year. The election is irrevocable and cannot be made on an amended return except with the permission of the Commissioner of Finance upon such terms and as the

Commissioner may specify where the Commissioner concludes that such permission should be granted in the interests of fairness and equity due to changes in circumstances resulting from an audit adjustment. If a taxpayer fails to make an election to use the double-weighted gross income percentage, its business allocation percentage, where applicable, must be determined under the provisions of paragraph (1) of this subdivision (d).

(3) *Formula allocation required.* For taxable years beginning on or after January 1, 1996, in the case of a taxpayer that is substantially engaged in the business of publishing newspapers or periodicals, substantially engaged in the business of broadcasting radio or television programs, or substantially engaged in any combination of such businesses and such taxpayer is also engaged in any other unincorporated business, §28-07(c) of these rules shall not apply and the portion of the taxpayer's unincorporated business taxable income from all such businesses shall be determined using the allocation formula provided in this subdivision (d) unless the Commissioner of Finance determines that the income of the taxpayer from all unincorporated businesses carried on in whole or in part in the City is not fairly and equitably reflected, in which event the provisions of subdivision (e) shall apply. For purposes of this paragraph (3), a taxpayer shall be deemed to be substantially engaged in the business of publishing newspapers or periodicals or broadcasting radio or television programs, or any combination of such businesses, if more than ten percent of the taxpayer's gross receipts from all businesses are attributable to publishing newspapers or periodicals or broadcasting radio or television programs.

§37. Examples (i) and (ii) of paragraph 2, redesignated as paragraph 4, of such subdivision (d) of such section are amended to read as follows:

([2]4) *Examples.*

Example (i): [In the case of]Individual A is a manufacturer whose plant is located in Connecticut[, the]. The bulk of his sales are made in New York City through a rented sales office in New York City from which traveling salesmen cover the States of New York, New Jersey and Pennsylvania. For the purpose of expediting deliveries to customers, a warehouse is owned and maintained in New York City. In addition, independent consultants are employed in furtherance of the manufacturer's business. The following illustrates the application of the "allocation formula" for 1995: For the allocation of sales of tangible personal property for taxable years beginning on or after July 1, 1996, see §27-07(d)(1)(iii)(A)(2) and 27-07(d)(2) of these rules.

A	B	C	D
Description of Items used as factors	Total Factors within and without New York City	New York City Factors	Percent Column C is of Column B

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1. Value of the real and tangible personal property of the business (average of values at beginning and end of year)	$500,000	$35,000	7%
2. Wages, salaries and other personal service compensation paid during the year	400,000	140,000	35%
3. Gross sales or charges for services during the year	1,200,000	972,000	81%
4. Total of percentages in Column D			123%
5. Average of percentages (divide total percentages, item 4, by 3)			41%

[Example (ii):] The figures in Column B are the totals for the business both within and without New York City. The figures in Column C represent the following:

(A) Item 1. The average value of the real and tangible personal property within New York City. The real property entered here includes the owned warehouse and the value of the rented sales office in New York City. Tangible personal property consists of machinery, tools, implements and other equipment and goods, wares and merchandise.

(B) Item 2. Compensation paid to employees for services in connection with business carried on within New York City consists of the compensation of the New York City sales office and warehouse force and the salesmen traveling out of the New York City sales office. Fees paid for work done for the business by independent contractors located within and without the City cannot be included in the payroll factor. Only wages and other compensation paid to employees may be included.

(C) Item 3. Gross sales or charges for services performed by or through an agency located within New York City. The sales or charges to be allocated to New York City include all sales negotiated or consummated and charges for services performed by an

employee, agent, agency or independent contractor chiefly situated at, connected with by contract or otherwise, or sent out from offices of the unincorporated business or other agencies situated within the City. In this example, all sales made by the New York City sales office and the salesmen sent from that office, no matter in what State they may make the sales, are allocated to New York City.

Example (ii): The facts are the same as in example (i) except that the figures represent the results for 1997 and Item 3 represents solely receipts from sales of tangible personal property manufactured by the taxpayer and the amount of such receipts for sales shipped to points within the City (item 3 column C) is $600,000. The figure in column D of item 3 is therefore 50 percent. If the taxpayer elects to use the double-weighted gross income percentage as provided in paragraph (2) of this subdivision (d), items 4 and 5 would be determined as follows:

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4. Total of percentages in Column D adding Item 3 twice	142%
5. Average of percentages (divide total percentages, Item 4, by 4)	35.5%

§38. Paragraph 2, redesignated as paragraph 4, of such subdivision (d) of such section is amended to add a new example (iii) to read as follows:

Example (iii): Partnership A is substantially engaged in providing cable television service both inside and outside the City. All of Partnership A's gross receipts are attributable to its cable television service business. Therefore Partnership A is required to use formula allocation unless the Commissioner determines that the formula in paragraph (3) of this subdivision does not fairly and equitably reflect the business income in the City. Partnership A receives income from sales of advertising on its programs as well as income from subscriptions. Subscription prices are not uniform throughout Partnership A's service area; some subscribers pay a higher price than others do. Partnership A can identify the source of the subscription receipts directly by the location of the subscriber. In this case, the Commissioner may determine that the use of audience data for allocating subscription receipts does not fairly and equitably reflect Partnership A's subscription receipts from the City and, under subdivision (e) of this section, may require subscription receipts to be sourced according to subscriber location while advertising receipts must be sourced according to audience data.

§39. Paragraph 3 of such subdivision (d), redesignated as paragraph 5, is amended to read as follows.

([3]5) *Missing factors*. The allocation percentage is computed by adding together the percentages of the taxpayer's real and tangible personal property, payroll and gross income within New York City during the period covered by the return, and dividing the total of such percentages by three unless the taxpayer is a manufacturing business and elects to use a double weighted gross income percentage for a taxable year beginning on or after July 1, 1996, in which event the total of such percentages is divided by four. However, if one of the factors, for example, the payroll factor is missing, the other [two] percentages are added and the sum is divided by [two]the number of percentages, and if two of the factors are missing, the remaining factor percentage is the allocation percentage. (A factor is not missing merely because its numerator is zero, but it is missing if both its numerator and its denominator are zero.)

§40. Paragraph 1 of subdivision (f) of such section is amended to read as follows:

(1) Income and deductions from rental of real property of the unincorporated business and gain or loss from the sale, exchange or other disposition thereof are not subject to allocation under any of the provisions of these [regulations]rules but are considered as entirely derived from or connected with the State, other than this State, in which the real property is located, or if such property is located within this State, the political subdivision in which the property is located. Where a building or a parcel of real property is held partly for occupancy and use by the unincorporated business and partly for the production of rental income, the value thereof should be apportioned on a fair and equitable basis and only the portion of such value attributable to occupancy and use by the unincorporated business should be included in the property percentage of the allocation formula under §28-07(d). Nothing in this subdivision (f) of this §28-07 is to be construed to treat income, gain, loss or deductions from real property as derived from an unincorporated business carried on in whole or in part in New York City in contradiction of the provisions of §28-02(h) for taxable years beginning on or after July 1, 1994.

§41. Section 28-07 of such rules is amended by adding a new subdivision (i) to read as follows:

(i) *Allocation of investment income*. [reserved]

§42. Section 28-07 of such rules is amended by adding a new subdivision (j) to read as follows:

(j) *Allocation for entities with a distributive share of income, gain, loss or deduction derived from another unincorporated business.*

(1) *General.* If an unincorporated entity (the "partner") is a partner in another unincorporated entity (the "partnership"), carrying on an unincorporated business wholly or partly in New York City and either the partner or the partnership allocates a portion of its unincorporated business entire net income outside New York City, the partner must allocate its business income, if any, as

provided in paragraph (2) of this subdivision, and its investment income, if any, as provided in paragraph (3) of this subdivision. If the partner's distributive shares of the business and investment income of the partnership are not separately stated on the partnership's Internal Revenue Service Form 1065, Schedule K-1, with respect to the partner, the proportion of business and investment income in the partner's distributive share will be deemed to be the same as the proportion of business and investment income in the unincorporated business entire net income of the partnership before allocation.

Except as provided in subparagraph (ii) of paragraph (2) of this subdivision (j) (rental real estate), a partner must use the same method to allocate its distributive share of each item of business income, gain, loss or deduction from a given partnership, other than deductions not subject to allocation as provided in section 28-08 of these rules.

(2) *Allocation of business income.*

(i) (A) Except as otherwise provided in subparagraph (i)(B) of this paragraph, a partner must allocate to the City the same percentage of its distributive share of each item of a particular partnership's business income, gain, loss and deduction as the partnership allocated to the City for purposes of determining its own business income allocated to the City for the partnership's taxable year ending with or within the partner's taxable year.

(B) *Discretionary use of other methods.* The Commissioner of Finance in his or her discretion may permit or require a taxpayer partner to use another method to allocate its business income if the Commissioner determines that the method provided in subparagraph (i)(A) of this paragraph (2) does not result in a fair and equitable allocation to the City of the taxpayer partner's income.

(C) Alternative methods that may be permitted or required by the Commissioner of Finance include, but are not limited to, the following:

(a) a formula method whereby the partner calculates a single business allocation percentage that it applies to its own business income and to its distributive shares of business income from partnerships. In computing this business allocation percentage, the partner must include its percentage interest in the property, gross income and payroll within and without the City of the partnerships from which it receives a distributive share. For purposes of this subparagraph, a partner's percentage interest in a partnership's property, gross income and payroll will be deemed to be the same as the partner's percentage interest in the profits, losses and capital of the partnership as reflected on the partnership's Internal Revenue Service Form 1065, Schedule K-1, with respect to the partner for the partnership's taxable year ending within or with the partner's taxable year.

(b) a method whereby the partner's distributive share of income, gain, loss and deduction from a partnership is allocated by the partner's business allocation

percentage determined without regard to the business allocation factors or books and records of the partnership. This method may be appropriate where all diligent efforts by the partner to obtain the necessary information from the partnership have failed and the use of this method is not otherwise distortive.

(ii) Notwithstanding anything contained in subparagraph (i) of this paragraph (2) to the contrary, a partner must allocate its distributive share from a partnership of each item of income and deduction attributable to rental real estate and each item of gain or loss from the sale, exchange or other disposition of real estate in accordance with subdivision (f) of this section.

(3) *Allocation of investment income*.

(i) Except as otherwise provided in subparagraphs (ii) and (iii) of this paragraph, in computing its allocated investment income, the partner must allocate to the City its separate investment income, determined without regard to its distributive shares from partnerships, using an investment allocation percentage determined without regard to its percentage interest in the investment capital of any partnership. The partner must separately allocate to the City the same percentage of its distributive share of investment income of a particular partnership as the partnership allocated to the City for purposes of determining its own investment income allocated to the City for the partnership's taxable year ending with or within the partner's taxable year.

(ii) *Discretionary use of other methods*. The Commissioner of Finance in his or her discretion may permit or require the taxpayer to use another method to allocate its distributive share of investment income of the partnership if the Commissioner determines that the method provided in subparagraph (i) of this paragraph (3) does not result in a fair and equitable allocation to the City of the taxpayer's income.

(iii) Alternative methods that may be permitted or required by the Commissioner of Finance include, but are not limited to, a method whereby, in computing its investment allocation percentage, the partner includes its percentage interest of the items of investment capital that are used in computing the investment allocation percentages of the partnerships from which it receives distributive shares. In this method, the partner must then allocate the sum of its separate investment income and its distributive shares of investment income from other partnerships by the investment allocation percentage so computed.

(4) *Examples*. The following examples illustrate methods of allocation of business and investment income for entities that receive distributive shares. Because an entity that receives a distributive share from another entity subject to the UBT will generally be eligible for the UBT Paid Credit, these examples also illustrate the calculation of the credit where the entities allocate a portion of their income outside the City. The facts of the following examples have been simplified and do not reflect the deduction allowed by Ad. Code section 11-509(a) or the exemption allowed by Ad. Code section 11-510(1). The effect of other credits allowed under Ad. Code section 11-

503 also is not reflected. For further information about the UBT Paid Credit see §28-03(d) of these rules.

Example 1: Allocation of Business Income--Books and Records

AB is a partnership doing business inside and outside New York City. AB has two partners, A and B, both of which are also partnerships doing business inside and outside New York City. A's partnership interest in AB is 60% and B's is 40%. None of the partnerships have any investment income.

AB, A, and B all allocate on the basis of books and records and A and B allocate their distributive shares from AB pursuant to §28-07(j)(2)(i)(A) of these rules. AB has unallocated unincorporated business entire net income ("UBENI") of $1000x of which $700x is allocable by its books and records to its business location in the City and $300x is allocable to its business location outside the City. A's separate unallocated UBENI is $1000x of which $500x is allocable to its business location in the City and $500x is allocable to its business location outside of the City. B's separate unallocated UBENI is $100x of which $90x is allocable to its business location in the City and $10x is allocable to its business location outside of the City.

A's Allocated Unincorporated Business Taxable Income ("UBTI")

A's allocated UBTI is $920x, composed of A's separate allocated UBTI of $500x and A's 60% distributive share of AB's allocated UBTI of $700x allocated to the City.

Calculation of A's UBT Paid credit and Tax Liability.

Measure 1: A's distributive share percentage of AB's UBT is $16.8x (A's distributive share percentage of 60% multiplied by AB's UBT liability of $28x.)

Measure 2: A's UBT liability on its allocated UBTI of $920x would be $36.8x. Without its distributive share of $420x from AB, A's allocated UBTI would be $500x on which the tax would be $20x. The incremental tax effect of the distributive share is $16.8x ($36.8x-$20x = $16.8x.)

Therefore, A's UBT paid credit is $16.8x, reducing its UBT liability to $20x.

B's Allocated UBTI

B's allocated UBTI is $370x, composed of B's separate allocated UBTI of $90x and B's 40% distributive share of AB's allocated UBTI of $700x.

Calculation of B's credit.

Measure 1: B's distributive share percentage of AB's UBT is $11.2x (B's distributive share percentage of 40% multiplied by AB's UBT liability of $28x.)

Measure 2: B's UBT liability on its allocated UBTI of $370x would be $14.8x. Without its distributive share of $280x from AB, B's allocated UBTI would be $90x on which the tax would be $3.6x. The incremental tax effect of the distributive share is $11.2x ($14.8x-$3.6x = $11.2x.)

Therefore, B's UBT paid credit is $11.2x, reducing its tax liability to $3.6x.

Example 2: Allocation of Business Income--Formula Allocation with a Flow Through of Factors

The facts are the same as in Example 1 except that it has been determined by the Commissioner of Finance that the method used in example 1 is distortive and that the taxpayer must use the method described in §28-07(j)(2)(i)(C)*(a)* of these rules. (This example is provided to illustrate the calculation of the allocation percentages and applicable UBT paid credit and is not intended to illustrate the circumstances under which the Commissioner will find the use of an allocation method to be distortive.) All three partnerships allocate their income pursuant to §28-07(d) of these rules (the formula method). AB, A and B are not manufacturing firms eligible to elect to use a double-weighted gross income factor. AB's business allocation percentage is 70% computed as follows:

AB	Total w\in & w/o the City	NYC	% in NYC
Property	$10,000	$7,000	70%
Wages	$1,000	$600	60%
Gross Income	$5,000	$4,000	80%
Total			210%
Average			70%

Without taking into account its distributive share from AB, A has a 50% business allocation percentage computed as follows:

A	Total w\in & w/o the City	NYC	% in NYC
Property	$10,000	$5,000	50%
Wages	$1,000	$600	60%

Gross Income	$5,000	$2,000	40%
Total			150%
Average			50%

Without taking into account its distributive share from AB, B has a 90% business allocation percentage computed as follows:

B	Total w\in & w/o the City	NYC	% in NYC
Property	$10,000	$9,000	90%
Wages	$1,000	$850	85%
Gross Inc.	$5,000	$4750	95%
Total			270%
Average			90%

AB's UBENI is $1000x. AB's allocated UBTI is $700x. AB pays UBT of $28x. AB's Form NYC-204 indicates that A's distributive share from AB is $600x and that B's distributive share is $400x. A and B are subject to the UBT and are entitled to UBT Paid Credits based upon their distributive shares from AB. A's separate UBENI is $1000x. B's separate UBENI is $100x.

AB, A and B all allocate business income using formula allocation and compute their business allocation percentage pursuant to §28-07(j)(2)(i)(C)(*a*) of these rules.

Calculation of A's Allocation Percentage

A	Total w\in & w/o City	NYC	% in NYC
A's Property	$10,000	$5,000	
60% of AB's Property	$ 6,000	$4,200	
Total Property	$16,000	$9,200	57.50%
Wages A	$1,000	$600	
60% of AB's wages	$600	$360	
Total Wages	$1,600	$960	60%
A's Gross Income	$5,000	$2,000	
60% of AB's G.I.	$3,000	$2,400	
Total G.I.	$8,000	$4,400	55%
Total			172.50%
Average			57.50%

A's Allocated UBTI

A's total unallocated UBENI is $1600x (separate UBENI of $1000x + distributive share of AB's UBENI ($600x).) A's allocated UBTI is $920x (57.5% of $1600x = $920x.)

Calculation of A's UBT Paid Credit.

Measure 1: A's distributive share percentage of AB's UBT is $16.8x as in example 1 above.

Measure 2: A's UBT liability on its allocated UBTI of $920x would be $36.8x. Without its distributive share of $600x from AB and without taking into account its share of AB's allocation factors, A's allocated UBTI would be $500x (50% of $1000x) on which the tax would be 20x. The incremental tax effect of the distributive share is $16.8x ($36.8x-$20x = $16.8x.)

Therefore, A's UBT paid credit is $16.8x, reducing its UBT liability to $20x.

Calculation of B's Allocation Percentage

B	Total w/in & w/o NYC	NYC	% in NYC
B's Property	$10,000	$9,000	
40% of AB's Property	$4,000	$2,800	
Total Prop.	$14,000	$11,800	84.29%
B's Wages	$1,000	$850	
40% of AB's Wages	$400	$240	
Total Wages	$1,400	$1,090	77.86%
B's Gross Income	$5,000	$4,750	
40% of AB's G.I.	$2,000	$1,600	
Total G.I.	$7,000	$6,350	90.71%
Total			252.86%
Average			84.29%

B's Allocated UBTI

B's total unallocated UBENI is $500x (separate UBENI of $100x + distributive share of AB's UBENI ($400x).) B's allocated UBTI is $421x (84.29% of $500x = $421x.)

Calculation of B's UBT Paid Credit.

Measure 1: B's distributive share percentage of AB's UBT is $11.2x, as in example 1 above.

Measure 2: B's UBT liability on its allocated UBTI of $421x would be $16.86x. Without its distributive share of $400x from AB and without taking into account its share of AB's allocation factors, B's allocated UBTI would be $90x (90% of $100x) on which the tax would be $3.6x. The incremental tax effect of the distributive share is $13.26x ($16.86x-$3.6x = $13.26x.)

Therefore, B's UBT paid credit is $11.2x reducing its tax liability to $5.66x.

Example 3: Allocation of Business Income--Formula Allocation without a Flow-Through of Factors

All facts are the same as in Example 2 except that pursuant to §28-07(j)(2)(i)(B) of these Rules, A and B receive written permission from the Commissioner of Finance to use the method specified in §28-07(j)(2)(i)(C)*(b)* of these Rules under which they allocate their distributive shares of income, gain, loss and deductions from AB using their own business allocation percentages without regard to the business allocation percentage of AB. (This example is provided to illustrate the calculation of the allocation percentages and applicable UBT paid credit and is not intended to illustrate the circumstances under which the use of an alternative allocation method will be allowed.)

A's Allocated UBTI

A's total unallocated UBENI is $1600x (separate UBENI of $1000x + distributive share of AB's UBENI ($600x).) A's allocated UBTI is 800x (50% of $1600x = $800x.)

Calculation of A's credit.

Measure 1: A's distributive share percentage of AB's UBT is $16.8x as in example 1 above.

Measure 2: A's UBT liability on its allocated UBTI of $800x, would be $32x. Without its distributive share of $600x from AB, A's allocated UBTI would be $500x (50% of $1000x) on which the tax would be $20x. The incremental tax effect of the distributive share is $12x ($32x-$20x=$12x.)

Therefore, A's UBT paid credit is $12x reducing its tax liability to $20x.

B's Allocated UBTI

B's total unallocated UBENI is $500x (separate UBENI of $100x + distributive share of AB's UBENI ($400x).) B's allocated UBTI is $450x (90% of $500x = $450x.)

Calculation of B's credit.

Measure 1: B's distributive share percentage of AB's UBT is $11.2x as in example 1.

Measure 2: B's UBT liability on its allocated UBTI of $450x, would be $18x. Without its distributive share of 400x from AB, B's allocated UBTI would be $90x (90% of $100X) on which the tax would be $3.6x. The incremental tax effect of the distributive share is $14.2x ($18x-$3.6x=$14.2x.)

Therefore, B's UBT paid credit is $11.2x reducing its tax liability to $6.8x.

§43. Paragraph (1) of subdivision (b) of section 28-09 of these rules is amended to read as follows:

(1) General. For taxable years beginning before July 1, 1994, a [A] partnership (or other unincorporated entity which is considered to be a partnership for unincorporated business tax purposes, see §28-02(c) of these [regulations] rules) is allowed an exemption in addition to the specific exemption described in §28-09(a)(1) if a partner or member of such partnership or other entity is, in its separate capacity, taxable under the [City corporate business] general corporation tax imposed pursuant to Chapter 6 of Title 11 of the Administrative Code or the [City] unincorporated business tax imposed pursuant to Chapter 5 of Title 11 of the Administrative Code. The additional exemption allowable in such a case is the amount of such partner's or member's proportionate interest in the excess of the partnership's unincorporated business gross income (as computed under §28-05 of these [regulations] rules) over the partnership's unincorporated business deductions allowed under §§28-06 and 28-08 of these [regulations]rules. If the unincorporated business of a partnership which qualified for the additional exemption under this subdivision (b) is carried on both within and without New York City, the proportionate interest of a partner or member with respect to which the additional exemption is allowable is computed without regard to any allocation the partnership may be permitted to make under §28-07 of these [regulations] rules, other than an allocation applicable to a net operating loss deduction allowable under §28-06 of these [regulations] rules.

No additional exemption is allowed for amounts distributed to an individual member of a partnership who also carries on his own separate and independent unincorporated business and who, pursuant to §28-05(a) of these [regulations] rules, is not required or permitted to include his distributive share of partnership income in computing his own separate unincorporated business gross income.

Notwithstanding anything in these rules to the contrary, no additional exemption shall be allowed to an unincorporated business for any taxable year of the unincorporated business beginning after June 30, 1994.

§44. Paragraph 1 of subdivision (a) of section 28-15 of such rules is amended to read as follows:

(1) Every unincorporated business shall make a declaration of estimated unincorporated business tax for each taxable year if: (i) for taxable years beginning after 1986 but before 1996, its unincorporated business taxable income can reasonably be expected to exceed [$2,500] $15,000; (ii) for taxable years beginning in 1996, its unincorporated business taxable income can reasonably be expected to exceed $20,000; and (iii) for taxable years beginning after 1996, its estimated unincorporated business tax can reasonably be expected to exceed $1,000 for the taxable year. The declaration must cover a calendar year accounting period, or a full fiscal year if the taxpayer files its unincorporated business tax return on a fiscal year basis, unless a declaration for a short period is required by §28-15(k).

§45. Subdivision (b) of such section is amended to read as follows:

(b) *Contents of declaration.* For the purpose of making the declaration, the amount of the unincorporated business taxable income which the business can reasonably be expected to receive or accrue, depending upon the method of accounting upon which the unincorporated business taxable income is computed, or, for taxable years beginning after 1996, the amount of the estimated tax, shall be determined upon the basis of the facts and circumstances existing at the time prescribed for the filing of the declaration as well as those facts and circumstances reasonably to be anticipated for the taxable year.

§46. Paragraph 1 of subdivision (f) of such section is amended to read as follows:

(f) *Time for filing declaration by an unincorporated business having estimated unincorporated business tax of $40 or less for taxable year.* (Administrative Code, §11-511(d)(2)).

(1) For taxable years beginning before 1997, [An] an unincorporated business which has an estimated unincorporated business tax of $40 or less may file its declaration for the taxable year as follows:

(i) if on a calendar year basis, on or before the 15th day of January of the succeeding calendar year, or

(ii) if on a fiscal year basis, on or before the 15th day of the month immediately following the close of such taxable year.

(iii) in the case of a short taxable year, on or before the 15th day of the month immediately following the close of such taxable year.

§47. Subdivision (a) of section 28-18 of such rules is amended to read as follows:

§28-18 Returns and Payment of Tax. (a) *Returns--filing requirements.* (Administrative Code §11-514(a)). For taxable years beginning after 1986 but before 1997, [A] a return on a form prescribed by the Commissioner of Finance must be made and filed for each taxable year by or for every unincorporated business which is carried on in this City to any extent, and which has either unincorporated business gross income of more than $10,000, computed without deduction for cost of goods sold or services performed and without regard to allocation under §28-07 of these [regulations]rules, regardless of whether or not it has unincorporated business taxable income[. In addition, every unincorporated business which has unincorporated business gross income of $10,000 or less, but], or [which has] any amount of unincorporated business taxable income [must also make and file a return for each taxable year in which it carries on business in the City to any extent]. In addition, for taxable years beginning after 1996, a return on a form prescribed by the Commissioner of Finance must be made and filed for each taxable year by or for every unincorporated business that is carried on in this City to any extent and that has either (1) unincorporated business gross income, computed without deduction for cost of goods sold or services performed and without regard to allocation, of more than $25,000 in the case of a partnership, or more than $75,000 for any other unincorporated business, regardless of whether it has unincorporated business taxable income, or (2) unincorporated business taxable income of more than $15,000 in the case of a partnership, or more than $35,000 for any other unincorporated business. Any return required under this subdivision (a) shall be made by the individual or unincorporated entity who or which was engaged in the conduct or the liquidation of the business, unless such individual is deceased, or unless such individual or entity is under a disability, in which case the return shall be made and filed by the executor or administrator (in the case of a deceased individual), or by any fiduciary or other person charged with the property of the individual or entity, or by a duly authorized agent. The foregoing provision regarding the filing of returns by fiduciaries or agents in the case of death or disability of an individual taxpayer does not relieve the taxpayer or his estate from liability if such fiduciary, agent or other person omits or fails to file any return required under Chapter 5 of Title 11 of the Administrative Code. If an individual or other unincorporated entity is engaged in several distinct business activities, only one return shall be filed. In such a case, however, a separate schedule for each activity should be filed with the return.

§48. Section 28-18 of such rules is amended to add a new subdivision (j) thereto to read as follows:

(j) *Reporting requirements for parking services provided to tenants.* Administrative Code §11-502(d). For taxable years beginning on or after July 1, 1996, an owner, lessee or fiduciary holding, leasing or managing real property and operating a garage or other similar facility at any such property that is open to the public must provide the following information for each such garage or similar facility on a return as required by subdivision (a) of this §28-18 in order to treat parking, garaging or motor vehicle storage services provided to tenants at any such property as incidental to the holding, leasing or management of the real property and not part of an unincorporated business. A return must be filed and the following information submitted regardless of whether, taking into account the exclusion

of the income from the provision of parking or similar services to tenants, the taxpayer's gross income from all unincorporated businesses carried on in whole or in part in the City would be below that necessitating the filing of a return under subdivision (a) of this §28-18. Failure to submit the following information for a garage or similar facility at any such property in any material respect will result in parking, garaging or vehicle storage services rendered to tenants at that property being subject to the tax imposed by Chapter 5 of Title 11 of the Administrative Code. However, inadvertent omissions of information for an insignificant number of tenants or minor inadvertent factual errors will not cause such services to be taxable.

The taxpayer must submit with the return required by subdivision (a) of this §28-18 a statement for each garage or other similar facility for which an exclusion is claimed pursuant to §28-02(h)(2)(iii) containing:

(1) the parking facility name;

(2) the parking facility address;

(3) the license number of the facility, if applicable;

(4) the licensed capacity of the facility, if licensed;

(5) the total number of transactions and amount of receipts for the taxable year from all sales of parking services including prepaid parking services, all parking services provided without charge and all parking services paid for by a person other than the person whose vehicle is parked, garaged or stored (such as a merchant validation of a parking ticket);

(6) the total number of transactions and amount of receipts from sales of monthly or longer term parking services, including a designation of each transaction and receipt as exempt from the eight percent Manhattan parking tax, where applicable; and

(7) the total number of transactions and amount of receipts from sales of monthly or longer term parking services provided to tenants.

The taxpayer must maintain records containing the name, address, and license plate number for each tenant and must make such records available to the Department upon request.

BASIS AND PURPOSE OF AMENDMENTS

These amendments affect the portion of the Rules Relating to the New York City Unincorporated Business Tax governing the definition of an unincorporated business, the imposition of the tax, the definition of unincorporated business taxable income, the definition of unincorporated business gross income, the allocation of unincorporated business income, the unincorporated business deductions, the unincorporated business exemptions and the filing of returns. The purpose of these amendments is to reflect legislative changes made to various aspects of the tax by Ch. 485 of the Laws of 1994, Chs. 128 and 625 of the Laws of 1996 and Ch. 481 of the Laws of 1997.

/S/ Andrew S. Eristoff
Commissioner of Finance