

Income/Franchise:

New York ALJ Says Certain Deferred Compensation Must Be Allocated Based on “BAP Method” from Years Earned

Determination DTA Nos. 830479, 830481, N.Y. Div. of Tax App., ALJ Div. (9/7/23). In a ruling involving two nonresident individual partners of a limited partnership that owned a limited liability company (LLC) operating in New York in prior years as a registered investment advisor and providing investment management services to private investment funds, an administrative law judge (ALJ) with the New York State Division of Tax Appeals held that the partners’ shares of certain deferred management and performance fees pursuant to Internal Revenue Code section 457A and the related appreciation must be allocated to New York for personal income tax purposes under state law based on the partnership’s business allocation percentage (BAP) for the years the underlying services were performed, rather than for the later year in which such amounts were recognized. Under the facts, both the taxpayers and the Division of Taxation of the New York State Department of Taxation and Finance (Department) used the “BAP method” to determine the amount of income that should be allocated to New York; however, the taxpayers asserted the deferred management and performance fees and the related appreciation should be included in the gross income percentage and ultimately averaged with the property and payroll percentages for 2017 to determine the 2017 BAP, and the Department asserted the New York State BAP from the time the services were performed/earned should be used (*i.e.*, 100%). In ruling against the taxpayers, the ALJ explained that the taxpayers’ methodology “ignores the plain language of Tax Law § 631(b)(1)(F),” and the only reasonable interpretation of it is that “the BAP to be utilized is from the year the services generating the income were performed.” Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/determinations/830479.det.pdf>

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