

Instructions for Form NYC-202

NEW YORK CITY DEPARTMENT OF FINANCE



Unincorporated Business Tax Return For fiscal years beginning in 2009 or for calendar year **2009**

Highlights

of Recent Tax Law Changes for Unincorporated Businesses

- Chapter 201 of the Laws of 2009 provides for a 10 year phase-in of single factor allocation beginning in 2009. For taxable years beginning in 2009, for taxpayers using the three factor formula, the business allocation percentage will be composed of 30% of the New York City property percentage, 30% of the New York City wages percentage and 40% of the New York City gross income percentage.
- Starting with taxable years beginning in 2009, taxpayer with unincorporated business gross income, determined without any deduction for the cost of goods sold or services performed, of \$95,000 or less are not required to file an Unincorporated Business Tax Return. See Chapter 183 of the Laws of 2009.
- Starting with taxable years beginning in 2009, if the tax is \$3,400 or less, a tax credit is allowed for the entire amount of the tax. If the tax is \$5,400 or more, no credit is allowed. The credit is gradually phased out where the tax is over \$3,400 but less than \$5,400. See Chapter 183 of the Laws of 2009.
- For taxable years beginning after 2008, taxpayers are not required to file a declaration of estimated tax if the estimated tax can reasonably be expected to be \$3,400 or less. See Chapter 183 of the Laws of 2009.
- Beginning in 2009, certain receipts for services performed by registered securities or commodities brokers will be sourced based on the customer mailing addresses. See section 108 of Chapter 201 of the Laws of 2009 and the instructions to Schedule E.
- For purposes of the New York City Unincorporated Business Tax, General Corporation Tax and Banking Corporation Tax, the City has “decoupled” from the Federal bonus depreciation allowed under the Economic Stimulus Act of 2008 and the American Recovery and Reinvestment Act of 2009, except with respect to the depreciation deductions allowed with respect to “qualified New York liberty zone property” and “qualified property” placed in service in the Resurgence Zone (generally the area in the borough of Manhattan south of Houston Street and north of Canal Street.) For City tax purposes, depreciation deductions for all other “qualified property” must be calculated as if the property was placed in service prior to September 11, 2001. Local Law 17 of 2002. See Form NYC-399Z and Finance Memorandum 09-5, “Application of the IRC §280F to Sports Utility Vehicles” for more information.
- For tax years beginning on or after January 1, 2007, the maximum amount that may be deducted for compensation for a taxpayer’s personal services has been raised to \$10,000.
- The Department of Finance has released a shorter, simpler Unincorporated Business Tax form, the NYC-202S. Check the NYC-202S form and instructions to determine if you can use that form.
- This year’s form has been modified to make it easier for taxpayers to request the consent of the Department of Finance to the use an alternative allocation method. Taxpayers simply check the appropriate box on page 1, complete Schedule C, Part 3, pay the tax based on that Schedule, and attach a rider, as further explained in the instructions to Schedule C.
- For tax years beginning on or after January 1, 2006, qualifying taxpayers that relocate to an industrial business zone to engage in industrial and manufacturing activities may be eligible for a one-time refundable credit equal to \$1,000 for each full-time employee at eligible premises in the IBZ, with certain limits. Use Form NYC-114.6 to claim the credit against the Unincorporated Business Tax.

GENERAL INFORMATION

WHO MUST FILE

For tax years beginning in 2009 or later, any individual or unincorporated entity that carries on or liquidates a trade, business, profession or occupation wholly or partly within New York City and has a total gross income from all business regardless of where carried on of **more than \$95,000** (prior to any deduction for cost of goods sold or services performed) must file an Unincorporated Business Tax Return. See Finance Memorandum 99-1 for information regarding the treatment of single member limited liability companies owned by individuals that are disregarded for federal income tax purposes.

If an individual or an unincorporated entity carries on **two or more unincorporated businesses, in whole or in part within the City, all such businesses shall be treated as one unincorporated business for purposes of this tax.** The gross income and deductions from all such businesses must be combined and reported on one return.

However, an individual member of a partnership who carries on his own separate and independent unincorporated business is not required or permitted to include his distributive share of partnership income in computing his separate unincorporated business taxable income.

WHICH FORMS TO FILE

Individuals, estates and trusts must file on Form NYC-202 or NYC-202S and partnerships (including any incorporated entity treated as a partnership for federal income tax purposes) or other unincorporated organizations must file Form NYC-204.

If you are required to file a return but do not owe any tax, you may be eligible to file Form NYC-202 EZ. To determine whether you may use Form NYC-202 EZ, refer to the form itself or use the following worksheet:

202 EZ WORKSHEET

1. Enter: Net profit (loss) from federal Schedule C or Schedule C-EZ \$ _____
2. Add: additional business/professional income (loss) such as sale of business assets, rental income and royalties from federal Form 1040, page 1 \$ _____
3. Add: income and unincorporated business taxes paid this year and deducted on federal Schedule C \$ _____
4. Add: lines 1, 2 and 3 \$ _____

- If line 4 does not exceed \$100,000 you may use Form NYC-202 EZ.
- If you are filing for a period of less than 12 months, refer to Form NYC-202 EZ to determine whether you may use that form.
- Taxpayers who allocate business income, who file as an estate or trust, or who have NYC modifications other than line 3 of the worksheet are required to file Form NYC-202.

WHO IS SUBJECT TO THE TAX

- 1) The Unincorporated Business Tax is imposed on any individual or unincorporated entity (including a partnership, fiduciary or corporation in liquidation and including any incorporated entity treated as a partnership for federal income tax purposes) engaged in any trade, business, profession, or occupation wholly or partly carried on within New York City.
- 2) Income received from the practice of law, medicine, dentistry, architecture, or any other profession is subject to the Unincorporated Business Tax.
- 3) S Corporations are not subject to the Unincorporated Business Tax. S Corporations are subject to the General Corporation Tax.
- 4) **The Unincorporated Business Tax does not apply to:**
 - a) any entity subject to the tax imposed by Title 11, Chapter 6 (General Corporation Tax) of the NYC Administrative Code. For taxable years beginning in 1996 and thereafter, unincorporated associations and publicly traded partnerships taxable as corporations for federal income tax purposes under IRC §7701 (a) (3) and §7704 are subject to the General Corporation Tax and not the Unincorporated Business Tax. **However, unincorporated entities that were subject to the Unincorporated Business Tax for tax years beginning in 1995 that elected to continue to be subject to the Unincorporated Business Tax for years after 1995 on a timely filed Unincorporated Business Tax return for the tax year beginning in 1996 continue to be subject to the Unincorporated Business Tax.**
 - b) any entity subject to the tax imposed by Title 11, Chapter 11 (Utility Tax) of the NYC Administrative Code (except that vendors of utility services are subject to the Unincorporated Business Tax on

- that percentage of their entire net income allocable to the City which their non-utility receipts bear to their total receipts);
- c) any entity carrying on an insurance business as a member of the New York Insurance Exchange (authorized in Section 6201 of the Insurance Law); or
- d) Real Estate Mortgage Investment Conduits (REMICs). Holders of interests in a REMIC remain taxable on such interests or on the income from such interests.
- e) certain wireless telecommunications service providers - Effective for tax periods beginning on and after August 1, 2002, entities that receive eighty percent or more of their gross receipts from charges for providing mobile telecommunications services to customers will be taxed as if they were regulated utilities for purposes of the New York City Utility Tax and Unincorporated Business Tax. Thus, such entities will be subject to only the New York City Utility Tax and not the Unincorporated Business Tax.
- 5) An individual, trust or estate, except a dealer as defined in Admin. Code §11-501 (l) will not be deemed engaged in an unincorporated business solely by reason of the conduct of the following activities for the taxpayer's own account: the purchasing, holding or selling of property (defined below), engaging in transactions in positions in property, the acquisition, holding or disposition, other than in the ordinary course of business, of interests in unincorporated entities also eligible for this exemption, and any other activity not constituting an unincorporated business subject to the Unincorporated Business Tax.

Property Defined. Property for this purpose includes real and personal property, including property qualifying as investment capital (see instructions for Schedule D of this form) and other stocks and securities, notional principal contracts, derivative financial instruments and other positions in property but excluding property and positions in property held by a dealer, and excluding debt instruments acquired in the ordinary course of a trade or business and certain other property. See Admin. Code §11-502 (c) (1) (A).

Notwithstanding anything to the contrary, the receipt of \$25,000 or less of gross receipts during the taxable year (deter-

mined without regard to any deductions) from an unincorporated business will not disqualify the taxpayer for this exemption.

- 6) A person that is an owner, lessee or fiduciary will not be deemed to be engaged in an unincorporated business solely by reason of the holding, leasing or managing of real property. For taxable years beginning on or after July 1, 1994, if an individual or unincorporated entity is carrying on an unincorporated business in whole or in part in the City, and is also holding, leasing or managing real property as an owner, lessee or fiduciary, the holding, leasing or managing of the property will not be considered an unincorporated business to the extent that the real property is held for the purposes of producing rental income or gain on the disposition of the real property, **provided, however, this partial exemption for rental real estate is not available to a dealer holding real property primarily for sale to customers in the ordinary course of the dealer's trade or business.**

The operation by any taxpayer, otherwise eligible for the partial exemption, of a garage or other business at the property solely for the benefit of tenants in the property that is not open or available to the general public will be considered to be incidental to the holding, leasing or managing of the property and will not be considered an unincorporated business. However, if such a taxpayer operates a garage or other business at the property that also is open or available to the general public, that garage or other business will be considered a taxable unincorporated business, provided, however, for taxable years beginning after 1995, if a taxpayer operates a garage that is open to building tenants and the public, the operation of that garage will not be considered a taxable unincorporated business but only to the extent of income from parking services provided at that garage to building tenants on a monthly or longer-term basis and **only if the information required to be filed with this return specified below is provided with respect to that garage.** All other income from the operation of that garage will be subject to the tax.

The taxpayer must submit with this return a statement containing the following for each garage or other similar facility that is operated for the benefit of tenants and that is open to the general public:

- (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 8 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 building tenants.

Failure to submit the above information with this return will result in all of the income of that garage being subject to tax.

See Section 11-502 (d) of the NYC Administrative Code.

NOTE: If you are engaged exclusively in an activity exempt from Unincorporated Business Tax, you are not required to file a return.

OTHER FORMS YOU MAY BE REQUIRED TO FILE

FORM NYC-5UBTI - Declaration of Estimated Unincorporated Business Tax must be filed by every individual, estate or trust carrying on an unincorporated business or profession in New York City and whose estimated tax can reasonably be expected to exceed \$3,400 for the calendar year or fiscal year immediately following the year covered by this return.

The declaration must cover a full calendar or fiscal year and is due on the 15th day of the fourth month of the taxable year. (A partnership declaration should be filed on Form NYC-5UB.)

For further information about estimated tax payments and due dates, see Form NYC-5UBTI.

FORM NYC-EXT - Application for Automatic 6-month Extension of Time to File Business Tax Return. File Form NYC-EXT on or before the due date of the return.

FORM NYC-115 - Unincorporated Business Tax Report of Change in Taxable Income made by the Internal Revenue Service and/or New York State Department of Taxation and

Finance must be used for reporting adjustments in taxable income resulting from an Internal Revenue Service audit of your federal income tax return and/or a New York State Department of Taxation and Finance audit of your State income tax return.

FORM NYC-221 - Underpayment of Estimated Unincorporated Business Tax will help you determine if you have underpaid an estimated tax installment and, if so, compute the penalty due.

FORM NYC-399 - Schedule of New York City Depreciation Adjustments must be used to compute the allowable New York City depreciation deduction if you claim the federal ACRS or MACRS depreciation deduction for certain property placed in service after December 31, 1980. See the instructions for line 10d of Schedule B.

FORM NYC-399Z - Depreciation Adjustments for Certain Post 9/10/01 Property may have to be filed by taxpayers claiming depreciation deductions for certain sport utility vehicles or "qualified property," other than "qualified New York Liberty Zone property," "qualified New York Liberty Zone leasehold improvements" and "qualified resurgence zone property" placed in service after September 10, 2001 for federal or New York State tax purposes. See "Highlights of Recent Tax Law Changes", Finance Memorandum 09-5, "Application of IRC §280F Limits to Sports Utility Vehicles" and instructions to Form NYC-399Z.

FORM NYC-CR-A - Commercial Rent Tax Annual Return must be filed by every tenant that rents premises for business purposes in Manhattan south of the center line of 96th Street **and** whose annual or annualized gross rent for any premises is at least \$200,000. (Effective June 1, 2001).

WHEN TO FILE

Form NYC-202 is due on or before April 15, 2010, or, for fiscal year taxpayers, on or before the 15th day of the fourth month following the close of the taxable year.

See the instructions for Form NYC-EXT for information regarding what constitutes a proper estimated tax for this purpose. Failure to pay a properly estimated amount will result in a denial of the extension.

An automatic extension of six months for filing this return will be allowed if, within the time prescribed for filing, the taxpayer files with the Department of Finance Form NYC-EXT and pays the amount properly determined as its tax. See the instructions for Form NYC-EXT for information regarding what constitutes a properly estimated tax for this purpose. Failure to pay a properly estimated amount will result in a denial of the extension.

No additional extension for filing a return will be granted beyond the six-month extension, unless the taxpayer is outside the United States. (Taxpayers outside the United States should refer to 19 RCNY Section 28-18(c) for additional extensions.)

WHERE TO FILE

Returns with remittances:

NYC Department of Finance
P.O. Box 5040
Kingston, NY 12402-5040

Returns claiming refunds:

NYC Department of Finance
P.O. Box 5050
Kingston, NY 12402-5050

All others:

NYC Department of Finance
P.O. Box 5060
Kingston, NY 12402-5060

NOTE: If a Declaration of Estimated Unincorporated Business Tax (Form NYC-5UBTI) is being filed, DO NOT mail it to any address listed here. It should be mailed to the address indicated on Form NYC-5UBTI.

ACCESSING NYC TAX FORMS

By Computer - Download forms from the Finance website at nyc.gov/finance

By Phone - call 311. If calling from outside of the five NYC boroughs, please call 212-NEW-YORK (212-639-9675).

IDENTIFYING INFORMATION

In the space provided on the front of the return, enter your correct Social Security Number **or** Employer Identification Number if you are an estate, trust or LLC and a New York State Sales Tax ID Number, if applicable. The Sales Tax ID number can be 9, 10 or 11 digits. Enter the same business code entered on federal Schedule C or Schedule C-EZ. Individuals licensed and/or regulated by the NYC Taxi and Limousine Commission use business code 999999 in lieu of the federal code.

If this is an amended return, check the box on page 1.

BUSINESS CARRIED ON BOTH INSIDE AND OUTSIDE NEW YORK CITY

If business is carried on both inside and outside New York City, a fair and equitable portion of the business income must be allocated to New York City. Otherwise, all of the business income must be allocated to New York City. (Refer to the instructions on page 9 for Schedule C, Business Allocation)

BUSINESS TERMINATED DURING TAXABLE YEAR

If the business was terminated during 2009, attach a statement to Form NYC-202 showing disposition of the business property and how it was reported on the return. Check the box on page 1 of the return.

USE OF FEDERAL FIGURES

Except where otherwise indicated, items of business income, gain, loss or deduction are to be entered on the return as reportable for federal tax purposes. All items reported on Form NYC-202 or on attachments to it, however, are subject to verification, audit and revision by the Department of Finance.

FEDERAL OR NEW YORK STATE CHANGES

If, on audit of your return, the federal or New York State tax authorities change any item of income or deduction reported to the Internal Revenue Service or the New York State Department of Taxation and Finance, or an item of income or deduction is changed as a result of a renegotiation of a contract with the United States or New York State, or you execute a waiver of the restrictions on assessment by either authority under IRC section 6213(d) or NYS Tax Law section 681(f) and the change pertains to the unincorporated business income or deductions reported on the Unincorporated Business Tax return, you must report the change to the Department of Finance within 90 days. Form NYC-115 should be used for this purpose and may be obtained from the sources listed in these instructions.

Form NYC-115 must be filed separately and should not be attached to any return.

If an amended federal or New York State return is filed reflecting a change in unincorporated business income or deductions, an amended Unincorporated Business Tax return must be filed within 90 days. Use Form NYC-202 and check the box at the top of page 1.

ACCOUNTING PERIODS AND METHODS

The accounting period for which Form NYC-202 is filed and the method of accounting used are the same as for federal income tax purposes. If a taxpayer's taxable year or method of accounting is changed for federal income tax purposes, the same changes must be made for purposes of the Unincorporated Business Tax.

PENALTIES

The law imposes penalties for failure to file a return or to pay any tax when due, or for making, rendering, signing, certifying or filing a false or fraudulent return. The mere fact that the figures reported on Form NYC-202 are taken from the federal return will not relieve

the taxpayer from the imposition of penalties because of negligence or for filing a false or fraudulent return.

TAX PREPARERS

Anyone who prepares a return for a fee must sign the return as a paid preparer and enter his or her Social Security Number or PTIN. Include the company or corporation name and Employer Identification Number, if applicable.

Preparer Authorization: If you want to allow the Department of Finance to discuss your return with the paid preparer who signed it, you must check the "yes" box in the signature area of the return. This authorization applies only to the individual whose signature appears in the "Preparer's Use Only" section of your return. It does not apply to the firm, if any, shown in that section. By checking the "Yes" box, you are authorizing the Department of Finance to call the preparer to answer any questions that may arise during the processing of your return. Also, you are authorizing the preparer to:

- Give the Department any information missing from your return,
- Call the Department for information about the processing of your return or the status of your refund or payment(s), and
- Respond to certain **notices that you have shared with the preparer** about math errors, offsets, and return preparation. The notices **will not** be sent to the preparer.

You are not authorizing the preparer to receive any refund check, bind you to anything (including any additional tax liability), or otherwise represent you before the Department. The authorization cannot be revoked, however, the authorization will automatically expire no later than the due date (without regard to any extensions) for filing next year's return. **Failure to check the box will be deemed a denial of authority.**

SPECIFIC INSTRUCTIONS

If this is an amended return, check the box on page 1 of the return.

Check the box marked "yes" on page 1 of this form if, on your federal return: (i) you reported bonus depreciation and/or a first year expense deduction under IRC §179 for "qualified New York Liberty Zone property," "qualified New York Liberty Zone leasehold improvements," or "qualified Resurgence Zone property," regardless of whether you are required to file form NYC-399Z, (ii) you claimed a federal targeted jobs credit for Liberty Zone business employees, or (iii) you replaced property involuntarily converted as a result of the

attacks on the World Trade Center during the five (5) year extended replacement period. You must attach Federal forms 4562, 4684, 4797 and 8884 to this return. See instructions for Schedule B, lines 10d, 15 and 16 for more information.

SCHEDULE A
Computation of Tax

LINE 1 - BUSINESS INCOME

Enter on line 1 the total from page 2, Schedule B, line 28.

LINE 2 - BUSINESS ALLOCATION PERCENTAGE

Taxpayers not allocating income should enter 100% on line 2, then complete lines 4 and 5.

For tax years beginning on or after January 1, 2005, except as provided below, taxpayers must allocate business income using the formula method. However, taxpayers who used the books and records method for the two immediately preceding tax years, which must have consisted of 12 months each, may make a one-time election to continue using the books and records allocation method for each tax year beginning on and after January 1, 2005 and before January 1, 2012. See, instructions for Schedule C for more information.

Taxpayers allocating income using the statutory formula should determine the business allocation percentage to be used here by completing Schedule C, parts 1, 2 and 3. Transfer the percentage entered on Schedule C, part 3, line 5 to line 2 of this schedule rounded to the nearest one hundredth of a percentage point and check (✓) the "formula" box.

Eligible taxpayers electing to continue to allocate income on the basis of business books and records should mark "yes" on the box on the top of page 1 and check (✓) the second box on line 2 of Schedule A. They should then proceed to omit the percentage on line 2, disregard lines 3 through 6, and continue with line 7. Enter on line 10 the sum of lines 1 and 9.

Taxpayers allocating income on the basis of an alternative method of allocation must complete Schedule C, parts 1, 2 and 3 and attach an explanation of the alternative method. (*Refer to the instructions for Schedule C, Alternative Allocation Method.*)

LINES 3 AND 6 - INCOME, GAIN OR LOSS FROM NYC REAL PROPERTY

The business allocation percentage is not applied to income from rentals of New York City real property or gains or losses from the sale of New York City real property. Enter here the modified gain (or loss) from the sale or exchange and net income from rental of real property located in New York City included on line 1 of Schedule A. This is the gain (or loss) and net rental income included on

line 8 of Schedule B as adjusted for the portion of the New York City modifications (Schedule B, part 2) applicable to such items. If New York City modifications are not applicable, enter on lines 3 and 6 the full amount of gain (or loss) and net rental income included on line 8 of Schedule B. (*Refer to "Who is Subject to the Tax", paragraph 6.*)

LINE 9 - ALLOCATED INVESTMENT INCOME

If the investment allocation percentage is zero, interest on bank accounts must be multiplied by the business allocation percentage.

LINE 10 - CURRENT YEAR'S UNINCORPORATED BUSINESS NET OPERATING LOSS

If line 10 shows a net loss from business, this loss is the 2009 unincorporated business net operating loss.

Only the first \$10,000 of each year's loss may be carried back. The carryback period for City purposes generally corresponds to the federal carryback period available for individuals. Whichever carryback period, if any, the taxpayer elects for federal purposes, the same carryback period must be used for City purposes. If the taxpayer elects to carry back the first \$10,000 of the loss, any excess net operating loss may be carried forward as if the taxpayer had elected to relinquish the entire carryback period for all but the first \$10,000 of the loss. If the taxpayer elects to forego the federal carryback period, no amount of the net operating loss may be carried back for City purposes and the entire net operating loss may be carried forward for City purposes.

Losses that are not permitted to be carried back may be carried forward and used to offset income for the period permitted for Federal tax purposes, generally 20 years for losses from years beginning after 8/5/97.

If a "carryback" results in an overpayment of a prior year's tax, a claim for refund, accompanied by a copy of the Unincorporated Business Tax Return for the taxable year for which the refund is claimed, should be filed within the limitation period prescribed by law. A detailed computation of the net operating loss deduction for that year must accompany the refund claim.

LINE 11 - NEW YORK CITY NET OPERATING LOSS DEDUCTION

The business allocation percentage is not applied to a New York City net operating loss deduction that was subject to allocation in the year in which the loss was incurred. If there was an unincorporated business net operating loss in a prior year any part of which may be carried over to 2009, the amount claimed for 2009 should be entered on line 11 after completing Schedule E. (*Refer to instructions for Schedule E.*)

LINE 13 - ALLOWANCE FOR TAXPAYER'S SERVICES

A deduction may be claimed for reasonable compensation for taxpayer's personal services. The allowable deduction is:

- 1) 20% of line 12 or
- 2) \$10,000,

whichever is lower. If line 12 is a loss, enter "0" on line 13.

LINE 15 - EXEMPTION

An unincorporated business exemption of \$5,000 is allowed against net income reported on line 14. If more than one business was carried on by a taxpayer, only one exemption of \$5,000 is allowed against the combined net income derived from all business activities.

The exemption of \$5,000 must be prorated on a \$13.70 daily basis if the business was carried on for a period of less than a full taxable year of 12 months, unless the business was carried on and the return is filed for a number of whole months. In that case, the proration is to be on a \$416.67 per month basis.

EXAMPLE

- #1 If the sole proprietorship carried on business for a full 9 months, the exemption amount to be entered on line 15 is \$3,750.03 (9 months X \$416.67 per full month).
- #2 If the sole proprietorship carried on business for 263 days, the exemption amount to be entered on line 15 is \$3,603.10 (263 days X \$13.70 per day).

Taxpayers filing a short period return should fill in the dates at the top of page 1 of the return and prorate the exemption as described above.

LINE 16 - TAXABLE INCOME

Enter here the amount of line 14 less line 15. (*If loss, refer to the instructions for Schedule A, line 10.*)

LINE 17 - TAX

Enter on line 17 the amount obtained by multiplying the amount entered on line 16 by 4%.

LINE 18 - SALES AND USE TAX ADDBACK

This item relates to the unincorporated business tax credit for sales and compensating use tax paid on certain machinery, equipment and services (NYC Administrative Code Sections 11-503(d) and 11-503(k)). If the taxpayer received a refund or credit in 2009 of such sales or compensating use tax for which it claimed an unincorporated business tax credit in a prior tax period, the amount of such refund or credit must be added back on line 18. A corresponding adjustment is to be made on line 14 on Schedule B, part 2. (*Refer to instructions for line 14 of Schedule B, part 2.*)

LINE 20 - BUSINESS TAX CREDIT

- If the amount entered on line 19 is \$5,400 or over, no credit is allowable; enter "0" on line 20.
- If the amount entered on line 19 is \$3,400 or less, your credit is the entire amount of tax on line 19. No tax will be due.
- If the amount of tax entered on line 19 exceeds \$3,400 but is less than \$5,400, a credit is allowed in the amount determined by multiplying the tax on line 19 by a fraction, the numerator of which is \$5,400 minus the amount of the tax on line 19 and the denominator of which is \$2,000. Use the following formula:

FORMULA

$$\frac{\text{tax on line 19} \times (\$5,400 - \text{tax on line 19})}{\$2,000} = \begin{matrix} \text{Unincorporated} \\ \text{Business Tax} \\ \text{Credit} \end{matrix}$$

EXAMPLE

If the tax on line 19 is \$3,900, the business tax credit is calculated as follows:

- 1) $\$3,900 \times \frac{(\$5,400 - 3,900)}{\$2,000} = \$2,925$
- 2) Enter \$2,925 on line 20.
- 3) Enter \$975 (\$3,900 - 2,925) on line 21 (Unincorporated Business Tax)

LINE 21 - UNINCORPORATED BUSINESS TAX

Enter on line 21 the unincorporated business tax due. If the credit on line 20 equals the tax shown on line 19, enter "0" on line 21.

LINE 22a - OTHER CREDITS

Enter on line 22a credits against the unincorporated business tax for:

- 1) relocation and employment assistance program (REAP) credit (*Refer to instructions on Form NYC-114.5 and attach form.*)
- 2) sales and compensating use taxes (*Refer to instructions on Form NYC-114.5 and attach form for an appropriate year.*) **NOTE:** *The sales and use tax credits may only be taken for sales or use tax paid in the current year on certain purchases in prior years. See instructions for Schedule B, line 10a.*

LINE 22b - REAL ESTATE TAX ESCALATION CREDIT AND EMPLOYMENT OPPORTUNITY RELOCATION COSTS CREDIT AND INDUSTRIAL BUSINESS ZONE CREDIT

(Refer to instructions on Form NYC-114.6, Claim for Credit Applied to Unincorporated Business Tax and attach form.)

LINE 22c - LOWER MANHATTAN RELOCATION AND EMPLOYMENT ASSISTANCE PROGRAM (LMREAP) CREDIT

Refer to instructions on Form NYC-114.8 and attach form.

LINE 22d - MADE IN NYC FILM PRODUCTION CREDIT

Refer to instructions on Form NYC-114.9 and attach form.

LINE 24 - PAYMENT OF ESTIMATED TAX

Enter on line 24 the sum of all payments of estimated tax made for calendar year 2009 or fiscal year beginning in 2009 including carry-over credit from the preceding taxable year, and payment with extension, NYC-EXT. Complete table on page 4 of this return.

LINE 27a - LATE PAYMENT/INTEREST

If the tax is not paid on or before the due date (determined without regard to any extension of time), interest must be paid on the amount of the underpayment from the due date to the date paid. For information regarding interest rates, visit the Finance website at nyc.gov/finance or call 311. If calling from outside of the five NYC boroughs, please call 212-NEW-YORK (212-639-9675).

LINE 27b - LATE PAYMENT OR LATE FILING/ADDITIONAL CHARGES

- a) A **late filing penalty** is assessed if you fail to file this form when due, unless the failure is due to reasonable cause. For every month or partial month that this form is late, add to the tax (less any payments made on or before the due date) 5%, up to a total of 25%.
- b) If this form is filed more than 60 days late, the above late filing penalty cannot be less than the lesser of (1) \$100 or (2) 100% of the amount required to be shown on the form (less any payments made by the due date or credits claimed on the return).
- c) A **late payment penalty** is assessed if you fail to pay the tax shown on this form by the prescribed filing date, unless the failure is due to reasonable cause. For every month or partial month that your payment is late, add to the tax (less any payments made) 1/2%, up to a total of 25%.
- d) The total of the additional charges in *a*) and *c*) may not exceed 5% for any one month except as provided for in *b*.

If you claim not to be liable for these additional charges, attach a statement to your return explaining the delay in filing, payment or both.

LINES 29 and 30 - NET OVERPAYMENT

If there is an overpayment on line 29, enter on line 30a the amount of overpayment to be refunded. Enter on line 30b the amount to be credited to the 2010 estimated tax on Form NYC-5UBTI. If line 23 is less than zero, disregard negative sign and add that amount to line 24.

LINE 31 - TOTAL REMITTANCE DUE

If the amount on line 29 is not greater than zero, enter on line 31 the sum of the amount on line 25 and the amount, if any, by which line 28 exceeds line 26. After completing this return, enter the amount of your remittance on line A. This must be the full amount as shown on line 31. All remittances must be payable in U.S. dollars drawn on a U.S. bank. Checks drawn on foreign banks will be rejected and returned. Remittances must be payable to: **NYC Department of Finance.**

LINE 33 - GROSS RECEIPTS OR SALES FROM FEDERAL RETURN

Enter the amount from line 3 of Schedule C (Gross receipts or sales less returns and allowances) or from line 1 of Schedule C-EZ (Gross Receipts) of Federal form 1040.

SCHEDULE B

Computation of Total Income

PART 1 - ITEMS OF BUSINESS INCOME, GAIN, LOSS OR DEDUCTION

Amounts on lines 1 through 6 are to be entered from the federal tax return.

Taxpayers carrying on two or more unincorporated businesses, either wholly or partly in New York City, must enter the combined net income from all business activities relating to such businesses.

If business is carried on both inside and outside New York City and the taxpayer is electing to allocate business income according to the books and records of the business, report in Schedule B, part 1, the New York City income and deductions only. Apply the New York City modifications described in part 2 that relate to the New York City items reported. (*Refer to instructions for Schedule C.*)

If the taxpayer is using an alternative method of allocation and a percentage formula is used other than the statutory formula, enter the amounts from the federal tax return on lines 1 through 6 of this schedule. If a direct allocation method is used, report in Schedule B, part 1, the New York City income and deductions only. Apply the New York City modifications described in part 2 that relate to the New York City items reported.

(*Refer to the instructions for Schedule C, Business Allocation, for further details.*)

LINE 1 - NET PROFIT (OR LOSS) FROM BUSINESS, FARMING OR PROFESSIONS

Enter here the amount reported for federal tax purposes. This amount should be the amount reported on federal Schedule C or C-EZ, Form 1040. (If you operate a farm, enter the profit or loss reported on federal Schedule F, Form 1040.) Attach a copy of federal Schedule C, C-EZ or F. If this is a final return, attach a copy of your *entire* federal Form 1040 and check the box on the first page of this return.

If allocation is based upon books and records, report the net profit (or loss) from New York City operations of the business.

LINE 2 - MULTIPLE SCHEDULES C AND F

If entering income from more than one federal Schedules C, C-EZ or F, check the box and enter number of Schedules C, C-EZ or F attached.

LINE 3 - GAIN (OR LOSS) FROM SALE OF REAL OR PERSONAL BUSINESS PROPERTY

Enter here the total gain or loss from the sale or exchange of real or personal property carried as business assets (including proceeds from the sale of the business and its goodwill). Attach federal Schedule D and/or Form 4797. Note that federal depreciation and federal basis must be used in these computations. (Refer to instructions for Schedule B, part 2, line 19, relating to the subtraction from gain reported on line 3 for certain property acquired prior to January 1, 1966, and instructions for Schedule B, part 2, lines 10d and 16 relating to ACRS depreciation modifications.)

LINE 4 - NET AMOUNT OF RENTS FROM REAL OR PERSONAL BUSINESS PROPERTY

Enter here the net amount of rental and royalty income derived from real and personal business property, using federal figures. (*Attach federal Schedule E.*) **If you are electing to use the books and records method of allocation, enter amounts allocable to New York City.** Include the rental income from property even if not considered an unincorporated business. (*Refer to "Who is Subject to the Tax", paragraph 6.*)

LINE 5 - OTHER BUSINESS INCOME (OR LOSS)

Enter net amount of income or loss derived from business activities or sources other than those enumerated on lines 1, 3, and 4 of Schedule B, part 1 and attach a schedule giving details of the items reported. Interest and dividends from securities held in connection with the business or carried as business assets should be reported here. **If you are electing to**

use the books and records method of allocation, enter amounts allocable to New York City.

If a net operating loss deduction is allowable in 2009 by reason of a carryover of a net operating loss sustained in a prior year, do not enter the loss deduction here. Complete Schedule E.

LINE 7 - INCOME OR GAIN FROM SALE OR EXCHANGE OF REAL PROPERTY

Rental income or loss from real property located outside New York City and gain or loss on disposition of real property located outside New York City are not considered for purposes of computing the unincorporated business tax. Therefore, to exclude this income, loss or gain, subtract on line 7 the amount included on lines 3 and 4 if income or gain is reported, and add this amount on line 7 if loss is reported. Do not exclude the rental income from property located in New York City even if not considered an unincorporated business. (Refer to "Who is Subject to the Tax", paragraph 6.) (See instructions for line 19.)

PART 2 - NEW YORK CITY MODIFICATIONS

It may be necessary to make certain additions to or subtractions from the amount reported in part 1, line 8 to arrive at total income to be reported on line 27. If any of the items listed in Schedule B, Part 2 is applicable, complete Part 2 showing the nature and amount of each item, and enter the combined total on line 21. If none of these apply, transfer the amount on line 8 to line 22 of Schedule B. If the business is carried on both inside and outside New York City and you are electing to determine the New York City income from books and records of the business, enter in Part 2 only those additions and subtractions that relate to the New York City items reported on lines 1 through 5 of Schedule B, Part 1.

- ADDITIONS -

LINE 9 - INCOME AND UNINCORPORATED BUSINESS TAXES

Enter the amount of income and unincorporated business taxes imposed by New York City, New York State or any other taxing jurisdiction that were deducted in computing Part 1, line 8.

LINE 10 - MODIFICATIONS RELATING TO ITEMS OF TAX CREDIT AND DEDUCTION

Line 10a: The credit for sales tax paid on electricity or electric service used in the production of certain tangible property formerly allowed by Admin. Code §11-503(g) has been repealed for purchases on or after November 1, 2000. No amount should be added back with respect to this credit.

Purchases of machinery or equipment for which a credit is allowed by Admin. Code §11-503(d) were exempted from sales tax effective December 1, 1989. Purchases of certain services performed on machinery or equipment used in production for which a credit is allowed by Admin. Code §11-503(k) were exempted from sales tax effective September 1, 1996. Credits may be taken under these two provisions only if the sales tax payment was made in the current year with respect to a purchase in a period when the applicable sales tax was effective. In such cases, the sales tax excluded or deducted for federal tax purposes should be added back. If you are claiming a credit pursuant to §11-503(d), a form NYC 114.5 for the year 1990 or a prior year should be used. If you are claiming a credit pursuant to §11-503(k), a form NYC 114.5 for the year 2000 or a prior year should be used.

Line 10b: Taxpayers claiming the real estate tax escalation credit or employment opportunity relocation costs or industrial business zone credits must enter the sum of the amounts shown on lines 4 and 5 of Form NYC-114.6.

Line 10c: Enter any amounts deducted in computing part 1, line 8, for:

- i) interest on money borrowed to purchase or carry bonds or securities, the interest on which is exempt from the Unincorporated Business Tax;
- ii) expenses that relate to exempt income or to property held for the production of exempt income; and
- iii) amortization of bond premium on any bond, the interest on which constitutes exempt income.

Line 10d: The Federal bonus depreciation allowed for "qualified property," as defined in IRC section 168(k) is not allowed for Unincorporated Business Tax purposes except for such deductions allowed with respect to "qualified New York liberty zone property", "qualified New York liberty zone leasehold improvements" and "qualified property" placed in service in the Resurgence Zone (generally the area in the borough of Manhattan South of Houston Street and North of Canal Street.) For City tax purposes, depreciation deductions for all other "qualified property" must be calculated as if the property was placed in service prior to September 11, 2001. For tax years beginning on or after January 1, 2004, other than for eligible farmers (for purposes of the New York State farmers' school tax credit), the amount allowed as a deduction with respect to a sport utility vehicle that is not a passenger automobile for purposes of section 280F(d)(5) of the Internal Revenue Code is limited to the amount allowed under section 280F of the Internal Revenue Code as if the vehicle were a passenger automobile as defined in that section. For SUVs that are qualified property other than qualified

Resurgence Zone property and other than New York Liberty Zone property, the amount allowed as a deduction is calculated as of the date the SUV was actually placed in service and not as of September 10, 2001. With respect to SUV's placed into service after December 31, 2007 and before January 1, 2010, Federal bonus first year depreciation for passenger automobiles allowed under the Economic Stimulus Act of 2008 and the American Recovery and Reinvestment Act of 2009 is disallowed for SUVs except for SUVs that are "qualified Resurgence Zone property." On the disposition of an SUV subject to the limitation, the amount of any gain or loss included in income must be adjusted to reflect the limited deductions allowed for City purposes under this provision. Enter on Schedule B, lines 10(d) and 16 the appropriate adjustments from form NYC-399Z. See, Finance Memorandum 09-5, "Application of IRC 280F Limits to Sport Utility Vehicles" for more information.

The federal depreciation deduction computed under the Accelerated Cost Recovery System (ACRS) or the Modified Accelerated Cost Recovery System (MACRS) (IRC Section 168) is not allowed for property placed in service in New York State in taxable years beginning before January 1, 1985 (except recovery property subject to the provisions of IRC Section 280-F).

ACRS and MACRS may not be allowed for property placed in service outside of New York State in taxable years beginning after 1984 and before January 1, 1994 (except property subject to the provisions of IRC Section 280-F). For additional information regarding depreciation deductions for property placed in service outside New York after 1984 and before 1994, see Finance Memorandum 99-4 "Depreciation for Property Placed in Service Outside New York After 1984 and Before 1994".

In place of the federal depreciation deduction, a depreciation deduction using pre-ACRS or MACRS rules (IRC Section 167) is allowed. Enter on line 10d the ACRS depreciation deduction used in computing part 1, line 8. (Refer to instructions for line 16.) (Attach Form NYC-399 and/or NYC-399Z.)

Line 10e: Add back losses, interest, depreciation and any other expenses deducted for federal income tax purposes directly or indirectly attributable to the holding, leasing or managing of real property (including any business conducted at the property as an incidental service to tenants) or to the income or gain therefrom, if such holding, leasing or managing of property is exempt from Unincorporated Business Tax under NYC Administrative Code Section 11-502(d) in taxable years beginning on or after July 1, 1994 or January 1, 1996, in the case of parking serv-

ices rendered to tenants at a garage open to the public. (Refer to "Who is Subject to the Tax", paragraph 6.) Enter on line 10e expense deductions and losses reflected in Part 1, line 8 attributable to exempt real estate activities.

LINE 11 - OTHER ADDITIONS

Describe in a separate schedule the nature and amount of any additions, such as:

- 1) interest income on state and local bonds held in connection with the business (other than on bonds of New York State and its political subdivisions)
- 2) interest or dividend income on bonds or securities, held in connection with the business, of any United States authority, commission or instrumentality that the laws of the United States exempt from federal income tax but not from state or local income taxes
- 3) any amount deducted in computing part 1, line 8, for salaries, wages, withdrawals or interest paid to the proprietor of the unincorporated business
- 4) Add back royalty and interest payments made to related members as required by Ad. Code section 11-506(f).
- 5) any other additions required by Sections 11-506, 11-507 and 11-509 of the NYC Administrative Code. (Attach any appropriate schedules.)

- SUBTRACTIONS -

LINE 13 - INCOME AND UNINCORPORATED BUSINESS TAX REFUNDS

Enter any refund or credit for overpayment of any income tax to the extent included in computing part 1, line 8.

LINE 14 - SALES AND USE TAX REFUNDS OR CREDITS

This item relates to the unincorporated business tax credit for sales and compensating use taxes paid on certain machinery, equipment and services. If the taxpayer received a refund or credit in 2009 of any sales or compensating use tax for which it claimed an unincorporated business tax credit in a prior tax period, the amount of the refund or credit must be added to the Unincorporated Business Tax on line 18 of Schedule A, and entered at Schedule B, part 2, line 14, as a subtraction modification.

There is no addback for current refunds of sales tax paid on purchases or use of electricity or electric service used in the production of certain tangible property for which the taxpayer took a credit in a prior period under Adm. Code §11-503(g).

LINE 15 - FEDERAL EMPLOYMENT CREDIT

Enter the portion of wages and salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of Section 280C of the Internal Revenue Code. (Attach federal Form 5884 or 8884 for Liberty Zone business employees.)

The New York Liberty Zone business employee credit is only available for wages paid or incurred during the current taxable year for work performed in 2002 or 2003.

LINE 16 - DEPRECIATION ADJUSTMENT

In place of the disallowed ACRS deduction for certain property, line 10d, a depreciation deduction computed by any method permitted under IRC Section 167 as in effect on December 31, 1980, will be allowed. Enter on line 16 the ACRS adjustment from Form NYC-399, Schedule C, line 8, column B. (Attach Form NYC-399.) See instructions for line 10d and for Form NYC-399, see also Finance Memorandum 99-4 "Depreciation for Property Placed in Service Outside New York After 1984 and Before 1994."

If a taxpayer took the additional depreciation deduction on its federal return with respect to "qualified property" OTHER THAN "qualified Resurgence Zone property", "qualified New York Liberty Zone property" and "qualified New York Liberty Zone leasehold improvements or SUVs for which an add-back was required under the instructions to Line 10(d) of this schedule, use NYC 399Z to calculate the amount of the deduction that may be deducted for City purposes. The amount appearing in column B of line 8 on Form NYC 399Z should be included on this line. See "Highlights of Recent Tax Law Changes" and Finance Memorandum 09-5, "Application of IRC 280F Limits to Sport Utility Vehicles", for more information.

LINE 17 - EXEMPT INCOME

Attach a schedule showing the nature and amount of exempt income, such as:

- 1) interest income on United States obligations included in computing part 1, line 8
- 2) interest or dividend income on bonds or securities of any United States authority, commission or instrumentality included in computing part 1, line 8, but exempt from state or local income taxes under United States law
- 3) interest or dividend income on bonds or securities to the extent exempt from income tax under New York laws authorizing the issuance of such bonds or securities, but included in computing part 1, line 8.

LINE 18 - DIVIDENDS

Enter 50% of dividends other than dividends from stocks not meeting the holding period requirement set forth in IRC Section 246(c).

LINE 19 - REAL ESTATE SUBTRACTIONS

Subtract income or gain includible in gross income for federal income tax purposes from the holding, leasing or managing of real property (including any business conducted at the property as an incidental service to tenants) if such holding, leasing or managing of property is not subject to Unincorporated Business Tax under NYC Administrative Code Section 11-502(d) in taxable years beginning on or after July 1, 1994 or January 1, 1996, in the case of parking services rendered to tenants at a garage open to the public. (Refer to "Who is Subject to the Tax", paragraph 6.) Enter on line 19 the amount of income and gain reflected in Part 1, line 8, attributable to exempt real estate activities.

LINE 20 - OTHER SUBTRACTIONS

Describe in a separate schedule the nature and amount of any subtractions, such as:

- 1) the portion of gain included in computing part 1, line 8, from the sale or other disposition of property acquired before January 1, 1966, except:
 - a) stock in trade of the taxpayer or other property of a kind that would be properly included in his inventory if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; and
 - b) accounts or notes receivable acquired in the ordinary course of his/her trade or business for services rendered or from the sale of property described in a) to the extent of the difference between:
 - i) the amount of gain reported at part 1, line 3, for each property; and
 - ii) the amount of gain that would be reported on line 3 for each property if the adjusted basis of the property on the date of sale or other disposition had been either:
 - A) its fair market value on January 1, 1966, plus or minus all federal adjustments to basis for the period after December 31, 1965; or
 - B) the amount realized from its sale or other disposition, whichever is lower.

If the gain reported is from a sale of property before January 1, 1966, and reported on the installment method, the fair market value of the property on the date of sale must be substituted for its fair market value on January 1, 1966. The total adjustment may not exceed the taxpayer's net gain from the sale or other disposition of all the property.

- 2) interest on money borrowed to purchase or carry bonds or securities, the interest on which is subject to the Unincorporated Business Tax but exempt from federal income tax; ordinary and necessary expenses paid or incurred during the taxable year in connection with such income or property held for the production of such income; and amortization of bond premium for the taxable year on any bond, the interest from which is subject to the Unincorporated Business Tax but exempt from federal income tax, to the extent these items were not deducted in computing part 1, line 8.
- 3) Subtract income such as royalties from related members for the use of intangibles as described in section 11-506(f) of the Administrative Code.
- 4) any other subtractions required by Sections 11-506 and 11-507 (other than charitable contributions) of the NYC Administrative Code. (Attach any appropriate schedules.)

Do not include on line 20 any net operating loss carryover. Any unincorporated business net operating loss deduction allowable in 2009 by reason of a carryover of a net operating loss sustained by the unincorporated business in prior years should be reported in Schedule E and on Schedule A.

SAFE HARBOR LEASES

This applies to agreements entered into prior to January 1, 1984. The NYC Administrative Code was amended to nullify the effects of federal "Safe Harbor Leases" upon New York City unincorporated business taxable income. (Refer to Sections 11-506 and 11-507 of the NYC Administrative Code for details.)

LINE 24 - CHARITABLE CONTRIBUTIONS

Deductions are allowed for charitable contributions made by the unincorporated business, as a tax entity separate and distinct from its owners or proprietors, to the extent they would be deductible by a corporation for federal income tax purposes, but not in excess of 5% of line 23. In general, contributions deductible by a corporation are the same as those for individuals, except that:

- 1) contributions to fraternal societies, orders and associations operating under the lodge system are not deductible; and
 - 2) contributions to a trust, chest, fund or foundation
- are deductible only if they are to be used within the United States or its possessions.

LINE 26 - INVESTMENT INCOME

Investment income includes: 50% of dividends from stocks held for investment; interest from investment capital; net capital gain or loss from sales or exchanges of securities held for investment; and income from cash if an election is made to treat cash as investment capital on line 3 of Schedule D. Do not include any capital loss that could not be used in computing federal taxable income.

In computing investment income, subtract the amount of deductions allowable in computing entire net income which are directly or indirectly attributable to investment capital or investment income.

LINE 26a - DIVIDENDS FROM STOCKS HELD FOR INVESTMENT

Enter dividends not excluded on line 18. This includes 50% of dividends from corporations for which an exclusion was allowed on line 18 of this schedule, and 100% of dividends from stock not meeting the holding period requirement set forth in Section 246(c) of the IRC.

LINE 26d - INCOME FROM CASH

Enter income from cash on Schedule B, line 26d only if you have elected to treat cash as investment capital and have entered the amount thereof on Schedule D, line 3.

LINE 26f - DEDUCTIONS ATTRIBUTABLE TO INVESTMENT CAPITAL

For more information, see Statement of Audit Procedure GCT-2008-04, Noninterest Expense Attribution, April 9, 2008 and Statement of Audit Procedure PP-2008-12, GCT & UBT Treatment of Repurchase Agreements and Securities Lending and Borrowing Transactions for Financial Services Firms Regularly Engaged in Such Activities, March 31, 2008, available on the Department's website at nyc.gov/finance.

SCHEDULE C Business Allocation

An allocation of business income is permitted for purposes of the Unincorporated Business Tax if you carry on business both inside and outside New York City.

ALLOCATION BY SEPARATE BOOKS AND RECORDS

For tax years beginning on or after January 1, 2005, except as provided below, taxpayers must allocate business income using the formula method. Taxpayers who used the books and records method for the two immediately preceding tax years, which must have consisted of 12 months each, may make a one time election to continue using the books and records allocation method for each tax year beginning on and after January 1, 2005 and before January 1, 2012. Taxpayers must make this election on a timely filed original return for the tax year beginning in 2005. To make this election, check the box marked "yes" on page 1 of this return. NOTE: the election cannot be made or, if made, will be deemed to have been revoked if the Department of Finance determines that the use of books and records does not fairly reflect the taxpayer's income from the City. Similarly, the election will be deemed revoked as of the beginning of any tax year, if the Department of Finance determines that the use of books and records does not fairly reflect the taxpayer's income from the City for that year. A taxpayer may revoke the election for any tax year by filing a return using another permitted allocation method. However, the revocation will not be effective if the Department determines that the other method does not fairly reflect the taxpayer's income from the City. Once the election has been revoked or is deemed revoked, the taxpayer may not use the books and records allocation method for any subsequent year. See section 11-508(b)(2) of the NYC Ad. Code as amended by Ch. 633 of the Laws of 2005.

Eligible taxpayers who have made the election to allocate using the books and records method must complete Schedule C, parts 1 and 2 and attach a detailed schedule showing the source of each item of income and expense as being attributable inside and outside the City.

ALLOCATION BY FORMULA

Unless you are electing to use the books and records method, income from business carried on both inside and outside New York City must be determined in accordance with the statutory formula or an alternative method approved by the Department of Finance. Schedule C, parts 1, 2 and 3 must be completed for this purpose in accordance with the following specific instructions.

An unincorporated business that derives more than 10% of its gross receipts for the taxable year from publishing newspapers or periodicals or radio or television broadcasting must allocate all its income using the statutory formula unless the Department of Finance requires an alternative method to be used in order to fairly and equitably reflect the taxpayer's business income in the City.

ALTERNATIVE ALLOCATION METHOD

If you believe that the methods of allocation described above do not fairly and equitably reflect income from New York City, you may request the Department's consent to use an alternative method when filing this return. To make that request, you must check the appropriate box on page 1, complete Schedule C, Part 3, and fully explain your proposed alternative allocation method in a rider. This explanation must provide full information regarding the nature and scope of the business activities carried on within and without New York City and provide complete details of how the method you propose would allocate income on a more equitable basis than the statutory method. In addition, at the time of filing the return, you must pay the tax in accordance with the formula basis set out in Schedule C, Part 3. If the Department consents to your proposed alternative allocation method and it results in a lower tax liability than the formula basis set out in Schedule C, you may be entitled to a refund of the excess amount you have paid.

If you carried on more than one business for which an alternative allocation method is required, a similar statement must be prepared for each business and attached to your return.

Security and commodity brokers should refer to 19 RCNY Section 28-07(h) for special rules for allocating commissions, manager fees, primary spreads, and selling concessions.

SCHEDULE C, PARTS 1 AND 2

Enter the information requested in parts 1 and 2, all columns. Indicate in the "rent" column whether you own or rent the premises listed. Enter the amount of rent paid, if any. (*Attach rider if necessary.*)

WEIGHTED FACTOR ALLOCATION FOR TAXPAYERS OTHER THAN MANUFACTURING COMPANIES ELECTING TO USE THE OPTIONAL ADDITIONAL GROSS INCOME FACTOR.

The business allocation percentage is generally computed by means of a three factor formula as follows:

- The property factor (line 1)
- The payroll factor (line 2)
- The gross income factor (line 3)

Each factor is computed by dividing the amount in Column A (New York City amount) by the amount in Column B (total amount) and entering the result in Column C. For taxable years beginning in 2009, taxpayers, other than manufacturing companies electing to use the optional additional gross income factor, must weight the three factors as follows: 30% for property; 30% for wages; and 40% for gross income.

Those companies using weighted factors must make the adjustments on Schedule C

described below:

Adjustments to Part 3 of Schedule C. Taxpayers utilizing the weighted factors should not complete lines 3b and 4.

Taxpayers using the weighted factors complete the following worksheet. Enter the figures from line 1e, Column C, line 2, Column C and line 3a, Column C exactly as they appear on those lines (without percentage symbols).

WORKSHEET

- A. Enter figure from line 1e, Col. C A. _____
- B. Multiply line A by 30 B. _____
- C. Enter figure from line 2, Col. C C. _____
- D. Multiply line C by 30 D. _____
- E. Enter figure from line 3a, Col. C. E. _____
- F. Multiply line E by 40 F. _____
- G. Add lines B, D, and F G. _____
- H. Divide line G by 100 if no factors are missing. If a factor is missing, divide line G by the total of the weights of the factors present. Round to four decimal places.. H. _____

Enter the line H amount on line 5 and on Schedule A, line 2.

NOTE - For purposes of computing the allocation percentage using the weighted factors method, as described above, or the double weighting for manufacturers method, described below, a factor is not missing because its numerator is zero but is missing if both its numerator and denominator are zero.

Double weighting for Manufacturers -

For taxable years beginning after 6/30/96, a manufacturing business may elect to use a double-weighted gross income factor. An election must be made on a timely filed original return and is made by entering on line 3b the amount from line 3a. If you make an election, add the percentages in Column C and divide the sum by 4 and enter the result on line 5 rounded to the nearest one hundredth of a percentage point. If one or more of the other factors is missing, add the remaining percentage(s) and divide by the number of percentages so added. **If you do not wish to make the election, do not enter an amount on line 3b and use the weighted factor allocation method described above.** For purposes of this election, a

manufacturing business is an unincorporated business primarily engaged in the manufacturing and sale of tangible personal property. Manufacturing includes assembly, working raw materials into wares, and giving new shapes, qualities or combinations to matter that has already gone through some artificial process, through the use of machinery, tools, appliances or other similar equipment. A business is primarily engaged in manufacturing if more than 50% of its gross receipts for the year are attributable to manufacturing.

After the business allocation percentage is computed, multiply Schedule A, line 4 by the business allocation percentage to determine the amount allocated to New York City. Enter the result on Schedule A, line 5.

The three factors are described below in the instructions for lines 1a, 1b, 1c, 1d, 2 and 3a and 3b.

Complete lines 1a, 1b, 1c, and 1d of Schedule C, part 3, to determine the average value of real and tangible personal property of the business.

LINE 1a - REAL PROPERTY OWNED

Enter in column A the average value of real property located within New York City. Enter in column B the average value of real property connected with the business both inside and outside New York City. For this purpose, property connected with the business does not include property from which the taxpayer *solely* receives rental income not considered income from an unincorporated business. See "Who is subject to the Tax," paragraph 6. The average value of the property is determined by adding:

- 1) its value at the beginning of the taxable year, and
- 2) its value at the end of the taxable year, and dividing by two.

LINE 1b - REAL PROPERTY RENTED FROM OTHERS

The value of real property rented to the business and to be included in line 1b is generally **eight** times the gross rent payable during the taxable year for which the return is filed. Gross rent includes:

- 1) any amount payable for the use or possession of real property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise; and
- 2) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other agreement; and
- 3) that proportion of the cost of any improvement to real property made by or on behalf of the business which reverts to the owner or lessor upon termination of a lease or other agreement.

If a building is erected on land leased by or on behalf of the business, the value of the building is determined in the same manner as if it were owned by the business. The value of the underlying land is determined by multiplying the gross annual ground rent by eight. Enter the value of rented real property located within New York City in column A and the value of all rented real property in column B.

LINE 1c - TANGIBLE PERSONAL PROPERTY OWNED

Enter in column A the average value of tangible personal property located within New York City. Enter in column B the average value of all tangible personal property connected with the business both inside and outside New York City.

The average value of the property is determined by adding:

- 1) its value at the beginning of the taxable year, and
- 2) its value at the end of the taxable year, and dividing by two.

LINE 1d - TANGIBLE PERSONAL PROPERTY RENTED FROM OTHERS

For tax years beginning on or after January 1, 2005, rented tangible personal property must be included in the property factor. The value of the rented tangible personal property to be included in line 1d is eight times the gross rent payable for the tangible personal property during the tax year.

LINE 2 - WAGES, SALARIES AND OTHER PERSONAL SERVICE COMPENSATION

The amounts to be entered on line 2 include wages, salaries, and other personal service compensation paid only to employees of the unincorporated business. Do not include payments to independent contractors or independent sales agents. The portion that represents the amount paid in connection with operations carried on in New York City should be entered on line 2 in column A. The total compensation paid to employees during the taxable year in connection with unincorporated business operations carried on both inside and outside New York City should be entered in column B.

If an employee works in or travels out of an office or other place of business within New York City, the compensation paid to that employee for services is part of operations carried on within New York City and must be included in New York City amounts.

LINES 3a and 3b - GROSS SALES OF MERCHANDISE OR CHARGES FOR SERVICES RENDERED DURING THE YEAR

Except as provided below, the amount to be entered on line 3a in column A is the portion of the total gross sales or charges that represents

services performed by or through an agency in New York City. This includes services performed by employees, agents, agencies or independent contractors situated at, connected with, or sent out from, offices of the unincorporated business (or its agencies) located in New York City. Notwithstanding the foregoing, for tax years beginning on and after July 1, 2005, the source of income from services will be determined by the place where the services were performed (the "place-of-performance method"), instead of the office out of which the services were performed, according to the following phase-in schedule: Taxpayers having gross receipts of less than \$100,000 for the first tax year starting on or after July 1, 2005 and before July 1, 2006 must use the place-of-performance method starting in that year. Taxpayers having gross receipts of less than \$300,000 for the first tax year starting on or after July 1, 2006 and before July 1, 2007, must use the place-of-performance method starting in that year. All other taxpayers must use the place-of-performance method starting with the first tax year beginning on or after July 1, 2007.

For taxable years beginning after June 30, 1996, the amount to be entered on line 3 in column A with respect to sales of tangible personal property is the portion of the total gross sales of tangible personal property that represents sales where shipment is made to a point within New York City.

Do not include payments for the use of intangibles from related members that were subtracted on line 20 of Schedule B.

Taxpayers engaged in publishing newspapers or periodicals must allocate receipts from advertising in such publications based on the circulation of the publication in the City compared to the total circulation. Taxpayers engaged in radio or television broadcasting, whether by cable or other means, must allocate receipts from broadcasting programs or commercial messages based upon the location of the audience for the broadcasts in the City compared to the total audience. Taxpayers engaged in publishing newspapers or periodicals or in radio or television broadcasting must allocate receipts from subscriptions to such newspapers, periodicals and broadcast programs based on the location of the subscriber.

Manufacturers electing to double-weight the gross income factor should enter the amount from line 3a, Column C, on line 3b. See 19 RCNY §28-07(d) for rules relating to the definition of manufacturing.

Receipts from management, administration or distribution services provided to a regulated investment company (RIC) must be allocated based upon the percentage of the RIC's shareholders domiciled in New York City. (Attach Rider showing computation.) See Admin. Code §11-508(e-2).

SOURCING OF RECEIPTS OF REGISTERED SECURITIES OR COMMODITIES BROKERS OR DEALERS.

For taxable years beginning after 2008, new rules are applicable in determining the sourcing of the receipts of taxpayers which are registered securities or commodities brokers or dealers. See Chapter 201 of the Laws of 2009.

Receipts earned by registered securities or commodities broker or dealer - The rules below apply for determining whether a receipt is deemed to arise from services performed in New York City by a registered securities or commodities broker or dealer, for purposes of computing the gross income factor of the BAP (Administrative Code section 11-508(e-3)).

A registered securities or commodities broker or dealer is a broker or dealer who is registered by the Securities and Exchange Commission (SEC) or the Commodities Futures Trading Commission and includes over-the-counter (OTC) derivatives dealers as defined under regulations of the SEC (17 CFR 240.3b-12). The terms *securities and commodities* have the same meanings as the meanings in IRC sections 475(c)(2) and 475(e)(2).

- **Brokerage commissions** - Brokerage commissions earned from the execution of securities or commodities purchase or sales orders for the accounts of customers are deemed to arise from a service performed in New York City if the customer who is responsible for paying the commissions is located in New York City.
- **Margin interest** - Margin interest earned on brokerage accounts is deemed to arise from a service performed in New York City if the customer who is responsible for paying the margin interest is located in New York City.
- **Account maintenance fees** - Account maintenance fees are deemed to arise from a service performed in New York City if the customer who is responsible for paying the account maintenance fees is located in New York City.
- **Income from principal transactions** - Gross income from principal transactions (that is, transactions in which the registered broker or dealer is acting as principal for its own account, rather than as an agent for the customer) are deemed to arise from a service performed in New York City if the production credits for these transactions are awarded to a New York City branch, office, or employee of the taxpayer.

Registered broker dealers may elect to source the gross income from principal transactions based on the location of the customer

to the principal transaction. If the election is made, gross income from principal transactions is deemed to arise from a service performed in New York City to the extent that the gross proceeds from the transactions are generated from sales of securities or commodities to customers within the city based upon the mailing addresses of those customers in the records of the taxpayer. For additional information, see section 11-503(e-3)(1)(C) as added by section 108 of Chapter 201 of the Laws of 2009.

- **Fees from advisory services for the underwriting of securities** - Fees earned from advisory services for a customer in connection with the underwriting of securities (where the customer is the entity contemplating the issuance of the securities or is issuing securities) or for the management of an underwriting of securities are deemed to arise from a service performed in New York City if the customer responsible for paying the fee is located in New York City.
- **Receipts from the primary spread for the underwriting of securities** - Receipts from the primary spread or selling concession from underwritten securities are deemed to arise from a service performed in New York City if production credits are awarded to a branch, office, or employee of the taxpayer in New York City as a result of the sale of underwritten securities.
- **Interest earned on loans to affiliates** - Interest earned on loans and advances made by a taxpayer to an affiliate are deemed to arise from a service performed in New York City if the principal place of business of the affiliate who is responsible for the payment of interest is located in New York City. An entity shall be considered an affiliate with the taxpayer for this purpose if the entity and the taxpayer have an eighty percent or more common direct or indirect, actual or beneficial ownership.
- **Fees for management or advisory services** - Fees earned from management or advisory services, including fees from advisory services for activities relating to mergers or acquisition activities, are deemed to arise from a service performed in New York City if the customer responsible for paying these fees is located in New York City.

A customer is located in New York City if the mailing address of the customer, as it appears in the broker's or dealer's records, is in New York City. For more information, see 11-503(e-3) as added by section 108 of Chapter 201 of the Laws of 2009.

SCHEDULE D

Investment Allocation

Complete Schedule D if you have investment capital. Investment capital is the average value of your investments in stocks, bonds, and other corporate or government securities, less liabilities, both long term and short term, directly or indirectly attributable to investment capital. Investment capital does not include those stocks, bonds or other securities the interest and dividends from which are totally exempt from the UBT, except such instruments that are disposed of during the taxable year, producing taxable gain or loss. Investment capital does not include those stocks, bonds or other securities that are held for sale to customers in the regular course of business. Investment capital does not include interests in, or obligations of, partnerships or other unincorporated entities.

To determine the value of your assets for investment allocation purposes, you must include marketable securities at fair market value.

The fair market value of any asset is the price (without any encumbrance, whether or not the taxpayer is liable) at which a willing seller, not compelled to sell, will sell and a willing purchaser, not compelled to buy, will buy. The fair market value, on any date, of stocks, bonds and other securities regularly dealt in on an exchange or in the over-the-counter market is the mean between the highest and lowest selling prices on that date.

The value of all other property must be included at the value shown on the taxpayer's books and records in accordance with generally accepted accounting principles (GAAP).

ISSUER'S ALLOCATION PERCENTAGE

To determine the portion of investment capital to be allocated within the City, multiply the value of each stock or security during the period covered by the return (column E) by the issuer's allocation percentage for that stock or security.

This percentage may be obtained (1) from tax service publications, (2) by writing to: NYC Department of Finance, Customer Assistance - Correspondence Unit, 59 Maiden Lane, 14th Floor, New York, NY 10038 or (3) by calling 311. If calling from outside of the five NYC boroughs, please call 212-NEW-YORK (212-639-9675). If the issuer was not doing business in New York City during the preceding year, the percentage is "0".

SCHEDULE D, LINE 3 - CASH

If you have both business and investment capital, you may elect to treat cash on hand or on deposit as either business or investment capital. If you wish to elect to treat cash as investment capital, you must include it on this line. Otherwise, you will be deemed to have elected to treat cash as business capital. You may not

elect to treat part of such cash as business capital and part as investment capital. You may not revoke your election after it has been made.

SCHEDULE E

Net Operating Loss Deduction

The net operating loss deduction allowable on Form NYC-202 is computed in the same manner for unincorporated business tax purposes as it would be for federal income tax purposes, but taking into account only unincorporated business gross income and unincorporated business deductions allocated to New York City of the unincorporated business.

If the unincorporated business was carried on both inside and outside New York City during the year in which the net operating loss was sustained, the allowable 2009 net operating loss deduction is to be determined by reference to the allocation basis or method used in the year the loss was sustained, regardless of whether the unincorporated business was carried on both inside and outside New York City during 2009. The amount of loss allocated to New York City for the loss year is the amount to be entered on line 1 of Schedule E.

LINE 7

If the amount on Schedule A, line 10 is a loss, enter "0." If you are submitting a Schedule E for more than one loss year, enter on line 7 of Schedule E for the earliest loss year the amount from Schedule A, line 10. On the Schedule E for any subsequent loss year, enter on line 7 the amount from Schedule A, line 10, reduced by the sum of the amounts entered on Schedules E, line 8, for any earlier loss years.

SCHEDULE F

Additional Required Information

All questions in this schedule (Questions 1 through 8) must be answered.

COMPOSITION OF PREPAYMENTS SCHEDULE

Enter the payment date and the amount of all prepayments made for this tax period.

For interest calculations and account information, call 311. If calling from outside of the five NYC boroughs, please call 212-NEW-YORK (212-639-9675).

You can also visit the Finance website at nyc.gov/finance

PRIVACY ACT NOTIFICATION

The Federal Privacy Act of 1974, as amended, requires agencies requesting Social Security Numbers to inform individuals from whom they seek this information as to whether compliance with the request is voluntary or mandatory, why the request is being made and how the information will be used. The disclosure of Social Security Numbers for taxpayers is mandatory and is required by section 11-102.1 of the Administrative Code of the City of New York. Such numbers disclosed on any report or return are requested for tax administration purposes and will be used to facilitate the processing of tax returns and to establish and maintain a uniform system for identifying taxpayers who are or may be subject to taxes administered and collected by the Department of Finance, and, as may be required by law, or when the taxpayer gives written authorization to the Department of Finance for another department, person, agency or entity to have access (limited or otherwise) to the information contained in his or her return.