NEW YORK CITY TAX APPEALS TRIBUNAL

In the Matter of	:	DECISION
A&E TELEVISION NETWORKS, LLC	:	TAT (E) 20-32 (UB)
Petitioner.	:	

The Commissioner of Finance of the City of New York (Respondent) filed an exception to a Determination of an Administrative Law Judge (ALJ) dated July 2, 2024 (ALJ Determination), which cancelled the Notice of Determination issued by the New York City Department of Finance (Department), dated March 29, 2018 (Notice), asserting New York City Unincorporated Business Tax (UBT) deficiencies for the tax periods ended December 31, 2012, September 30, 2013, and September 30, 2014.[1]

Respondent was represented by Adam C. Dembrow, Esq. and Joshua G. Gamboa, Esq., both from the New York City Law Department. Petitioner was represented by Ted W. Friedman, Esq., of Eversheds Sutherland LLP. The parties submitted a Stipulation of Facts, in which the parties stipulated to certain facts and to the authenticity of certain exhibits, pursuant to §1-109 of the New York City Tax Appeals Tribunal Rules of Practice and Procedure (Tribunal Rules).[2] The parties consented to have this matter determined on submission without the need for appearance at a hearing, pursuant to §1-

[1] Except as otherwise noted, the ALJ's Findings of Fact, although paraphrased and amplified herein, generally are adopted for purposes of this Decision. Certain Findings of Fact not necessary to this Decision have not been restated and can be found in the ALJ Determination.
[2] 20 RCNY §1-109.

09(f) of the Tribunal Rules.[3] Oral argument before the Tribunal was held on May 20, 2025.

Petitioner, a limited liability company organized under the laws of Delaware and classified as a partnership for federal income tax purposes, is a media company that owns a portfolio of non-fiction and entertainment-based television brands.[4] Petitioner is involved in the creation, acquisition and distribution of television programming and other content that is licensed to various distributors with worldwide audiences and is subject to the UBT.[5]

Prior to 2009, Petitioner was owned as follows: 25% by NBC-A&E Holding, Inc. (NBCUniversal); 37.5% by Hearst Communications, Inc. (Hearst Communications); and 37.5% by Disney/ABC International Television, Inc. (Disney/ABC TV) (collectively, the Partners).

In 2009, in connection with Petitioner's acquisition of Lifetime Entertainment Services, NBCUniversal's equity in Petitioner was reduced from 25% to 15.8%. The Hearst Communications equity increased from 37.5% to 42.1% and the Disney/ABC TV equity increased from 37.5% to 42.1%. The Partners amended Petitioner's LLC Agreement pursuant to which NBCUniversal was granted the option to require Petitioner to redeem a portion of NBCUniversal's equity in Petitioner (Put Option).[6]

[3] 20 RCNY §1-09(f).
[4] Amended Stipulation of Facts, #1 and #3.
[5] Amended Stipulation of Facts, #2 and #4.
[6] Amended Stipulation of Facts, #6 and #7.

In 2012, in connection with NBCUniversal holding the Put Option, the Partners agreed that Petitioner would redeem all of NBCUniversal's equity in Petitioner in August 2012, in exchange for $3.025 billion cash (the Redemption). Petitioner financed the Redemption with approximately $2.45 billion debt from unrelated parties (the Redemption Debt) and $600 million in cash contributions from the other two partners.[7]

For federal income tax purposes, Petitioner reported the Redemption as a distribution and the interest expense attributable to the Redemption debt as a deductible business expense.[8] The Internal Revenue Service (IRS) audited Petitioner's 2012 Form 1065, U.S. Return of Partnership Income, and specifically requested information about Petitioner's claimed interest expense deduction relating to the Redemption debt.[9] At the conclusion of the audit the IRS proposed no adjustment to Petitioner's interest expense deduction and signed a settlement agreement with Petitioner (Settlement Agreement).[10] The IRS treated Petitioner's interest expense deduction in connection with the redemption as an ordinary and necessary business expense properly deductible under Internal Revenue Code (IRC) Section 162.

On March 29, 2018, the Department issued the Notice asserting a deficiency of UBT relating to tax periods ended December 31, 2012, September 30, 2013, and September 30, 2014. The Notice contained the following explanation: "Interest expense

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[7] Amended Stipulation of Facts, #8 and #9.
[8] Amended Stipulation of Facts, #10–13.
[9] Amended Stipulation of Facts, #14–16.
[10] Amended Stipulation of Facts, #17–20. Based on the Settlement Agreement, Petitioner filed an amended UBT return relating to 2012. The IRS did not audit Petitioner's federal income tax returns relating to tax years ended 2013 or 2014. Id, #22.

for debt financed distribution was adjusted by 94% as it was deemed not business related".

The UBT is imposed "on the unincorporated business taxable income of every unincorporated business wholly or partly carried on within [the City]." Admin. Code § 11-503(a). The unincorporated business taxable income of an unincorporated business is generally defined as the excess of its unincorporated business gross income[11] over its unincorporated business deductions. Admin. Code § 11-505. Admin. Code § 11-507 defines "unincorporated business deductions of an unincorporated business" as:

> "the items of loss and deduction directly connected with or incurred in the conduct of the business, *which are allowable for federal income tax purposes for the taxable year* (including losses and deductions connected with any property employed in the business), with [certain] modifications…." (emphasis added).[12]

The sole question before us is whether unincorporated business deductions are strictly those "which are allowable for federal income tax purposes for the taxable year" (subject to certain modifications as provided in the UBT), or whether the language "directly connected with or incurred in the conduct of the business" adds an additional requirement for deductibility. Respondent argues the latter, and that the "directly connected" language allows Respondent to deny under the UBT a deduction allowable

[11] The term "unincorporated business gross income" means "the sum of the items of income and gain of the business, of whatever kind and in whatever form paid, includible in gross income for the taxable year for *federal income tax purposes*…." Admin. Code § 11-506(a)(1) (emphasis added).

[12] The Rules of the City of New York, Chapter 28 (Unincorporated Business Tax) of Title 19 (Department of Finance), state that, "Except as otherwise provided in this section, the unincorporated business deductions of an unincorporated business…means the items of loss and deduction…which are allowable for Federal income tax purposes for the taxable year and which are directly connected with or incurred in the conduct…of the business…." 28 RCNY § 6(a).

for federal income tax purposes without, it seems, any statutory standard restraining Respondent from overriding a federal deduction. Respondent's interpretation, thus, allows it to deny an allowable federal deduction under the UBT by imposing its own alternative interpretation of deductibility that differs from the federal income tax. Respondent essentially rejects federal conformity and applies it only where Respondent chooses to.

While Petitioner and Respondent both agree that Petitioner's deduction for the interest on the debt it incurred to redeem all of NBCUniversal's equity was allowable for federal income tax purposes for the taxable year and that there are no applicable modifications here,[13] the parties disagree on whether the "directly connected" language of Admin. Code § 11-507 nevertheless allows Respondent to deny the deduction.

The ALJ Determination granted the petition and denied the Notice, concluding that the determination of whether a particular item is "directly connected with or incurred in the conduct of the business" must be made under the applicable federal standard. [14] The ALJ reasoned that since the interest expense attributable to the Redemption Debt (Redemption Interest Expense) was allowable for federal income tax purposes and none of the enumerated modifications of Administrative Code § 11-507 apply, the Redemption Interest expense is an allowable deduction for City UBT purposes.[15]

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[13] ALJ Determination, at 7. Twenty-four modifications are enumerated in Administrative Code § 11-507, some of which require that certain expenses deductible for federal income tax purposes are added back to taxable income for UBT purposes. The deduction at issue in this case is not subject to any of the modifications.
[14] ALJ Determination, at 18.
[15] *Id*.

The ALJ considered the language, statutory structure, and legislative history of the 1960 UBT amendment to Administrative Code § 11-507 adding the language "which are allowable for federal income tax purposes for the taxable year."[16] In light of the legislative history, the ALJ considered Respondent's argument that the addition of that language was, nevertheless, ambiguous with respect to whether substantial conformity between the UBT and the federal income tax is required.[17] On the one hand, the ALJ noted, the added language could be read in Petitioner's favor as explaining or clarifying the phrase prior to the comma in "the items of loss and deduction directly connected with or incurred in the conduct of the business**,** which are allowable for federal income tax purposes for the taxable year.…" language of Administrative Code § 11-507. On the other hand, the ALJ reasoned that the comma could arguably be read to suggest two distinct parts of a compound sentence, and consequently two distinct requirements, in support of Respondent's position.

After dismissing Respondent's contention that Petitioner's interpretation would necessarily result in certain language in the statute becoming superfluous, the ALJ concluded that the legislative history of the UBT amendment demonstrates that the statutory reforms were indeed intended to bring the UBT into substantial conformity with the federal income tax. Ultimately the ALJ concluded that, consistent with prior New York State Tax Appeals Tribunal and New York State Court opinions, "when considered in the context of the legislative history, it is clear that Petitioner's interpretation…is the

[16] ALJ Determination, at 13-15. The language was added by L 1960, Ch 564.
[17] ALJ Determination, at 10-11.

only reasonable construction of the statute, and that the [allowable for federal income tax purposes phrase] was included in the definition of unincorporated business deductions to conform the standard of the ["directly connect with" phrase] to the applicable standard for federal income tax purposes."[18]

Petitioner argues that "[t]he phrase 'which are allowable for federal income tax purposes' in NYC Administrative Code § 11-507 means that the City looks to federal deductions as the starting point for determining UBT deductions, and then provides for specifically enumerated statutory modifications to those deductions".[19] In other words, according to Petitioner, once it is conceded that the deduction at issue was allowable for federal income tax purposes, it is necessarily allowable for City UBT purposes given that no enumerated statutory modification applies here.

Respondent contends that, irrespective of whether a deduction has already been allowed for federal income tax purposes, the City must first independently[20] find that an item of loss or deduction is directly connected with or incurred in the conduct of the business before the City looks to see whether the deduction was allowable for federal income tax purposes. Respondent's position is that "[a]n expense not satisfying *both* of these requirements is not an unincorporated business deduction".[21] According to Respondent, irrespective of whether any statutory modifications apply and

[18] ALJ Determination, at 15.
[19] Petitioner's Reply Brief, at 4-5.
[20] Notably, under certain circumstances, the City is not required to accept as correct a change in taxable income at the Federal level and may conduct an independent audit or investigation. *See* Rules of the City of New York Unincorporated Business Tax (19 RCNY) 28-20(d).
[21] Respondent's Opening Brief, at 4.

notwithstanding that the deduction at issue was allowable for federal income tax purposes here, the City could nevertheless disallow the deduction if the City believes that the deduction in issue is not directly connected with or incurred in the conduct of the business.

In other words, Respondent contends that there is a "difference between the deductions allowable for federal income tax purposes under Internal Revenue Code (26 USC) § 162 ("ordinary and necessary expenses")[22] and the deductions allowable for purposes of the New York City Unincorporated Business Tax…."[23] Respondent contends that, statutory modifications aside, the deductions under Administrative Code § 11-507 are "narrower" than the deductions allowable under the Internal Revenue Code.[24] Respondent contends that, "to be deductible for UBT purposes, an expense must be both 'ordinary and necessary' (i.e., deductible for federal income tax purpose) *and* be 'directly connected with or incurred in the conduct of the business'". [25]

Building on the argument that, even where no statutory modifications apply, the City has the discretion to make an independent determination about the deductibility of

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[22] Internal Revenue Code § 162(a) provides that "[t]here shall be allowed as a deduction all the *ordinary and necessary* expenses paid or incurred during the taxable year in carrying on any trade or business..." (emphasis added). The United States Supreme Court defined the terms "ordinary" and "necessary" in *Welch v. Helvering*, 290 U.S. 111 (1933). The Court stated that "ordinary" implies that the expenses are common to the business in which they occur, while "necessary" means "appropriate and helpful". *Id* at 113-15. U.S. Department of Treasury Regulations interpreting Internal Revenue Code Section 162(a) provide that "[b]usiness expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business...." 26 CFR § 1.162-1(a).

[23] Respondent's Opening Brief, at 1.

[24] *Id*.

[25] Respondent's Opening Brief, at 2. We note that Respondent's stated contention that a deduction for UBT purposes must be "directly connected with or incurred in the conduct of the business" is consistent with the federal standard as outlined in 26 CFR § 1.162-1(a). *See* footnote 22, *supra*.

an otherwise allowable expense for federal purposes, Respondent then contends that the deduction at issue in this case was not directly connected with or directly incurred in Petitioner's business. Respondent's contention, however, stands in direct contradiction to its concession that the deduction is allowable for federal income tax purposes. It is difficult to fathom how an expense can satisfy the regulatory definition of a deductible "ordinary and necessary business expense" under 26 CFR § 1.162-1(a) and be "directly connected with or pertaining to the taxpayer's trade or business" yet fail to satisfy the "directly connected" language under the UBT. Respondent's argument is circular, which it must be to essentially nullify the Legislature's clear "federal conformity" mandate.

Respondent contends that the statute is "clear and unambiguous" and cites to the Rules of the City of New York to support its contention that "allowable for federal income tax purposes" and "directly connected with or incurred in the business" are two distinct requirements.[26] Respondent also urges us to disregard legislative history on the basis that the statute at issue here is "unambiguous": "[W]here, as here, the language of the statute in question is unambiguous, recourse to legislative history is inappropriate".[27]

In support of its position, Petitioner argues that legislative history confirms that the amended definition of "unincorporated business deductions" brought those deductions into substantial conformity with the federal income tax. Petitioner contends that because none of the modifications in Administrative Code § 11-507 relate to third-

[26] *See* Respondent's Opening Brief, at 4; *see also* footnote 12, *supra*.
[27] Respondent's Opening Brief, at 8.

party interest expense, the legislature "clearly intended those expenses to be deductible for UBT purposes in the same manner that such expenses are deductible for federal income tax purposes."[28] Petitioner further contends that "the exact argument the Department has advanced in this case has been expressly rejected by the New York State Tax Appeals Tribunal" in the *Matter of New York Yankees Partnership.*[29]

During oral argument Respondent contended that "this case hinges on a comma" and that the comma which precedes the "which are allowable for federal income tax purposes for the taxable year" language in Administrative Code § 11-507 effectively negates federal conformity.[30]

For the following reasons we affirm the ALJ Determination, grant the petition and deny the Notice.

In *Matter of Brian Elenson v. Nassau County,* [31] the Appellate Division, relying on longstanding New York precedent, stated:

> "[P]unctuation . . . is subordinate to the text and is never allowed to control its plain meaning, but when the meaning is not plain, resort may be had to those marks . . . in order to make the author's meaning clear . . . Punctuation may perhaps be resorted to when no other means can be found of solving an ambiguity, but not in cases where no real ambiguity exists except what punctuation itself creates [citations and internal quotes omitted]".

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[28] Peitioner's Opening Brief, at 12.
[29] DTA No. 800263, 1991 N.Y. Tax LEXIS 590 (N.Y.S. Tax App. Trib. Nov. 7, 1991).
[30] The doctrine of federal conformity holds that, where there is a provision of New York tax law that is modeled after a virtually identical provision in the IRC, that provision of New York tax law should be construed in conformity with the IRC. *See Matter of Friedsam v. State Tax Comm'n.*, 64 N.Y.2d 76, 80-81 [1984]; *Matter of Marx v Bragalini*, 6 N.Y.2d 322, 333 (1959).
[31] 150 AD3d 1109, 1111 (2d Dept 2017). *See also USNB of Oregon v. Independent Ins. Agents*, 508 U.S. 439, 454-455 (1993).

The punctuation at issue in this case is the comma which precedes the "which are allowable for federal income tax purposes for the taxable year" language in Administrative Code § 11-507.

A comma has been defined as "a point used to mark the smallest structural divisions of a sentence" or "as a rhetorical punctuation mark indicating the slightest possible separation in ideas or construction."[32] The Court went on to note that, "[i]n a document which contains punctuation marks, the words, and not the punctuation, are the controlling guide in its construction….Punctuation in writings, therefore, may sometimes shed light upon the meaning…, but it must never be allowed to overturn what seems the plain meaning of the whole document."[33]

The Court of Appeals of New York has stated that "[w]hen presented with a question of statutory interpretation, our primary consideration is to ascertain and give effect to the intention of the Legislature".[34] We must afford "the statute a sensible and practical over-all construction, which is consistent with and furthers its scheme and purpose and which harmonizes all its interlocking provisions".[35]

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[32] *Travelers Insurance Co. v. Pomerantz*, 124 Misc. 250, 256, 207 N.Y.S. 81 (Sup.Ct.1924).
[33] *Id* at 256-57.
[34] *Matter of Daimler Chrysler Corp. v. Spitzer*, 7 N.Y.3d 653, 660 (2006). One of the fundamental considerations in statutory construction is "the general spirit and purpose underlying (a statute's) enactment;" the construction which furthers "the object, spirit and purpose of the statute" is the one to be preferred. *See* McKinney's Statutes § 96. Moreover, "[i]n the interpretation of statutes, such construction is given the language as will best effectuate the legislative intent, without reference to the accurate grammatical construction of words, phrases and sentences". *Id* at § 251.
[35] *Matter of Long v Adirondack Park Agency*, 76 N.Y.2d 416, 420 (1990). "It is a fundamental rule of statutory interpretation that of two constructions which might be placed upon an ambiguous statute one which would cause objectionable consequences is to be avoided." McKinney's Statutes, § 141. The construction of a statute to be adopted is the one which will not cause an injustice or an absurdity. "The Legislature is

In his Determination, the ALJ thoroughly discussed the legislative history relating to the City UBT, properly concluding that, in line with federal conformity, the City UBT was intended to be based on the same business income and deductions as are used for federal income tax purposes, with specified modifications.[36] Accordingly, the ALJ correctly concluded that "it is clear that Petitioner's interpretation…is the only reasonable construction of the statute…."[37]

The ALJ also properly concluded that his interpretation is consistent with precedent. Petitioner correctly argued that the exact argument Respondent advances in this case has been expressly rejected by the New York State Tax Appeals Tribunal in the precedential decision, *Matter of New York Yankees Partnership*.[38] In that case the government argued that the payments in question do not qualify for a deduction on the basis that such payments are not "directly connected with or incurred in the conduct of the business".[39] The New York State Tax Appeals Tribunal stated,

> "We find this argument unpersuasive. The Division is placing undue emphasis upon that particular phrase. We interpret the [provision] as a whole, without taking the phrase in issue out of context. The [applicable statute] provides for deductions 'directly connected with or incurred in the conduct of the business, which are allowable for federal income tax purposes for the taxable year' with certain modifications. Federal law, through the

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presumed to have intended that good will result from its laws, and a bad result suggests a wrong interpretation." *Id.*

[36] *See* ALJ Determination, at 13-15.

[37] *Id* at 15.

[38] DTA No. 800263, 1991 N.Y. Tax LEXIS 590 (N.Y.S. Tax App. Trib. Nov. 7, 1991). The New York City Charter mandates that we "shall follow as precedent the prior precedential decisions of the tribunal..., the New York State Tax Appeals Tribunal or of any federal or New York state court or the U.S. Supreme Court insofar as those decisions pertain to any substantive legal issues currently before the tribunal." NYC Charter, Section 170(d). *See Petitioner's Reply* Brief, at 1.

[39] DTA No. 800263, at 7.

> combination of [applicable federal income tax provisions], clearly provides the [taxpayer] with the [deduction at issue]. *Therefore, since [such deductions] are deductible for Federal purposes, then the payments in question are deductible for State purposes, provided that they do not fall within any of the enumerated modifications*…." (emphasis added).

Respondent cited to *Matter of Horowitz v. New York City Tax Appeals Trib*., 41 AD3d 101 (1st Dept. 2007) for the broad proposition that payments deductible for federal income tax purposes can nonetheless be nondeductible for UBT purposes. Respondent is correct that a payment can be deductible for federal income tax but not for UBT purposes. That can happen, however, only in a scenario where one of the statutory modifications in Administrative Code § 11-507 applies. In *Matter of Horowitz*, the specific statutory modification at issue was § 11-507(3), whereas no statutory modification is applicable in the instant matter.

We emphasize that, putting aside the nuanced refinements of statutory construction raised before us in this case, whether it be the use of the comma or the use of an appositive clause, the meaning of the statute is clear when read against its single purpose: to conform the UBT to the federal income tax. Any other interpretation would produce an absurd result, essentially empowering the City to apply the federal income tax under the UBT whenever and however it chooses. The City's interpretation negates federal conformity, which cannot be a correct interpretation of this statute. [40]

[40] We do not intend to suggest that the language "directly connected with or incurred in the conduct of the business" can never have a distinct meaning under the statute. For example, where multiple unincorporated businesses under common control are functioning together in a unitary manner it may be reasonable to read the "directly connected with" language to identify specific expenses with specific functions carried out by specific entities. *See, e.g.*, IRC §482.

We, therefore, affirm the ALJ Determination, grant the petition and deny the Notice.[41]

Dated: November 19, 2025
New York, NY

/s/
Neil Schaier
President and Commissioner

/s/
Robert J. Firestone
Commissioner

/s/
Vlad Frants
Commissioner

[41] We have considered all the other arguments of the Parties and find them unpersuasive.