Definition of New York Source Income of a Nonresident Individual Expanded

The definition of New York source income of a nonresident individual in Tax Law § 631(b)(1)(A)(1) was expanded to include the gain or loss from the sale of ownership interests in certain entities that own shares in cooperative housing corporations located in New York (*New York co-op*).

The entities covered by this are:

- partnerships,
- limited liability companies (LLCs),
- S corporations, and
- non-publicly traded C corporations with 100 or fewer shareholders.

This change applies to a sale or exchange of an interest that occurs on or after January 1, 2017. For a sale or exchange of an interest in an entity that occurred before January 1, 2017, but on or after May 7, 2009, see TSB-M-09(5)I, *Amendment to the Definition of New York Source Income of a Nonresident Individual* .

Determining New York source income

As a nonresident you include all or part of the gain or loss from the sale or exchange of an interest in any of the above entities in your New York source income if the entity owns:

- real property located in New York, and/or
- shares of stock in a New York co-op,

and the fair market value (FMV) of all the real property in New York and shares of stock in New York co-ops equals or exceeds 50% of the FMV of the assets the entity has owned for at least two years on the date of the sale or exchange. If all the entity's assets have been owned for less than two years, then the 50% condition is met.

The portion of the gain or loss you include in New York source income is the total gain or loss reported on your federal return from that sale or exchange multiplied by the following fraction as of the date of the sale or exchange:

$$\frac{\text{FMV of the entity's real property in New York and the shares of stock in New York co-ops}}{\text{FMV of all the assets that the entity owns}}$$

Example: *On August 1, 2017, John, a nonresident individual of New York State, sold his entire interest in Partnership ABC. John reported a gain of $40,000 from the sale on his federal return.*

Partnership ABC owns shares of stock in a New York co-op. On August 1, 2017, the FMVs are:

- *shares of stock in the New York co-op - $850,000*
- *total assets - $1,450,000*
- *total assets (including any real property and shares of stock in New York co-ops) owned for at least two years - $1,100,000*

On August 1, 2017, the FMV of Partnership ABC's real property in New York and shares of stock in a New York co-op exceeds 50% of the FMV of all the assets that Partnership ABC owned for at least two years ($850,000/$1,100,000 = .77 or 77%). Therefore, all or part of John's gain from the sale of his partnership interest is considered derived from New York sources.

To determine the amount of the gain that must be included in New York source income, John divides the FMV of Partnership ABCs shares of stock in New York co-ops by the FMV of all the assets owned on the date of sale ($850,000/$1,450,000) and multiplies the result by his federal gain reported on the sale of his partnership interest ($40,000). He determines that $23,600 is the amount of the gain from his sale of his partnership interest that must be included in New York source income as shown below:

- *$40,000 ($850,000/$1,450,000) = $23,600*

Part-year residents

This change also applies if you are a part-year resident individual that has a sale or exchange of an interest in an entity and the gain or loss on the sale or exchange occurs in the nonresident portion of the tax year.

Tiered entities

If you sell or exchange an interest in an entity that is part of a tiered structure of entities, the change applies to the sale or exchange if any entity in the tiered structure owns real property in New York or shares of stock in New York co-ops.

If a partnership in a tiered structure of entities sells or exchanges its interest in an entity in the tiered structure, the partnership must determine whether it has any New York source income relating to the sale or exchange for personal income tax as if it were a nonresident individual.[1]

Trusts

If you are a nonresident or part-year resident trust use the rules above for individuals. If you were a resident trust who was previously not subject to New York State income tax because you meet the conditions to not be subject to tax,[2] and you sold or exchanged your interest in a

[1] Tax Law § 631(b)(1)(A)(1)
[2] Tax Law § 605(b)(3)(D)

covered entity that owns real property in New York or shares of stock in New York co-ops, you will no longer meet the conditions and will be required to file.

References:

Tax Law §§ 605(b)(3)(D) and 631(b)(1)(A)(i)
Part Z of Chapter 59 of the Laws of 2017
TSB-M-09(5)I, *Amendment to the Definition of New York Source Income of a Nonresident Individual*

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