

Income/Franchise:

New York City: Investment Management Company Owes GCT on Gains Derived from Sale of LLC Interest

Decision No. TAT (E)16-9(GC), N.Y.C. Tax App. Trib. (3/12/21). The New York City Tax Appeals Tribunal (Tribunal) affirmed an administrative law judge's determination, which held that an investment management company having no activities in New York City (City) owed City general corporation tax (GCT) on its capital gains from the sale of its minority interest in a limited liability company (LLC), because under the facts, it was a limited partner receiving City-source income from this flow-through partnership entity that was doing business in the City. The company unsuccessfully claimed that such taxation violates the Due Process and Commerce Clauses of the US Constitution as it was *not* engaged in a unitary business with the LLC and did *not* have sufficient nexus with the City for such tax imposition. The Tribunal explained that the City's imposition of GCT on such a capital gain satisfies the Due Process Clause if there is "some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax...and the income attributed to the State for tax purposes must be rationally related to the taxing State" – concluding that both of these requirements are satisfied under the facts in this case. That is, the investment management company has nexus with the City by reason of its partnership interest in the LLC, and the value of the capital gain on the company's sale of its interest in the LLC's business is "rationally related" to its business activities, all of which were conducted in the City. The Tribunal commented that it could "see no other sources of value for the gain," and the company's stipulation that it paid GCT on its share of the LLC's "partnership income," constituted an admission of all of the relevant facts necessary to establish that it had nexus with the City. Please contact us with any questions.

URL: <https://www1.nyc.gov/assets/taxappeals/downloads/pdf/169DEC0321.pdf>

— Don Roveto (New York)
Partner
Deloitte Tax LLP
droveto@deloitte.com

Jack Trachtenberg (New York)
Principal
Deloitte Tax LLP
jtrachtenberg@deloitte.com

Mary Jo Brady (Jericho)
Senior Manager
Deloitte Tax LLP
mabrady@deloitte.com

Ken Jewell (Parsippany)
Managing Director
Deloitte Tax LLP
kjewell@deloitte.com

Joshua Ridiker (New York)
Senior Manager
Deloitte Tax LLP
jridiker@deloitte.com

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