

1. In general, the transfer of an interest in a partnership holding tangible personal property will not be subject to New York State sales tax because such a transfer is a transfer of intangible personal property. *See*, N.Y. Tax Regs. §§ 526.6(d)(4)(i), 526.8(c).

2. However, under New York law, an entity's separate existence will be recognized for tax purposes only so long as it has a legitimate business purpose. *See*, NYS ALJ (10/24/08), CCH New York Tax Reports, ¶ 406-279 (New York advisory opinion concluding that where a non-New York resident owns interests in an LLC or S corporation, the primary asset of which is New York-situs real property, such entity interests will not be includible in the individual's gross estate so long as the entity has a valid business purpose).

3. The test to be applied is the *Moline Properties* test, which states that an entity's separate existence will be recognized only "so long as [its] purpose is the equivalent of business activity or is followed by the carrying on of business by the corporation." *Moline Properties v. Commissioner*, 319 U.S. 436, 438-439 (1943).

4. This business purpose requirement has been extended to the sales and use tax context. *Morris v. New York State Department of Taxation and Finance*, 623 N.E. 2d 1157 (1993) (a sales tax case stating, "a corporation will be recognized as having a separate taxable identity unless it is shown to have had no legitimate business purpose either in its formation or its subsequent existence or that it was a sham or set up for tax avoidance"); *See also*, NYS ALJ 6/28/90, CCH New York Tax Reports, ¶ 253-261 (New York advisory opinion determining that a boat purchased by a DE corporation wholly owned by one stockholder would be disregarded and the stockholder would be liable for use taxes in connection with his ownership and use of the boat).