

Income/Franchise:

New York City: Appellate Court Affirms that Commission Payments to Federal “DISC” are Nondeductible for UBT Purposes

Case No. 2023-02713, N.Y. App. Div., 1st Dep’t (12/5/24). In a ruling involving a limited liability partnership (LLP) that made payments in the form of commissions to a federally-recognized domestic international sales corporation (DISC) with no employees and whose shareholders were all partners in the LLP, the New York Supreme Court, Appellate Division, First Department (Court) affirmed the New York City Tax Appeals Tribunal (Tribunal) determination [see TAT(E)17-21(UB), N.Y.C. Tax App. Trib. (1/26/23), and *State Tax Matters*, Issue 2023-8, for more details on the 2023 Tribunal ruling] and held that the payments were made to the LLP’s partners for their services and thus were nondeductible for New York City (City) Unincorporated Business Tax (UBT) purposes pursuant to City law that bars deductions for amounts paid or incurred to a proprietor or partner for services or the use of capital. In doing so, the Court explained that the LLP failed to show that the stipulated facts, the relevant caselaw, and the proper interpretation of the applicable statutory provisions – including New York City Charter § 170(d), Administrative Code § 11-507, and 19 RCNY 28-06(d)(1)(i)(B) – required the Tribunal to apply the federal law applicable to deductions of such commissions from taxable federal income to the facts here. Further, according to the Court, the LLP failed to show that the Tribunal lacked the authority, or a proper basis, for its conclusion concerning the impropriety of the LLP’s deduction of commission payments from taxable UBT income “where those payments were made to a shell DISC entity and the economic substance of the commission payment was to provide tax advantage compensation to petitioners’ partners for their services.” Please contact us with any questions.

URL:

[https://www.nycourts.gov/courts/ad1/calendar/List_Word/2024/12_Dec/05/PDF/Skidmore%20Owings%20&%20Merrill%20%20v%20%20NYC%20Tax%20Appeals%20\(2023-02713\).pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2024/12_Dec/05/PDF/Skidmore%20Owings%20&%20Merrill%20%20v%20%20NYC%20Tax%20Appeals%20(2023-02713).pdf)

URL: <https://www.nyc.gov/assets/taxappeals/downloads/pdf/1721DEC0123.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230224_4.html

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