

Income/Franchise:

New York: Tribunal Affirms that Deferred Compensation Must Be Allocated Based on “BAP Method” from Years Earned

Decision Nos. 830479 and 830481, N.Y. Tax App. Trib. (12/12/24). Affirming an administrative law judge (ALJ) ruling involving nonresident individual partners of a limited partnership that owned a limited liability company operating in New York in prior years as a registered investment advisor and providing investment management services to private investment funds [see *Determination DTA Nos. 830479, 830481*, N.Y. Div. of Tax App., ALJ Div. (9/7/23), and *State Tax Matters*, Issue 2023-38, for more details on the ALJ ruling in this case], the New York State Tax Appeals Tribunal (Tribunal) held that the partners’ shares of certain deferred management and performance fees and the related appreciation recognized pursuant to Internal Revenue Code section 457A and related guidance 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. In doing so, the Tribunal agreed with the ALJ that recognition of the related appreciation generally must be treated as ordinary income for tax purposes and the New York State BAP from the time the services were performed/earned should be applied (*i.e.*, 100%). Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/decisions/830479.dec.pdf>

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

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230922_4.html

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