

Income/Franchise:

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

Case No. 2021-2517 (Index No. TAT (E) 16-9 (GC)), N.Y. App. Div., 1st Dept. (4/12/22). The New York Supreme Court Appellate Division, First Department (Court), unanimously confirmed a New York City Tax Appeals Tribunal (Tribunal) ruling from 2021 [see Decision No. TAT (E)16-9(GC), N.Y.C. Tax App. Trib. (3/12/21) and *State Tax Matters*, Issue 2022-18, for more details on this earlier ruling], 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) that was taxed as a partnership and conducting business in the City. Among its arguments to the contrary, 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. Under the facts, the investment management company was a limited partner receiving City-source income from the LLC, and the Tribunal had reasoned that:

URL: [https://www.nycourts.gov/courts/ad1/calendar/List_Word/2022/04_Apr/12/PDF/Goldman%20Sachs%20%20v%20%20NYC%20Tax%20Tribunal%20\(2021-02517\).pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2022/04_Apr/12/PDF/Goldman%20Sachs%20%20v%20%20NYC%20Tax%20Tribunal%20(2021-02517).pdf)

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

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210507_11.html

1. The company has nexus with the City by reason of its partnership interest in the LLC, and
2. 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 Court concluded that the Tribunal had "rationally determined that petitioner failed to demonstrate that the City impermissibly sought to impose the GCT upon income attributable to activities carried on outside its borders." Furthermore, responding to the company's specific claim that the capital gain at issue was earned outside the City because activities related to its investment in the LLC were performed outside the country, the Court reasoned that "while the investment team's business acumen may have influenced the timing of petitioner's sale of its partnership interest," it was rational for the Tribunal to conclude that the capital gain was attributable to the value of the LLC on the date it was sold. Please contact us with any questions.

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