

# Trading from Home

## NYC and NYS Tax Implications

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# Remote Work Locations Can Have a Different Relevance under the Unincorporated Business Tax (UBT) and Personal Income Tax (PIT)

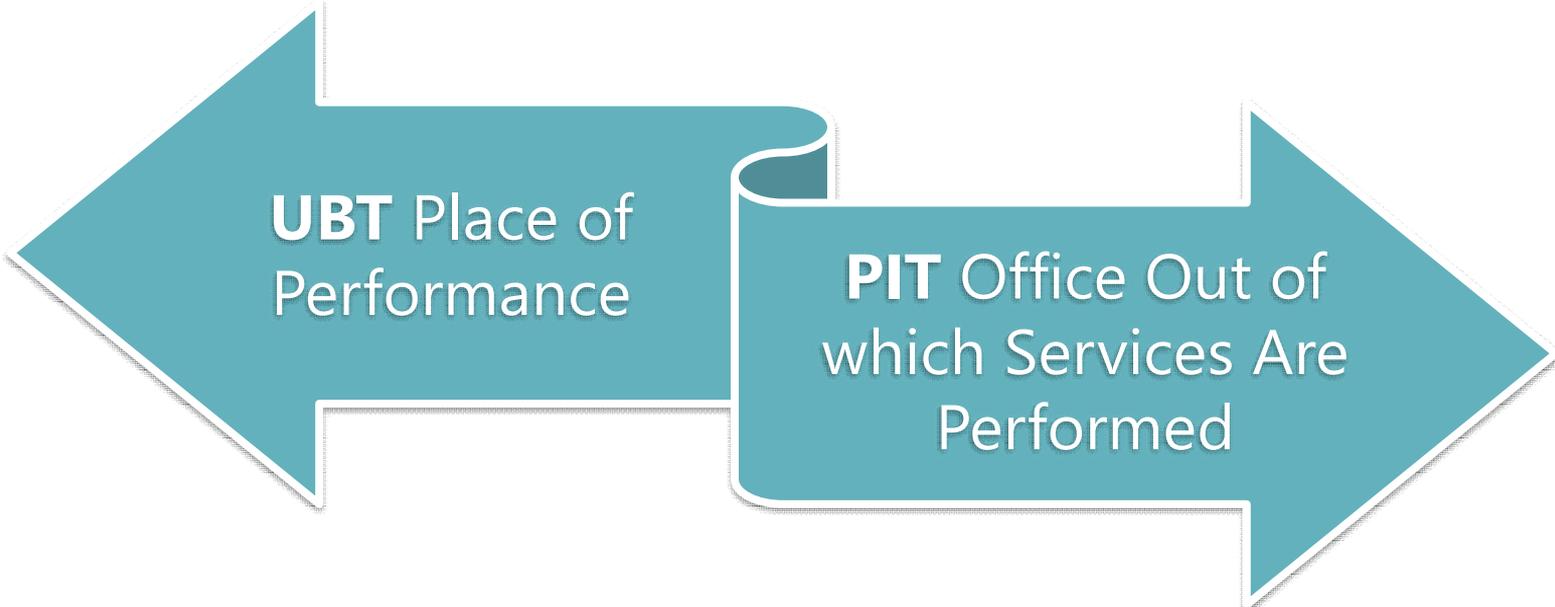
## ***UBT***

- Apportionment

## ***PIT***

- Apportionment
- Residency

# Remote Work Locations Impact the UBT and PIT Apportionment Calculations Differently



The diagram consists of two teal arrows pointing in opposite directions. The left arrow points left and contains the text 'UBT Place of Performance'. The right arrow points right and contains the text 'PIT Office Out of which Services Are Performed'. The two arrows are connected at their inner ends, forming a shape that resembles a double-headed arrow or a bridge between the two concepts.

**UBT** Place of Performance

**PIT** Office Out of which Services Are Performed

# Some Basics: Unincorporated Business Tax (UBT)

- ***What the numbers tell us:*** every dollar counts
  - The City’s estimated revenue loss from the pandemic in March to June was \$9 billion
  - The UBT and Tax Audit revenues are meaningful in the context of that gap
  - Data from the Mayor’s Office of Management and Budget, Tax Revenue Forecasting Documentation, March 2020, by fiscal year (in millions):

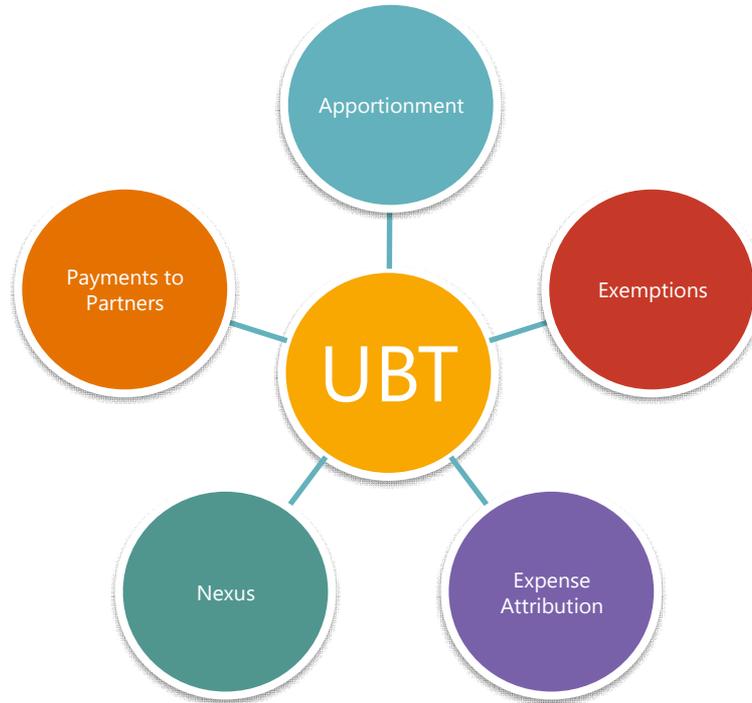
Revenue Source	2019	2020 (forecast)
UBT	\$2,028	\$1,993
Tax Audit	\$818	\$999



## Some Basics: UBT (cont.)

- ***What we all know:*** the UBT is a 4% tax on the income of partnerships, LLCs, sole proprietors, trusts and other unincorporated enterprises, and operates by oral tradition
  - The regulations are out of date and guidance is limited
- ***What we also know:*** NYC audits the UBT aggressively, the asset management industry is a significant focus
  - NYC has no personal income tax on nonresidents

# Some Basics: UBT (cont.)



# UBT: Impact of Remote Work Locations on Apportionment

## Single-Factor Formula

- NYC Admin. Code § 11-508(c)
- NYC Admin. Code § 11-508(i)(1)

## Place of Performance

- General Rule for services
- NYC Admin. Code § 11-508(c)(3)(C)

## Lump Sum

- Relative values
- Hours worked
- Some other reasonable method
- RCNY § 11-65(b)(3)(i)

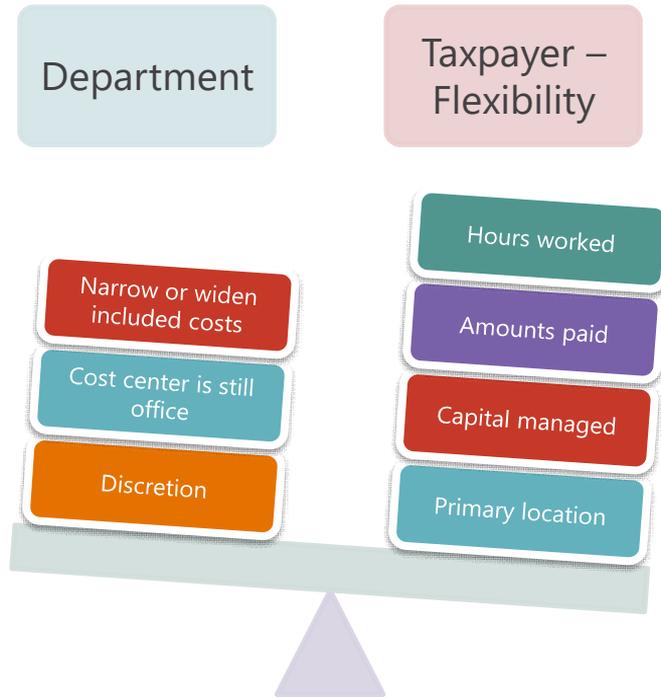
# UBT: Impact of Remote Work Locations on Apportionment



# UBT Impact of Remote Work Locations on Apportionment

- **Then:** *Matter of Zaretsky*, FHD(363)-UBT-6/91(0-0-0) (NYC Dept. of Fin. Hearing June 28, 1991).
  - Facts: Per week, surgeon spent 20 hours at NYC office and 30/40 hours at NJ home office; services were negotiated or consummated from NYC
  - Holding: 100% gross receipts allocable to NYC, but NJ home office was a regular place of business
    - (1) nature of business; (2) type and location of place of business; (3) nature of activity engaged in at each location; and (4) regularity, continuity, and permanency of the activity
- **Now:** *Matter of Gerson Lehrman*, TAT(E)08-79(GC), TAT(E)12-38(GC), TAT(E)12-39(GC) (NYC Tax App. Trib. Dec. 28, 2017).
  - Facts: A NYC consulting business with offices throughout the world engaged independent contractors to provide consulting services
  - Holding: Costs associated with personnel located outside NYC at their own chosen locations were included in the apportionment formula as non-NYC costs

# Potential Taxpayer and Department Apportionment Approaches to Work from Home Locations



# Supporting UBT Place of Performance





CLE Code

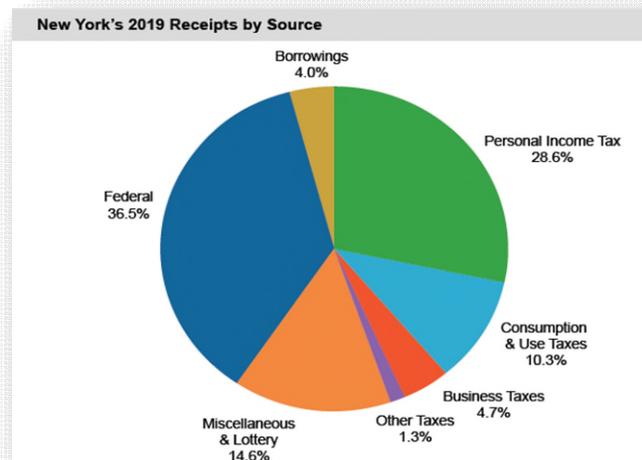
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“Resources” box.

Return the form by email to [cle-events@mayerbrown.com](mailto:cle-events@mayerbrown.com).

# Some Basics: Personal Income Tax (PIT)

- ***What the numbers tell us:*** PIT is vital to NYS
  - NYS estimates a 14% decline in receipts; \$61 billion in total lost revenue between fiscal years 2021 and 2024.
  - PIT receipts accounted for 28.6% of all NYS receipts in 2019 and 64% of all tax collected.





## Some Basics: PIT (cont.)

- ***What we all know:*** graduated tax on residents and nonresidents
  - Residents subject to tax on all income with possible credits available.
  - Nonresidents subject to tax on income attributable to NY sources.
- ***What we also know:*** NYS audits the PIT and residency aggressively; partnerships are starting to be audited more frequently.

# PIT: Impact of Remote Work Locations on Residents/Nonresidents

## Residents – Tax Base, Income Allocation

### Residency

- Five primary factors; other factors
- Statutory residency

### Double Taxation

- Credits paid to another state
- Intangibles Income

## Nonresidents – Income Allocation and Apportionment, Credits

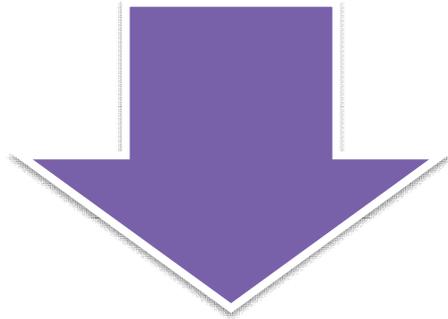
### Partners / Principals

- Books and records
- Three factor apportionment

### Employees

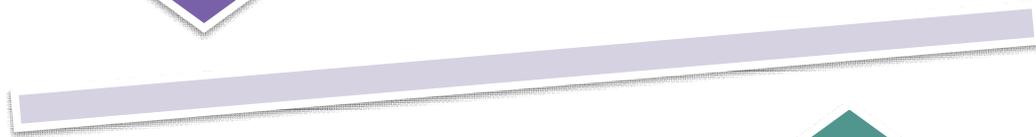
- Assigned location
- Days worked within NYS
- Convenience of the employer

# PIT: Nonresident Partner Apportionment



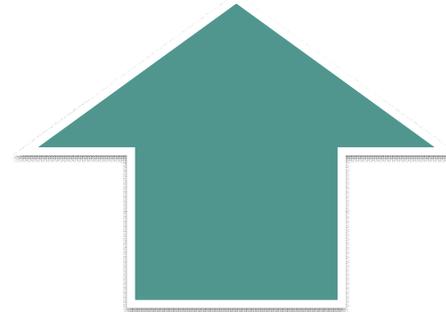
## Books & Records

Determine NYS income solely by books and records of NY office



## Three Factor Formula

- (1) Payroll (20 NYCRR § 132.15(e))
- (2) Gross Receipts (20 NYCRR § 132.15(f))
- (3) Property (20 NYCRR § 132.15(d))



# PIT: Nonresident Partner, Apportionment for Services

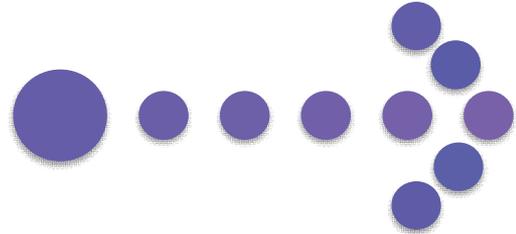
**Payroll** – sourced to NYS if assigned to NYS office



**Gross Income** – sourced to NYS if assigned to NYS office



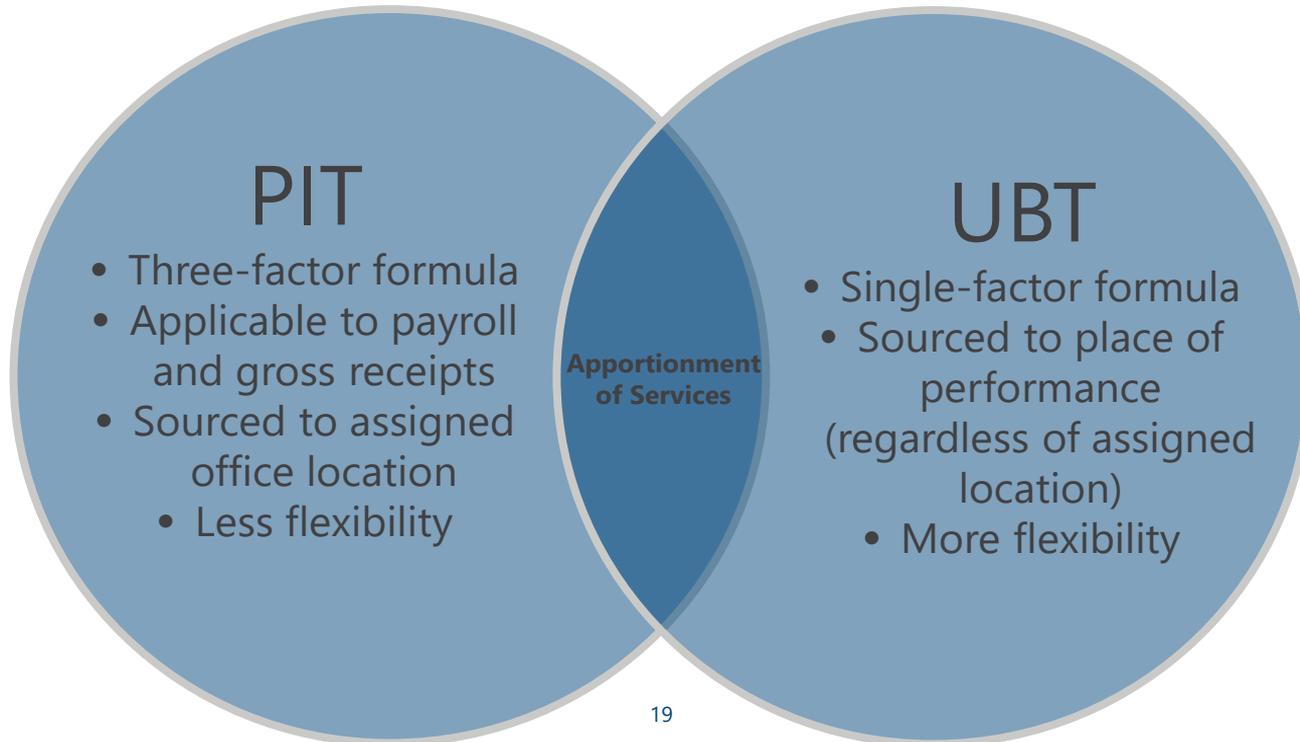
**Property** – depends on location of owned and rented property



# PIT: Nonresident Partner, Apportionment for Services, Gross Income Factor



# PIT and UBT: Apportionment of Services



# PIT: Nonresident Employee, Allocating Compensation

Days worked

- Allocate earnings to NYS based on days worked from within and outside of NYS (20 NYCRR § 132.18(a))

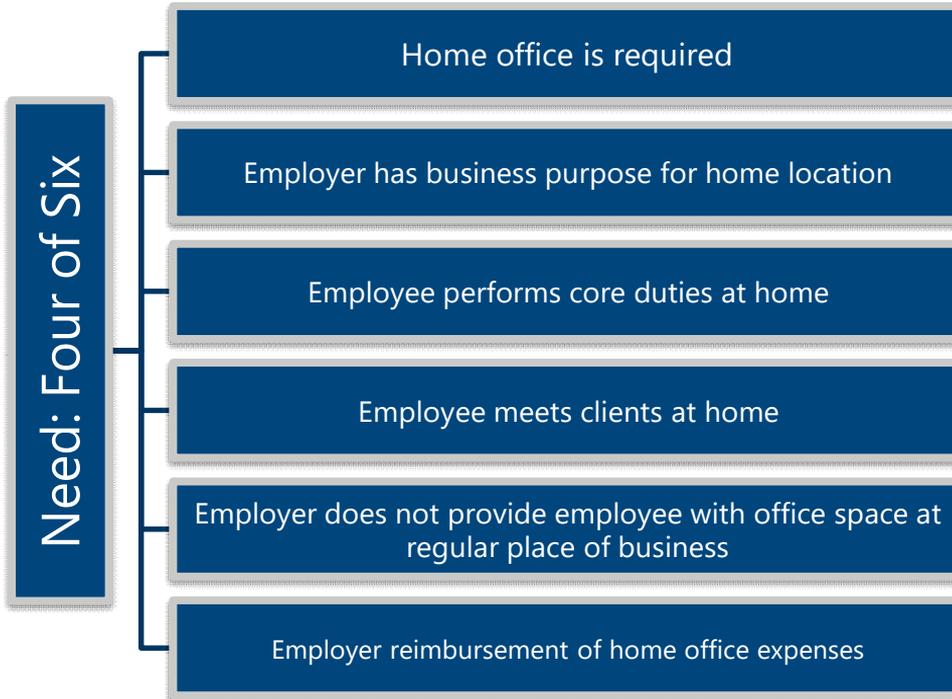
Convenience Test

- Claimed days worked outside of NYS must be based on necessity, not employee's convenience.
- Applicable only if assigned to NYS office.
- *Zelinsky v. New York State Tax Appeals Tribunal*, 1 N.Y.3d 85 (NY 2003)

Bona Fide Home office

- Must meet specific requirements (TSB-M-06(5)I (May 15, 2006))

# PIT: Bona Fide Home Office Secondary Factors



# PIT: Bona Fide Home Office Other Factors

Need: Three of Ten

Employer maintains telephone line and listing for home office

Home address is listed on employer business letterhead or business cards

Employee has exclusive area in home dedicated to office

Employee keeps inventory at home

Employer business records are stored at home office

Advertising shows home office as a place of business for employer

Home office has a sign indicating a place of business of employer

Home office is covered by a business insurance policy or business rider

Employee claims a deduction for home office expenses

Employee is not an officer of the company

# Supporting PIT Work Location (Same as UBT)



The background of the slide features a dark blue gradient with a faint world map. Overlaid on the map are various financial data points in white and light blue, including percentages like '4.1%', '2.95%', and '1.04%', and numerical values such as '4.78', '4.82', '65.50', '15.90', '16.60', '34.50', and '3,640,400'.

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