

New York City – Real estate licensing business deemed to be a service provider, subject to Unincorporated Business Tax

June 25, 2014

In brief

In a letter ruling, the New York City Department of Finance (Department) concluded that a company licensing office suites to third parties was not exempt from the Unincorporated Business Tax (UBT). The Department found that the company provided services that went beyond being incidental to exempt holding, leasing or managing real property. Accordingly, the company was subject to the UBT. [Finance Letter Ruling, NYC Dep't of Fin. [FLR 13-4937](#)/UBT, Aug. 19, 2013, released June 12, 2014]

In detail

Facts

Company is a limited liability company that offers furnished office space for rent and identifies itself as being in the business of providing 'serviced accommodations.' Company rents space from building owners, which it develops as office suites and licenses to third parties. Company's contractual agreements with third parties are structured as licenses to use real property rather than leases.

Services provided to the office suite occupants include the following: basic receptionist services, concierge services, basic IT assistance, cleaning and maintenance services, access to common areas, 24 hour lobby

security, and mail and package delivery to occupant's offices. Additionally, occupants have the opportunity to utilize other services for an additional cost.

New York City's incidental services to real property exemption from the UBT

New York City imposes the UBT on the taxable income of every unincorporated business carried on wholly or partly within NYC. However, an owner of real property, a lessee or fiduciary is *not* considered to be engaged in an unincorporated business by merely holding, leasing or managing real property. Certain business activities conducted at the real property by the owner, lessee or fiduciary, such as laundry, garage or health club services, are considered

incidental to the holding, leasing or managing real property and are exempt from UBT, provided that the business activities conducted are solely for the benefit of tenants and not available to the general public.

Office services found to be more than incidental for UBT purposes

While the Department found that some of the services Company provides could qualify as 'incidental' to the licensing activity as construed by statute, others exceeded the incidental threshold and were found to be taxable. For example, Company's license agreements outline certain amenities, such as heating, air conditioning, lighting, electricity, and access

to common areas that are included with office suite rent. Although these services could qualify as incidental, the Department concluded that Company markets a bundle of office services, which includes both incidental services and non-incidental services. The Department identified basic receptionist services, concierge services, basic IT assistance, cleaning and maintenance services as all going beyond incidental services as intended by the statute. Similarly, services offered at an additional cost such as conference room usage, coffee,

telephone service, internet service, copying machines, voicemail to email, and cable television are also services that are not incidental to the holding, leasing or managing of real property.

The Department further noted that Company prohibited an occupant from installing certain furniture and equipment and included a non-competition clause in its license agreements. These restrictions imposed on occupants provided additional grounds for concluding that Company was in the business of providing services and not merely

providing a license for the use of property, as identified in the statute. Accordingly, the Department found the Company to be subject to the UBT.

The takeaway

This ruling provides taxpayers guidance on the types of services the Department may view as being incidental services relating to the holding, leasing, or managing of real property and, consequently, not subject to the UBT.

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