

November 20, 2025

Via Electronic Submission: <http://rules.cityofnewyork.us/>

NYC Department of Finance
Legal Affairs Division
375 Pearl Street, 30th Floor
New York, NY 10038
Attn: Timothy Byrne

Re: Business Corporation Tax Regulations (Parts 1-1 & 1-2)

Dear Sir or Madam:

MFA¹ appreciates the opportunity to provide feedback to the New York City Department of Finance (the “**Department**”) as it develops regulations for the business corporation tax (“**BCT**”),² including, in particular, “definitions of relevant terms that are used throughout the regulations” and rules relating to “the required minimum activities in the City for corporations to be subject to tax under the BCT” (the “**proposed nexus rules**”).³ We commend the Department for its iterative approach to rulemaking through which the Department intends to publish additional proposed rules in tranches and may promulgate new proposed rules and notices of public hearing seeking further comment at a later time, if necessary.

MFA represents the global alternative asset management industry, of which over 1,800 New York City-based fund managers, in total, manage trillions of dollars in gross assets for institutional investors. Institutional investors—like pension plans, university endowments, and charitable foundations—rely on MFA members to diversify their investments, manage risk, and generate attractive returns throughout the economic cycle. While the proposed BCT regulations address various definitions and provide a broad range of proposed nexus rules, we limit our comments to the definitions and proposed nexus rules relevant to

¹ Managed Funds Association (MFA), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA’s mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

² Unless otherwise indicated, all “Section” and “Regulation” references are to the New York City Administrative Code, Title 11 (Taxation and Finance), as amended, and the Rules of the City of New York (RCNY) promulgated thereunder.

³ N.Y.C. DEP’T OF FIN., NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT ON PROPOSED RULES (2025), <https://www.nyc.gov/assets/finance/downloads/pdf/rules/dof-proposed-rules-bct-implementation.pdf>.

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common structures and activities in the alternative asset management industry. Specifically, we believe that the definition of “portfolio investment partnership” and certain proposed nexus rules should more closely conform to their New York State analogues.

I. Executive Summary

As set forth in more detail below, we make the following two recommendations:

1. The definition of “portfolio investment partnership” should more closely conform to its New York State analogue.
2. The proposed nexus rules should adopt New York State’s quantitative thresholds for a corporate limited partner’s interest or basis in its interest in a limited partnership.

II. Discussion

1. *The definition of “portfolio investment partnership” should more closely conform to its New York State analogue.*

Proposed Regulation section 11A-04(d) provides that “[a] corporation whose only contact with New York City is the ownership of a limited partnership interest in a portfolio investment partnership will not be deemed to be doing business in New York City,” unless certain conditions are met. New York State provides a rule to similar effect.⁴ However, the definitions of “portfolio investment partnership” for City and State purposes diverge along the lines of which asset classes a “portfolio investment partnership” may invest. The City definition limits a “portfolio investment partnership” to “a limited partnership that meets the gross income requirement of IRC section 851(b)(2)—namely, a 90 percent threshold of gross income derived from “stock or securities,” “foreign currencies,” or “other income (including...gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies.”⁵ By contrast, the State definition more expansively provides that “income and gains from commodities...or from futures, forwards, and options with respect to such commodities are included in income that qualifies to meet such gross income requirement.”⁶ Both definitions otherwise exclude dealers in stocks or securities (and commodities, in the case of the State definition).

While we appreciate that the former regulatory definition of “portfolio investment partnership” for general corporation tax (“**GCT**”) purposes similarly was not as expansive as the State definition,⁷ we urge

⁴ N.Y. COMP. CODES R. & REGS. tit. 20, § 1-2.3(b), (d).

⁵ I.R.C. § 851(b)(2).

⁶ N.Y. COMP. CODES R. & REGS. tit. 20, § 1-2.3(e)(4).

⁷ See RCNY § 11-06(d).

the Department to take this opportunity to more closely conform the City definition to its State analogue.⁸ *First*, there is no statutory basis to narrowly circumscribe the asset classes in which a “portfolio investment partnership” may invest.⁹ To the contrary, the Department is given broad regulatory authority to determine the manner in which “any corporation that is a partner in such partnership [doing business in the City] shall be subject to tax.”¹⁰

Second, the State’s more expansive definition is better suited to the purpose which the proposed nexus rule related to “portfolio limited partnerships” serves—principally, to relieve corporations whose only contact with the jurisdiction is a non-controlling limited partner interest from the time and expense of filing and (often, negligible) tax-paying obligations. To that end, in the past year, our members and their clients issued and received hundreds of thousands of Schedules K-1 from different partnerships, most of which include corporate limited partners as direct and indirect partners. The less expansive City definition threatens the possibility that these corporate limited partners may have BCT filing and tax-paying obligations for which the compliance burden for both putative taxpayers and the Department alike would far surpass the value of the tax collected.

Third, there is no policy basis to discriminate on the basis of asset classes in which a “portfolio investment partnership” may invest. As discussed above, the purpose of the proposed nexus rule related to “portfolio limited partnerships” is to relieve corporations whose only contact with the jurisdiction is a non-controlling limited partner interest from the time and expense of filing and tax-paying obligations. This proposed nexus rule for corporate limited partners of investment vehicles organized as limited partnerships that conduct investment activities in the City is intended to incentivize that activity without jeopardizing the tax position of the corporate limited partners. Therefore, the City definition should be no less expansive than the State definition, to encourage a broad range of investment activity in the City. In fact, the Department should consider futureproofing the City definition by incorporating protections for other common asset classes, including, for example, lending and ancillary activities and trading in digital assets (as defined in I.R.C. section 6045(g)(3)(D)).

Moreover, there is even less of an apparent policy basis to exclude commodities trading activities where the unincorporated business tax (“**UBT**”) exempts non-dealer individuals and unincorporated entities from being considered engaged in an unincorporated business solely by reason of the purchase and

⁸ The New York State Bar Association (NYSBA) Tax Section championed greater conformity as early as January 1998. See NYSBA Tax Section, Tax Report #917 (Jan. 20, 1998) (“...we note that each of the various State and City provisions relating to portfolio investment partnerships...define permissible activities inconsistently with each other and with the federal rule that applies to offshore investment vehicles...[I]t would be desirable if the applicable State and City provisions were revised to achieve greater conformity.”).

⁹ See N.Y.C. ADMIN. CODE § 11-651 *et seq.*

¹⁰ N.Y.C. ADMIN. CODE § 11-653(1)(f).

sale of property, including stocks, securities, *and commodities*, for their own account.¹¹ Taken together with the proposed nexus rule related to “portfolio limited partnerships,” investment vehicles organized as limited partnerships or other state law entities characterized as partnerships for tax purposes and their limited partner-investors are generally exempt from City taxation, unless, in the case of a corporate limited partner, the investor is otherwise independently subject to the BCT. Both rules serve the same purpose— incentivizing a broad range of investment activity in the City—and should be equally expansive.

2. The proposed nexus rules should adopt New York State’s quantitative thresholds for a corporate limited partner’s interest or basis in its interest in a limited partnership.

Proposed Regulation section 11A-04(b) provides that “a corporation shall be deemed to be doing business in New York City if such corporation owns a limited partnership interest in a partnership that is doing business...in New York City.” The City regulation effectively attributes the nexus-triggering activities of a limited partnership to its corporate limited partners, with limited exceptions for corporate limited partners of publicly traded partnerships and “portfolio investment partnerships.” By contrast, New York State provides an additional nexus safe harbor for a corporate limited partner with a less-than-1-percent interest as a limited partner in a partnership or \$1 million-or-less basis in its interest in the limited partnership, which is not otherwise described by a non-exhaustive list of nexus-triggering factual situations in the State regulation.¹²

While we appreciate that “[n]exus rules for limited partners subject to the GCT have historically diverged from the State,” we urge the Department to adopt the State’s nexus safe harbor for corporate limited partners whose only contact with the City is the ownership of a *de minimis* limited partnership interest. The State’s nexus safe harbor fulfills a similar purpose as the proposed nexus rule related to “portfolio limited partnerships”— to relieve corporations whose only contact with the jurisdiction is a non-controlling limited partner interest from the time and expense of filing and negligible tax-paying obligations where the compliance burden for both putative taxpayers and the Department alike would far surpass the value of the tax collected.

Moreover, the State’s nexus safe harbor “fills in the gap” where the proposed nexus rule related to “portfolio limited partnerships” is ineffective, for example, because the limited partnership invests in portfolio-diversifying asset classes which cause it to fail the gross income requirement of I.R.C. section 851(b)(2). The State’s nexus safe harbor’s quantitative thresholds serve as a natural backstop to corporate limited partners with effective control of the limited partnership or its general partner(s) inappropriately availing themselves of the nexus safe harbor. In any case, the City may incorporate the same conditions under which a corporate limited partner may not qualify for the limited exceptions for corporate limited

¹¹ See N.Y.C. ADMIN. CODE § 11-502(c); RCNY § 28-02(g).

¹² See N.Y COMP. CODES R. & REGS. tit. 20, § 1-2.3(b)(2)(i).

partners of publicly traded partnerships and “portfolio investment partnerships,” to further ensure that only truly non-controlling limited partner interests qualify.

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We appreciate the opportunity to submit our comments on the Department’s proposed BCT regulations, and we would be pleased to meet with the Department to discuss our comments. If the Department has any questions or comments, please do not hesitate to call Joseph Schwartz, Vice President and Senior Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Jennifer W. Han

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