Tax Considerations for New York Real Estate Businesses

December 22, 2007 - Front Section

Choosing an entity involves several tax and non-tax considerations.

For most real estate businesses, a traditional C corporation is not the best choice.

C corporations are subject to double taxation for both federal and state purposes, first at the corporate level and again at the shareholder level when dividends are distributed.

C corporations also must pay New York City (NYC) corporate income tax on income allocable to NYC (such as gain on the sale of NYC property). NYC resident shareholders are also subject to NYC personal income taxes on dividend income.

"Pass-through" entities - partnerships, LLCs, and S corporations - generally avoid entity-level taxes and are therefore more desirable structures than C corporations.

All income, losses, and other tax attributes flow through to the individual partners, members, or shareholders.

In NYC, however, S corporations are subject to the city's corporate income tax. Partnerships and LLCs are subject to the city's Unincorporated Business Tax (UBT), but there's an exception for certain real estate businesses. As with corporations, nonresident partners and LLC members are exempt from NYC personal income tax.

One of the advantages of a pass-through entity is that you can deduct your share of business losses (subject to certain limitations).

And real estate professionals have an advantage over other taxpayers: They can use qualifying rental real estate losses to fully offset other types of income, such as salaries, commissions, interest, and dividends.

Generally, to qualify as a real estate professional, you must spend at least 750 hours a year on real estate activities in which you "materially participate."

Your advisors can help you determine the right structure for your business in light of your overall financial picture.