

NY Tax Talk: Calculating Tiered Partnership Income

By **Elizabeth Cha, Diane Beleckas and Madison Ball** (April 8, 2026, 5:58 PM EDT)

This article is part of a quarterly column that examines recent developments in New York tax law. In this installment, we focus on a recently released determination of the New York City Tax Appeals Tribunal on the proper method for computing New York City unincorporated business tax, and its relation to issues of federal conformity and agency deference.

Tiered partnerships that may be subject to the New York City unincorporated business tax should take note of a recently released determination in *In the Matter of Cantor Fitzgerald Securities*.^[1]

In the determination, released on Jan. 27, the New York City Tax Appeals Tribunal's Administrative Law Judge Division upheld an assessment by the New York City Department of Finance, finding that the entity approach, and not the aggregate method, should be used by tiered partnerships to compute UBT liability.^[2] This article explores the implications of the ALJ Division's decision, not only with regard to its holding, but also as to the broader issues of federal conformity and administrative agency deference as applied by the ALJ Division.

Background

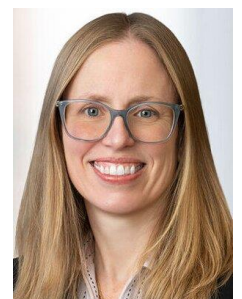
The taxpayer, Cantor Fitzgerald Securities, was a New York partnership engaged in business in New York City. Cantor Fitzgerald owned interests in multiple subsidiary partnerships, including some non-city partnerships engaged in activities wholly outside the city.

On its UBT returns for the 2004 through 2008 tax years, Cantor Fitzgerald utilized an aggregate approach, and calculated its unincorporated business gross income by including its distributive shares of income, gain, losses and deductions of its subsidiary partnerships, including the non-city partnerships.^[3]

Cantor Fitzgerald then allocated its income to the city using a business allocation percentage that was calculated by aggregating its shares of the property, payroll and gross income of its subsidiary partnerships, including the non-city partnerships, with its own allocation factors to determine a singular business allocation percentage.^[4]



Elizabeth Cha



Diane Beleckas



Madison Ball

The New York City Department of Finance redetermined Cantor Fitzgerald's gross income and business allocation percentage utilizing an entity approach to determining partnership business activities and income.

The department calculated Cantor Fitzgerald's business income separately from its subsidiary partnerships' business income, and allocated Cantor Fitzgerald's business income to the city using a business allocation percentage that was determined based solely on Cantor Fitzgerald's own property, payroll and gross income. The department then aggregated Cantor Fitzgerald's business income allocated to the city with its shares of its subsidiary partnerships' business income allocated to the city.

As a result, the income and factors of the non-city partnerships were removed from Cantor Fitzgerald's calculation, increasing its UBT liability for the 2004 through 2006 tax years.[5]

The tax appeals tribunal's ALJ Division accepted the department's redetermination — and rejected Cantor Fitzgerald's application of the federal flow-through theory of partnership taxation for UBT purposes.[6] The ALJ Division reasoned that partnerships are not subject to federal income taxation at an entity-level, but rather determine their income, gain, loss and deductions as a single entity and then allocate them to their partners for inclusion in their own federal income tax computations.[7]

Thus, the ALJ Division reasoned that partnerships do not have a "single taxable income" that serves as a starting point for calculating UBT, only individual items of income, gain, loss and deduction that together form the UBT-calculation starting point. The ALJ Division attributed this distinction to the UBT being an income tax regime, not merely a reporting methodology.[8]

Potential Impact on Taxpayers

Although Cantor Fitzgerald's tax liability increased, other taxpayers may benefit from excluding non-city partnerships. Tiered partnerships composed of partnerships doing business within New York City and entirely outside the city should take note of the determination and consider whether the isolation of non-city partnerships creates a planning opportunity.

Takeaways on Federal Conformity Limitations

The consideration of the federal starting point in the ALJ Division's Cantor Fitzgerald decision is notable when considered together with other recent decisions addressing the UBT starting point and federal conformity for UBT purposes, as the Department of Finance continues to draw distinctions between the UBT and federal income tax in applying UBT statutes.

On Nov. 19, 2025, the tax appeals tribunal's Appeals Division issued a decision in *In the Matter of A&E Television Networks LLC* regarding the computation of the UBT tax base and unincorporated business deductions.[9]

The Appeals Division determined that the Department of Finance could not disallow a deduction that was properly claimed and allowed for federal income tax purposes in computing the taxpayer's UBT tax base, absent a specific UBT modification. In so concluding, the Appeals Division considered the UBT's legislative history and concluded that the New York City Legislature clearly intended to "conform the UBT to the federal income tax." [10]

Both decisions were issued approximately a year after the New York Supreme Court, Appellate Division,

First Department's 2024 decision in *In the Matter of Skidmore Owings & Merrill LLP*. There the affirmed an Appeals Division determination that sustained the Department of Finance's disallowance of a deduction for commission payments made to an affiliated entity that were deductible for federal income tax purposes.[11]

Rather than reject federal taxable income as the starting point in computing the UBT tax base or the incorporation of federal income tax deductions generally, the decision was based upon the interpretation of the scope of a specific UBT modification — a UBT addback pertaining to payments to partners. The Appellate Division, First Department, found that the Department of Finance had the authority to consider economic substance in determining the applicability of the UBT addback, even though the federal income tax deduction being added back rested on a congressionally authorized legal fiction.[12]

Thus, within the span of approximately a year, the ALJ Division, Appeals Division and First Department of the Appellate Division took three distinct views on how federal authorities constrain the department's ability to independently determine the UBT tax base.

Furthermore, the ALJ Division's decision in *Cantor Fitzgerald* is the first New York City tax ruling to address the issue of administrative agency deference in light of the U.S. Supreme Court's 2024 decision on administrative deference, *Loper Bright Enterprises v. Raimondo*. [13] The ALJ Division found that the scope of the *Loper Bright* decision is limited to federal agency rulemaking, and therefore dismissed *Cantor Fitzgerald*'s argument that *Loper Bright* controlled for purposes of UBT.[14]

Rather than let the federal versus municipality distinction stand for itself, the ALJ Division analyzed deference given to the Department of Finance. The ALJ Division noted that the department had express statutory authority to issue its partnership allocation regulation, and that the regulation itself was proper as "its content aligned with and complemented" the controlling statute.[15]

The ALJ Division further posited that the department is generally entitled to deference as a rule-issuing agency due to its "technical expertise and understanding," which the ALJ Division describes in this case as "the nature of the UBT as an entity-level tax imposed by the Administrative Code where the Department's knowledge and understanding of the underlying operations and inferences are critical for proper implementation of the applicable tax regime." [16]

The deference afforded to the Department of Finance under current UBT authorities, and the procedure for appealing a UBT tax assessment through the tax tribunal and filing an Article 78 proceeding presents hurdles for taxpayers seeking to overturn a Department of Finance interpretation.

However, given that the *Loper Bright* decision is less than two years old, it remains to be seen what implications it will have as standards of administrative agency deference continue to unfold in state and local tax litigation.

Conclusion

An exception to the ALJ Division's *Cantor Fitzgerald* decision is pending before the Appeals Division. That decision may inform whether the Department of Finance will continue to challenge federal conformity constraints on its UBT interpretations, relying on the distinction drawn in *Cantor Fitzgerald* that, in New York, UBT is an income tax regime and not merely a reporting methodology, as it is for federal income tax purposes.

If the department continues to draw distinctions between UBT and federal income tax principles, the issue of the appropriateness of administrative agency deference will likely come to the forefront as taxpayers would likely challenge such interpretations as inconsistent with UBT statutes, which expressly incorporate federal meanings of terms and compute the UBT tax base based on federal taxable income.

For now, the Cantor Fitzgerald decision highlights a number of important issues for taxpayers, particularly those relating to federal conformity and agency deference for UBT taxpayers.

Elizabeth Cha is a partner, Diane Beleckas is a counsel and Madison Ball is an associate at Eversheds Sutherland.

Disclosure: Eversheds Sutherland represented the petitioners in Matter of A&E Television Networks.

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[1] The determination was issued on Dec. 16, 2025, but was not released until Jan. 27.

[2] In the Matter of the Petition of Cantor Fitzgerald Securities, TAT(H)19-16(UB) (N.Y.C. Tax Appeals Trib., ALJ Division, December 16, 2025) (available at <https://www.nyc.gov/assets/taxappeals/downloads/pdf/1916DET1225.pdf>).

[3] NYC Admin. Code § 11-506(a)(1) ("Unincorporated business gross income of an unincorporated business means the sum of the items of income and gain of the business, of whatever kind and in whatever form paid, includible in gross income for the taxable year for federal income tax purposes").

[4] Following a multiyear phase out, New York City eliminated the payroll and property factors for taxable years beginning on or after January 1, 2018. See NYC Admin. Code § 11-508(i)(9).

[5] The Department did not assert a UBT deficiency for 2007 and 2008 tax years as Cantor Fitzgerald reported losses for those years. In re Cantor Fitzgerald Securities at pg. 7.

[6] Id. at pg. 13.

[7] Id. at pg. 16.

[8] Id. at pg. 17 (internal quotations omitted).

[9] In the Matter of A&E Television Networks LLC, TAT(E) 20-32 (UB) (N.Y.C. Tax Appeals Trib., Nov. 19, 2025).

[10] Id. at pg. 13.

[11] In the Matter of Skidmore Owings & Merrill LLP v. New York City Tax Appeals Tribunal, 221 N.Y.S.3d 100, 101 (1st Dep't 2024).

[12] Id.

[13] In June 2024, the U.S. Supreme Court issued its decision in *Loper Bright Enterprises v. Raimondo* on judicial deference to administrative agency, overturning its then forty-year-old holding in *Chevron U.S.A Inc. v. Natural Resources Defense Council, Inc.* *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 377, 378,402 (2024) ("Since our decision in *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, we have sometimes required courts to defer to "permissible" agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently. In these cases we consider whether that doctrine should be overruled."). See also *Chevron U.S.A Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

[14] *In re Cantor Fitzgerald Securities* at pg. 23.

[15] Id. at pg. 24.

[16] Id.