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Diana Beinart
General Counsel/Deputy Commissioner

August 22, 2018

RE: N.Y.C. Unincorporated Business Tax
FLR-18-4986

Dear Mr.

This is in response to your letter dated December 10, 2017 requesting guidance as to the proper method of allocating your income to New York City for purposes of calculating the amount of New York City Unincorporated Business Tax (“UBT”) that you owe.¹

FACTS

The facts you have presented in your request are as follows:

You currently live in XXXXXX, Nassau County, but still own your former residence in New York City which you occupy for less than 184 days a year. You have three single member limited liability companies (LLC1, LLC2 and LLC3) through which you provide different services. Your unincorporated business gross income is more than \$95,000 per year and you file your return on Form NYC-202.

LLC1: The service provided through this limited liability company is remote IT support and maintenance for direct clients. You provide remote technical support to clients in the United States with remote IT support. The only time you come into New York City is when maintenance is required for the clients that are located in New York City.

LLC2: The service provided though LLC2 is consulting for indirect clients. Companies headquartered in Ohio, Massachusetts and California subcontract your services and send you to provide technical services onsite to their clients all over the United States. Some of these clients are located in New York City.

¹ You also requested guidance regarding your liability under the New York City Personal Income Tax but you were advised by phone on January 4, 2018 that this office does not administer that tax and to seek guidance from New York State.

LLC3: The service provided through this limited liability company is credit card terminal referral service. You work to generate leads for a Pennsylvania based company that provides credit and point of sale terminals.

DISCUSSION

The UBT is imposed on the unincorporated business taxable income of every unincorporated business carried on within New York City (the “City”). Section 11-503(a) of the New York City Administrative Code (the “Code”). Code section 11-502(a) defines an unincorporated business as “any trade, business, profession, or occupation conducted...by an individual or unincorporated entity...” 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 the 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. Code §§11-514(a)(4) and 11-506(a)(1). A limited liability company (“LLC”) which is wholly owned by an individual and which has not elected to be taxed as a corporation for federal income tax purposes is a disregarded entity and the business operated through it will be considered a sole proprietorship for UBT purposes. See Finance Memorandum 99-1. Where an individual carries on in whole or in part in the City, two or more distinct unincorporated business, all such businesses carried on in whole or in part in the City are treated as one unincorporated business for purposes of the UBT. 19 Rules of the City of New York (“RCNY”) §28-02(a)(4)(i). An unincorporated business carried on both within and outside the City must allocate to the City a fair and equitable portion of its business income. Code §11-508(a). To do that, a taxpayer multiplies its adjusted business income against a business allocation percentage consisting of a fraction dividing the taxpayer’s City property, payroll, and receipts by the taxpayer’s property, payroll, and receipts everywhere. Code §11-508(c).

The source of receipts from services. To determine the fraction of a taxpayer’s receipts within and outside the City, the sources for a taxpayer’s receipts need to be determined. Generally the UBT treats the source of receipts derived from the provision of services to be the location where the services are performed. Code §11-508(c)(3). There are special rules dealing with the sourcing for specific industries and businesses but those rules are not relevant here.

Under the facts that you have presented, you are operating three types of business through three separate LLC’s. Because you are filing a UBT return we are assuming you have not elected to treat these LLC’s as corporations. As single member LLCs, each of these LLCs is a disregarded entity and is considered a sole proprietorship. Because all unincorporated businesses operated by an individual in whole or in part in the City are treated as one business for purposes of the UBT, these LLCs will be treated as one business. Therefore, only one UBT return is required. For purposes of allocating the receipts to the City, a reasonable attempt to match the receipts to the time spent in the City earning those receipts should be made.

In order to determine the amount of the receipts from services to be allocated to the City, you should determine where the work was done, in accordance with Code section 11-508(c)(3).

If work for a particular client is split between the City and outside the City, you should allocate the receipts for that client based on the proportion of time spent in the City. Furthermore, if different

tasks performed by the same LLC are billed at different rates, the amount to be allocated to the City can be calculated separately, based on the time spent in the City to accomplish the various tasks. (*See generally*, 19 RCNY §28-07(e), Example).

The Department reserves the right to verify the information submitted. Please advise the Department of any material change in the facts presented.

Very truly yours,

Diana Beinart
General Counsel

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