



Legislation Text

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Preconsidered Res. No. 996

Resolution calling upon the State Legislature to introduce and pass, and the Governor to sign, legislation that would eliminate the exemption of private investment fund carried interest from the New York city unincorporated business tax

By Council Members Miller, Rosenthal, Kallos and Palma

Whereas, The New York City unincorporated business tax (“UBT”) is a tax imposed on the net income of any individual or unincorporated entity engaged in any trade, business, profession, or occupation wholly or partly carried on within New York City; and

Whereas, Private investment firms, such as private equity or hedge funds, that are structured as partnerships are subject to the UBT; and

Whereas, Partners in private investment firms are generally compensated in two ways; and

Whereas, First, they receive payment of a management fee, typically two percent of the invested capital; and

Whereas, Second, they receive payment of carried interest, which refers to a set percentage of the funds’ profits, typically set at 20 percent of profits; and

Whereas, While the management fee paid to partners is considered ordinary business income that is taxed under the UBT, carried interest is exempt from taxation under the UBT; and

Whereas, The exemption that applies to carried interest earned by private investment funds is the “self-trading” exemption which operates on the principle that a person or entity is not conducting business in New York City merely because they are engaged in the purchase, holding, and sale of property for their own personal account; and

Whereas, Because the federal tax regulations treat carried interest as investment income, the carried interest earned by private investment partners is treated as non-taxable investment income for purposes of the UBT; and

Whereas, Accordingly, an unincorporated private investment fund in New York City that is primarily engaged in self-trading may exempt carried interest from the UBT as an incentive allocation instead of treating it as taxable compensation; and

Whereas, However, according to testimony submitted by the Director of the Congressional Budget Office to the U.S. Senate Committee in 2007, “most economists...view at least part and perhaps all of the carried interest as performance-based compensation for management services...rather than a return on financial capital...”; and

Whereas, As performance-based compensation, carried interest should be taxed in the same manner as other compensation under the UBT; and

Whereas, In December 2015, the New York City Independent Budget Office (“IBO”) estimated that if carried interest were taxed under the UBT, the City would recognize approximately an additional \$200 million each year; and

Whereas, If IBO’s estimates are accurate, the carried interest exemption from the UBT would rank one of the City’s costliest business income and excise tax expenditures as reported by the City’s Department of Finance its Fiscal 2015 Tax Expenditure Report; and

Whereas, The benefit of the carried interest exemption goes to some of the country’s wealthiest individuals; and

Whereas, Of the 33 richest hedge fund managers in the United States identified by Forbes Magazine in 2015, all of whom had net worths in the billions of dollars, 26 worked for hedge funds that are headquartered in New York City; and

Whereas, Other types of partnerships, such as pension and mutual funds or law firms are not provided

with a similar tax preference and are required to pay the UBT on their earnings; and

Whereas, For purposes of equity and efficiency, private investment funds should be treated like all other partnerships and proprietors in New York City who are required to pay the UBT on their firms' net earnings; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the State Legislature to introduce and pass, and the Governor to sign, legislation that would eliminate the exemption of private investment fund carried interest from the unincorporated business tax.

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