§ 107.1550 Distributions by Licensee—permitted “tax Distributions” to private investors and SBA.

If you have outstanding Participating Securities or Earmarked Assets, and you are a limited partnership, “S Corporation,” or equivalent pass-through entity for tax purposes, you may make “tax Distributions” to your investors in accordance with this § 107.1550, whether or not they have an actual tax liability. SBA receives a share of any tax Distribution you make. This section tells you when you may make a “tax Distribution” and how to compute it. You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

(a) Conditions for making a tax Distribution. You may make a tax Distribution only if:

(1) You have paid all your Prioritized Payments, Adjustments, and Charges, so that the balance in both your Distribution Account and your Accumulation Account is zero (see § 107.1520).

(2) You satisfy the liquidity requirement in § 107.1505.

(3) The tax Distribution does not exceed your Retained Earnings Available for Distribution.

(4) The tax Distribution does not exceed the Maximum Tax Liability from paragraph (b) of this section.

(b) How to compute the Maximum Tax Liability. (1) You may compute your Maximum Tax Liability for a full fiscal year or for any calendar quarter. Use the following formula:

\[ M = (TOI \times HRO) + (TCG \times HRC) \]

where:

\( M \) = Maximum Tax Liability

\( TOI \) = Net ordinary income allocated to your partners or other owners for Federal income tax purposes for the fiscal year or calendar quarter for which the Distribution is being made, excluding Prioritized Payments allocated to SBA.

\( HRO \) = The highest combined marginal Federal and State income tax rate for corporations or individuals on ordinary income, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

\( TCG \) = Net capital gains allocated to your partners or other owners for Federal income tax purposes for the fiscal year or calendar quarter for which the Distribution is being made, excluding Prioritized Payments allocated to SBA.

\( HRC \) = The highest combined marginal Federal and State income tax rate for corporations or individuals on capital gains, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

(2) You may compute the highest combined marginal Federal and State income tax rate for corporations or individuals on capital gains, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

(3) In determining the combined Federal and State income tax rate, you
must assume that State income taxes are deductible from Federal income taxes. For example, if the Federal tax rate was 35 percent and the State tax rate was 5 percent, the combined tax rate would be \((35\% \times (1-0.05)) + 5\% = 38.25\%\).

(4) For purposes of this paragraph (b), the "State income tax" is that of the State where your principal place of business is located, and does not include any local income taxes.

(c) SBA’s share of the tax Distribution. (1) SBA’s percentage share of the tax Distribution is equal to the Profit Participation Rate computed under §107.1530.

(2) SBA may direct you to pay its share of the tax Distribution to its designated agent or Trustee.

(3) SBA will apply its share of the tax Distribution in the order set forth in §107.1560(g).

(d) Paying a tax Distribution. You may make an annual tax Distribution on the first or second Payment Date following the end of your fiscal year. You may make a quarterly tax Distribution on the first Payment Date following the end of the calendar quarter for which the Distribution is being made. See also §107.1575(a).

(e) Excess tax Distributions. (1) As of the end of your fiscal year, you must determine whether you made any excess tax Distributions for the year in accordance with paragraph (e)(2) of this section. Any tax Distributions that you make for a subsequent period must be reduced by the excess amount distributed.

(2) Determine your excess tax Distributions by adding together all your quarterly tax Distributions for the year (ignoring any required reductions for excess tax Distributions made in prior years), and subtracting the maximum tax Distribution that you would have been permitted to make based upon a single computation performed for the entire fiscal year. The result, if greater than zero, is your excess tax Distribution for the year.