

1 NOTE: This draft has been converted from an amendment to the current regulations to a draft of  
2 a new regulation. The substance of this draft is unchanged from the last posted draft with the  
3 exception of the following: 1) the ownership thresholds that would subject a limited partner in a  
4 partnership to tax have been increased to \$5 million/5% in light of the elimination of the separate  
5 accounting election in the corporate partner regulation draft: 2) how to compute the \$1 million  
6 deriving receipts threshold when the taxpayer is a partner in a partnership has been clarified; and  
7 3) the procedures for determining if the deriving receipts thresholds need to be adjusted because  
8 of a change in the consumer price index have been clarified.  
9

10 Subpart 1-3 of Part 1 of Subchapter A of Title 20 of the Codes, Rules and Regulations of the  
11 State of New York is repealed and a new Subpart 1-3, Corporations Subject to Tax, is added to  
12 read as follows:

13 SUBPART 1-3

14 CORPORATIONS SUBJECT TO TAX

15 Sec.

16 1-3.1 Domestic corporations subject to tax.

17 1-3.2 Foreign corporations subject to tax.

18 1-3.3 Activities deemed insufficient to subject foreign corporations to tax.

19 1-3.4 Corporations not subject to tax.

20 1-3.5 Change of classification.

21 Section 1-3.1 Domestic corporations subject to tax. [Tax Law, section 209(1), (8)].

22 (a) The tax is imposed on every domestic corporation, not specifically exempt as  
23 provided in section 1-3.4 of this Subpart, for the privilege of exercising its corporate franchise,  
24 that is to say, for the mere possession of the privilege. Accordingly, a domestic corporation is  
25 subject to tax for each fiscal or calendar year, or part thereof, during which it is in existence,  
26 regardless of whether it does any business, employs any capital, owns or leases any property,  
27 maintains any office, derives any receipts from any activity in this state or engages in any  
28 activity, within or without New York State. A domestic corporation is subject to tax even  
29 though it carries on its business or derives its receipts entirely outside New York State.

30 *Example:* A corporation is incorporated under the laws of New York State on July 1,  
31 2015. It begins to do business on February 1, 2016, setting up its books on the basis of a calendar  
32 year. The corporation is subject to tax from July 1, 2015 to December 31, 2015, since it had the  
33 privilege of exercising its corporate franchise for that period. It is also subject to tax for the  
34 period beginning January 1, 2016.

35 (b)(1) A domestic corporation that is no longer doing business, employing capital,  
36 owning or leasing property in a corporate or organized capacity, or deriving receipts from  
37 activity in this state is exempt from the fixed dollar minimum tax for tax years following its final  
38 tax year, provided that the corporation:

39 (i) is not doing business in New York State;

40 (ii) is not employing capital in New York State;

41 (iii) does not own or lease property in New York State in a corporate or organized  
42 capacity;

43 (iv) does not derive receipts from activity in New York State;

44 (v) does not have any outstanding Article 9-A franchise taxes for its final tax year  
45 or any prior tax year; and

46 (vi) has filed its final Article 9-A franchise tax return.

47 (2) A domestic corporation that meets the requirements of paragraph (1) of this  
48 subdivision:

49 (i) will no longer need to file any additional Article 9-A franchise tax returns for  
50 taxable years or periods occurring after the period covered by its final Article 9-A tax  
51 return; and

52 (ii) after filing its final Article 9-A tax return, may seek consent to be dissolved.

53 (3) A domestic corporation that meets the requirements of paragraph (1) of this  
54 subdivision but does not seek consent to be dissolved under subparagraph (ii) of paragraph (2) of  
55 this subdivision will be subject to dissolution by proclamation, pursuant to Tax Law section 203-  
56 a, after it has not filed Article 9-A franchise tax returns for at least two years.

57 (4) A domestic corporation that does not meet the requirements of paragraph (1) of this  
58 subdivision and that ceases to file Article 9-A franchise tax returns:

59 (i) will not qualify for the exemption from the fixed dollar minimum tax; and

60 (ii) may be issued assessments, including penalties and interest for failure to file

61 an Article 9-A franchise tax return or to pay the Article 9-A franchise tax, or for failure to  
62 do both.

63 (5) A domestic corporation that is no longer doing business, employing capital, owning  
64 or leasing property in a corporate or organized capacity, or deriving receipts from activity in this  
65 state, as described in paragraph (1) of this subdivision, but that wishes to retain its certificate of  
66 incorporation must:

- 67 (i) continue to file Article 9-A franchise tax returns;
- 68 (ii) continue to pay all applicable tax; and
- 69 (iii) not file a final return, that is, not file a return marked final.

70 Section 1-3.2 Foreign corporations subject to tax. [Tax Law, section 209(1), (3)].

71 (a) General.

72 (1) The tax is imposed on every foreign corporation, not specifically exempt as  
73 provided in section 1-3.4 of this Subpart, whose activities include one or more of the  
74 following:

- 75 (i) doing business in New York State in a corporate or organized capacity or in  
76 a corporate form; or
- 77 (ii) employing capital in New York State in a corporate or organized capacity or  
78 in a corporate form; or
- 79 (iii) owning or leasing property in New York State in a corporate or organized  
80 capacity or in a corporate form; or

81 (iv) maintaining an office in New York State; or

82 (v) deriving receipts from activity in New York State.

83 (2) Except as specified in paragraph (3) of this subdivision, a foreign corporation  
84 engaged in New York State in any one or more of the activities described in paragraph (1) of  
85 this subdivision is subject to tax even though its activities are wholly or partly in interstate or  
86 foreign commerce.

87 (3) Pursuant to Public Law 86-272 (15 U.S.C.A. sections 381-384), a foreign  
88 corporation is exempt from the tax imposed by Article 9-A of the Tax Law if its activities are  
89 limited to those described in that law; that is, the solicitation of orders by the corporation's  
90 employees, representatives or independent contractors for sales of tangible personal property,  
91 which orders are sent outside New York State for approval or rejection, and, which if  
92 approved, are filled by shipment or delivery from a point outside New York State. For a  
93 description of corporations that are exempt from taxation under Article 9-A of the Tax Law  
94 pursuant to the provisions of Public Law 86-272, see section 1-3.4(b)(9) of this Subpart.

95 (4) A foreign corporation that is not subject to tax or that is exempt from tax, other than a  
96 corporation that cannot be included in a combined report under Tax Law section 210-C(2)(c) and  
97 the applicable regulations, is required to be included in a combined report with a taxpayer if the  
98 combined reporting requirements are met. (See Subpart 6-2 of this Title—Combined Reports.)

99 (5) A foreign corporation engaged in New York State in any one or more of the  
100 activities described in paragraph (1) of this subdivision is subject to tax regardless of whether

101 it is authorized to do business in New York State, including after it surrenders its authority to do  
102 business.

103 (6)(i) A foreign corporation engaged in New York State in any of the activities described  
104 in paragraph (1) of this subdivision is subject to tax:

105 (a) for any taxable year or part of a taxable year during which it engages in any of  
106 the activities described in paragraph (1) of this subdivision; and

107 (b) for any subsequent taxable year during which it engages in any of the  
108 activities described in paragraph (1) of this subdivision.

109 (ii)(a) A foreign corporation deriving receipts from activity in New York State,  
110 under subdivision (f) of this section, is deemed to be deriving receipts for all of its  
111 taxable year or part of its taxable year, under clause (a) of subparagraph (i) of this  
112 paragraph, from the date of its first receipt derived from activity in New York State.

113 (b) A foreign corporation doing business in New York State because it issues  
114 credit cards, under subdivision (b) of this section, is deemed to be doing business for all  
115 of its taxable year or part of its taxable year, under clause (a) of subparagraph (i) of this  
116 paragraph, from the date on which it issues its first credit card in New York State.

117 (iii)(a) A foreign corporation deriving receipts from activity in New York State,  
118 under subdivision (f) of this section, in its first taxable year is deemed to be deriving  
119 receipts in the subsequent taxable year, under clause (b) of subparagraph (i) of this  
120 paragraph, from the beginning of the subsequent taxable year.

121 (b) A foreign corporation doing business in New York State because it issues  
122 credit cards, under subdivision (b) of this section, in its first taxable year is deemed to be  
123 doing business in the subsequent taxable year, under clause (b) of subparagraph (i) of this  
124 paragraph, from the beginning of the subsequent taxable year.

125 (7) If a partnership is doing business, employing capital, owning or leasing property,  
126 maintaining an office, or deriving receipts from activity in New York State, as  
127 determined pursuant to the rules under Article 9-A of the Tax Law, then all of its  
128 corporate general partners (other than corporate partners that are or would be subject to  
129 franchise tax under Article 9 or 33 of the Tax Law) are subject to the tax imposed by  
130 Article 9-A of the Tax Law.

131 (8) (i) A foreign corporation is doing business, employing capital, owning or leasing  
132 property, maintaining an office, or deriving receipts from activity in New York State if it is a  
133 limited partner of a partnership, other than a portfolio investment partnership, that is doing  
134 business, employing capital, owning or leasing property, maintaining an office, or deriving  
135 receipts from activity in New York State and if it is engaged, directly or indirectly, in the  
136 participation in or the domination or control of all or any portion of the business activities or  
137 affairs of the partnership. Such foreign corporations that are limited partners of such  
138 partnerships (other than corporate partners that are or would be subject to franchise tax under  
139 Article 9 or 33 of the Tax Law) are subject to the tax imposed by Article 9-A of the Tax Law. A  
140 foreign corporation is engaged, directly or indirectly, in the participation in or the domination or

141 control of all or any portion of the business activities or affairs of the partnership if one or more  
142 of certain factual situations, including but not limited to the following, exist during the taxable  
143 year or, except for clause (a) of this subparagraph, any previous taxable year:

144 (a) The foreign corporation has a five percent or more interest as a limited partner in a  
145 partnership and/or the basis of the foreign corporation's interest in the limited partnership,  
146 determined pursuant to IRC section 705, is more than \$5,000,000. For purposes of determining  
147 whether the level of interest in the partnership or level of basis of the interest in the  
148 partnership is met, the percentage of interest in the partnership and basis of interest in the  
149 partnership of members of the foreign corporation's affiliated group, of officers or directors of  
150 the foreign corporation or of officers or directors of members of the foreign corporation's  
151 affiliated group are added to the foreign corporation's interest in the partnership or the basis of  
152 its interest in the partnership, respectively.

153 (b) An officer, employee, or director of the foreign corporation or an officer,  
154 employee, or director of a member of an affiliated group that includes such foreign  
155 corporation or a member of such an affiliated group, is a general partner of the  
156 partnership.

157 (c) The foreign corporation or a member of an affiliated group that includes the  
158 foreign corporation is a five percent or more stockholder in a general partner of the  
159 partnership.

160 (d) One or more officers, employees, directors or agents of the foreign

161 corporation, or of a member of an affiliated group that includes such foreign  
162 corporation, perform acts usually performed by a general partner.

163 (e) The foreign corporation becomes a limited partner after one or more officers,  
164 employees, directors or agents of such corporation, or of a member of an affiliated  
165 group that includes such foreign corporation, negotiates the terms of the partnership  
166 agreement instead of merely accepting an existing agreement.

167 (f) There is substantial communication between one or more officers,  
168 employees, directors or agents of the foreign corporation, or of a member of an  
169 affiliated group that includes such foreign corporation, and the general partner  
170 regarding the business activities or affairs of the partnership.

171 (g) The foreign corporation, a member of an affiliated group that includes such  
172 foreign corporation, or an officer, employee, or director of the foreign corporation or of  
173 a member of such an affiliated group, guarantees payment of one or more loans to the  
174 partnership.

175 (h) The foreign corporation, a member of an affiliated group that includes such  
176 foreign corporation, or an officer, employee, or director of the foreign corporation or of  
177 a member of such an affiliated group, makes loans to the partnership.

178 (i) The foreign corporation is a limited partner that for purposes of IRC section  
179 469 is materially participating in the partnership as defined in section 1.469-5T(e)(2) of  
180 the Federal income tax regulations (26 CFR 1.469-5T[e][2]). For purposes of this

181 clause, references to *taxpayer* in such section 469 is deemed to mean any person, as  
182 defined in IRC section 7701(a)(1).

183 (j) The foreign corporation entered into the limited partnership arrangement not  
184 for a valid business or economic purpose, but for the principal purpose of avoiding or  
185 evading the payment of tax.

186 (ii) Other factual situations, during the taxable year or any previous taxable  
187 year, to be considered as indications that a foreign corporation is engaged, directly or  
188 indirectly, in the participation in or the domination or control of all or any portion of  
189 the business activities or affairs of the partnership, include the following:

190 (a) The foreign corporation, or a member of an affiliated group that  
191 includes such foreign corporation, sells its products and/or services to the  
192 partnership.

193 (b) The foreign corporation, or a member of an affiliated group that includes  
194 such foreign corporation, purchases the partnership's products and/or services.

195 (c) The foreign corporation, or a member of an affiliated group that includes  
196 such foreign corporation, is engaged in a similar or identical business to that of the  
197 partnership.

198 (d) 50 percent or more of the foreign corporation's assets or those of a member  
199 of an affiliated group that includes such foreign corporation are a limited partnership  
200 interest in the partnership.

201 (e) The business carried on by the partnership is integrally related to the  
202 business of the foreign corporation or a member of an affiliated group that includes  
203 such foreign corporation.

204 (f) The foreign corporation exercises its voting rights as a limited partner to  
205 remove a general partner, to approve the sale of the partnership assets, to amend the  
206 partnership agreement or to dissolve the partnership.

207 (g) The foreign corporation, or a member of an affiliated group that includes  
208 such foreign corporation, is interrelated with the partnership through one or more of the  
209 following factors:

210 (1) common management;

211 (2) common policy and directives including policy and directives relating to  
212 legal services, assignment or transfer of executive personnel, determination and  
213 enforcement of procedures to ensure compliance with the law, salary guidelines or  
214 uniform pay scale and/or labor relations activities;

215 (3) common or inter-entity use of intelligent assets, such as patents, trademarks  
216 or copyrights;

217 (4) common or inter-entity use of product distribution systems and/or  
218 warehousing functions;

219 (5) common or inter-entity use of facilities, equipment, or employees;

220 (6) common or inter-entity personnel recruitment;

- 221 (7) common or inter-entity research and development activities;  
222 (8) common or inter-entity marketing and/or advertising;  
223 (9) common or inter-entity information processing and computer support,  
224 printing, telecommunications, and/or other support services;  
225 (10) common or inter-entity transfer or pooling of technical information;  
226 (11) common or inter-entity pension plans and/or insurance plans; or  
227 (12) common or inter-entity credit analysis and coordination of credit extension.

228 (iii) As used in this paragraph, the following terms have these meanings:

229 (a) The term *five percent or more interest* means a distributive share of five  
230 percent or more of a limited partnership's income, gain, loss, deduction, or credit  
231 determined pursuant to IRC section 704.

232 (b) The term *inter-entity* means business activities or affairs carried on between  
233 a foreign corporation that is a limited partner of a partnership, or a member of an  
234 affiliated group that includes such foreign corporation, and such partnership.

235 (c) The term *affiliated group* has the same meaning as such term is defined in  
236 IRC section 1504, except that the term *common parent corporation* is deemed to mean  
237 any person, as defined in IRC section 7701(a)(1), and except that references to *at least*  
238 *eighty percent* in such section 1504 are read as *50 percent or more*. IRC section 1504  
239 is read without regard to the exclusions provided for in section 1504(b).

240 (d) The term *portfolio investment partnership* means a limited partnership that

241 meets the gross income requirement of IRC section 851(b)(2). For purposes of the  
242 preceding sentence, income and gains from commodities (not described in IRC section  
243 1221) or from futures, forwards, and options with respect to such commodities are  
244 included in income that qualifies to meet such gross income requirement. Such  
245 commodities must be of a kind customarily dealt in on an organized commodity  
246 exchange and the transaction must be of a kind customarily consummated at such  
247 place, as required by IRC section 864(b)(2)(B)(iii). To the extent that such a partnership  
248 has income and gains from commodities (not described in IRC section 1221) or  
249 from futures, forwards, and options with respect to such commodities, such income  
250 and gains must be derived by a partnership that is not a dealer in commodities and is  
251 trading for its own account as described in IRC section 864(b)(2)(B)(ii). The term  
252 *portfolio investment partnership* does not include a dealer (within the meaning of IRC  
253 section 1236) in stocks or securities.

254 (9) If a limited liability company that is treated as a partnership for tax purposes, other  
255 than a limited liability company that is treated as a portfolio investment partnership, is doing  
256 business, employing capital, owning or leasing property, maintaining an office or deriving  
257 receipts from activity in New York State, then all of its members that are foreign corporations  
258 (other than foreign corporations that are or would be subject to tax under Article 9 or 33 of the  
259 Tax Law) are subject to the tax imposed by Article 9-A of the Tax Law; provided, however, that  
260 if the operating agreement of such limited liability company imposes limitations on the foreign

261 corporate member's participation in the management of the limited liability company either  
262 equivalent to or more stringent than the limitations on the participation in the control of the  
263 business of a limited partnership imposed on limited partners under Article 8-A of the New York  
264 Partnership Law, the foreign corporate member will be subject to the rules applicable to foreign  
265 corporate limited partners set out in paragraph (8) of this subdivision.

266 (10)(i) An alien corporation, as defined in Tax Law section 209(2-a), that under any  
267 provision of the IRC is treated as a *domestic corporation* as defined in IRC section 7701 or that  
268 has effectively connected income for the taxable year is subject to tax if such alien corporation is  
269 engaged in New York State in any one or more of the activities described in paragraph (1) of this  
270 subdivision.

271 (ii) The term *effectively connected income* means income, gain, or loss that is  
272 effectively connected with the conduct of a trade or business within the United States as  
273 determined under IRC section 882 in the case of an alien corporation that under any  
274 provision of the IRC is not treated as a *domestic corporation* as defined in IRC section  
275 7701. It includes income, gain, or loss that is described in Tax Law section 208(9)(b) and  
276 excluded from federal taxable income under any provision of Federal law, including  
277 under a United States treaty obligation, that would be treated, in the absence of such  
278 exclusion, as effectively connected with the conduct of a trade or business within the  
279 United States, as described in subparagraph (i) of this paragraph.

280 (iii) Income, gain, or loss excluded from federal taxable income under a United  
281 States treaty obligation, as described in subparagraph (ii) of this paragraph, will be  
282 deemed to be treated as effectively connected with the conduct of a trade or business  
283 within the United States unless such treaty prohibits state taxation of such income, gain,  
284 or loss.

285 (b) Foreign corporation – doing business. (1) The term doing business is used in a  
286 comprehensive sense and includes all activities that occupy the time or labor of people for  
287 profit. Regardless of the nature of its activities, every corporation organized for profit and  
288 carrying out any of the purposes of its organization is deemed to be doing business for the  
289 purposes of the tax. In determining whether a corporation is doing business, it is immaterial  
290 whether its activities actually result in a profit or a loss.

291 (2) Whether a corporation is doing business in New York State is determined by the  
292 facts in each case. Consideration is given to such factors as:

- 293 (i) the nature, continuity, frequency, and regularity of the activities of the  
294 corporation in New York State;
- 295 (ii) the purposes for which the corporation was organized;
- 296 (iii) the location of its offices and other places of business;
- 297 (iv) the employment in New York State of agents, officers and employees; and
- 298 (v) the location of the actual seat of management or control of the corporation.

299 (3) A corporation is doing business in New York State if:

300 (i) it issues credit cards to at least 1000 customers with a mailing address in the  
301 state as of the last day of its taxable year;

302 (ii) it has merchant customer contracts that cover at least 1000 locations in the  
303 state to which it remits payments for credit card transactions during its taxable year;

304 (iii) the sum of the number of customers and the number of locations in  
305 subparagraphs (i) and (ii) totals at least 1000; or

306 (iv) the corporation is part of a unitary group that meets the ownership test under  
307 Tax Law section 210-C, unless it is a corporation that cannot be included in a combined  
308 report under Tax Law section 210-C(2)(c) and the applicable regulations, and:

309 (a) it issues credit cards to at least 10 customers with a mailing address in the state  
310 as of the last day of its taxable year;

311 (b) it has merchant customer contracts that cover at least 10 locations in the state  
312 to which it remits payments for credit card transactions during its taxable year; or

313 (c) the sum of the number of customers and the number of locations in items (a)  
314 and (b) totals at least 10, and

315 (d) provided that the members of the unitary group that meet the requirements of  
316 either (a), (b) or (c) together meet the requirements of paragraph (3)(i), (3)(ii) or (3)(iii)  
317 of this subdivision, other than any member that is a corporation that cannot be included in  
318 a combined report under Tax Law section 210-C(2)(c) and the applicable regulations.

319 (4) The term *credit cards* has the same meaning as in section 4-2.11 of this Subchapter.

320 (c) Foreign corporation – employing capital. The term employing capital is used in a  
321 comprehensive sense. Any of a large variety of uses, which may overlap other activities, may  
322 give rise to taxable status. In general, the use of assets in maintaining or aiding the corporate  
323 enterprise or activity in New York State will make the corporation subject to tax. Employing  
324 capital includes such activities as:

325 (1) maintaining stockpiles of raw materials or inventories; or

326 (2) owning materials and equipment assembled for construction.

327 (d) Foreign corporation – owning or leasing property. (1) The owning or leasing of real  
328 or personal property within New York State constitutes an activity that subjects a foreign  
329 corporation to tax. Property owned by or held for the taxpayer in New York State, whether or  
330 not used in the taxpayer's business, is sufficient to make the corporation subject to tax.

331 Property held, stored or warehoused in New York State creates taxable status. Property held as  
332 a nominee for the benefit of others creates taxable status. Also, consigning property to New  
333 York State may create taxable status if the consignor retains title to the consigned property.

334 (2) For purposes of this subdivision, real property means land, buildings, structures, and  
335 improvements thereon. In addition, it includes shares in a cooperative housing corporation, as  
336 defined in IRC section 216(b), in connection with the grant or transfer of a proprietary leasehold.  
337 Such shares in a cooperative housing corporation will be deemed to be owned within New York  
338 State if the property owned or leased by such corporation, as described in IRC section  
339 216(b)(1)(B), is located in New York State.

340 (e) Foreign corporation – maintaining an office. A foreign corporation that maintains an  
341 office in New York State is engaged in an activity that makes it subject to tax. An office is any  
342 area, enclosure or facility that is used in the regular course of the corporate business. A  
343 salesperson's home, a hotel room, or a trailer used on a construction job site may constitute an  
344 office.

345 (f) Foreign corporation – deriving receipts from activity. (1) A foreign corporation that  
346 derives receipts from any activity in New York State is subject to tax.

347 (2)(i) A corporation derives receipts from activity in New York State if its receipts within  
348 the state during the taxable year, as defined and apportioned pursuant to Part 4 of this

349 Subchapter:

350 (a) equal or exceed \$1,000,000; or

351 (b) total less than \$1,000,000 but equal or exceed \$10,000 and:

352 (1) the corporation is part of a unitary group that meets the ownership test under  
353 Tax Law section 210-C, unless it is a corporation that cannot be included in a combined  
354 report under Tax Law section 210-C(2)(c) and the applicable regulations; and

355 (2) the members of the unitary group that each have at least \$10,000 of New York  
356 receipts together have at least \$1,000,000 of such receipts, other than any member that is  
357 a corporation that cannot be included in a combined report under Tax Law section 210-  
358 C(2)(c) and the applicable regulations; or

359 (c) total less than \$1,000,000 and:

360 (1) the corporation is a general partner of a partnership and its New York receipts,  
361 if any, when combined with the New York receipts of the partnership total at least  
362 \$1,000,000; or

363 (2) the corporation is a limited partner of a partnership, other than a portfolio  
364 investment partnership, and its New York receipts, if any, when combined with the New  
365 York receipts of the partnership total at least \$1,000,000, provided that the limited partner  
366 is engaged, directly or indirectly, in the participation in or the domination or control of all  
367 or any portion of the business activities or affairs of the partnership, as described in  
368 subdivision (a)(8) of this section; or

369 (3) the corporation is a member of a limited liability company that is treated as a  
370 partnership for tax purposes, other than a limited liability company that is treated as a  
371 portfolio investment partnership, the operating agreement of which does not impose  
372 limitations on the corporate member's participation in the management of the limited  
373 liability company either equivalent to or more stringent than the limitations on the  
374 participation in the control of the business of a limited partnership imposed on limited  
375 partners under Article 8-A of the New York Partnership Law, and its New York receipts,  
376 if any, when combined with the New York receipts of the limited liability company total  
377 at least \$1,000,000; or

378 (4) the corporation is a member of a limited liability company that is treated as a  
379 partnership for tax purposes, other than a limited liability company that is treated as a

380 portfolio investment partnership, the operating agreement of which imposes limitations  
381 on the corporate member's participation in the management of the limited liability  
382 company either equivalent to or more stringent than the limitations on the participation in  
383 the control of the business of a limited partnership imposed on limited partners under  
384 Article 8-A of the New York Partnership Law, and its New York receipts, if any, when  
385 combined with the New York receipts of the limited liability company total at least  
386 \$1,000,000, provided that the member is engaged, directly or indirectly, in the  
387 participation in or the domination or control of all or any portion of the business activities  
388 or affairs of the limited liability company, pursuant to the rules for limited partners as  
389 described in subdivision (a)(8) of this section.

390 (ii) For purposes of determining whether a corporation is deriving receipts from  
391 activity in New York State, a corporation's receipts within New York State will include  
392 such receipts from activities described in Public Law 86-272, and further described in  
393 section 1-3.4(b)(9) of this Subpart.

394 (iii) A corporation that is part of a unitary group will not be considered when  
395 determining if the standards specified in this paragraph are met if it cannot be included in  
396 a combined report under Tax Law section 210-C(2)(c) and the applicable regulations.

397 (iv) For purposes of clause (a) of subparagraph (i) of this paragraph, for a  
398 corporation that is a partner in one or more partnerships, and for a corporation that is a  
399 member of one or more limited liability companies treated as a partnership for tax

400 purposes, the corporation's receipts within the state include its distributive share of any  
401 New York receipts, as described in Part 4 of this Subchapter, of each such partnership or  
402 limited liability company.

403 (3) In determining the amount of a corporation's New York receipts, merchant discount  
404 fees received by a corporation for processing credit card transactions are included in its New  
405 York receipts.

406 (4) A corporation will not be deemed to be deriving receipts from activity in the state if  
407 the only New York receipts included in the numerator of its apportionment fraction (as described  
408 in Subpart 4-1) are (i) interest income and net gains received by a corporation from securities  
409 issued by government agencies, including but not limited to securities issued by the government  
410 national mortgage association, the federal national mortgage association, the federal home loan  
411 mortgage corporation, and the small business administration, (ii) interest income from federal  
412 funds, or (iii) interest and net gains from sales of debt instruments issued by other states or their  
413 political subdivisions.

414 (5)(i) The Commissioner is authorized by Tax Law section 209(1)(e) to adjust by  
415 regulation the receipts thresholds of this subdivision.

416 (ii) The receipts thresholds of this subdivision are subject to adjustment by the  
417 Commissioner, including the thresholds applicable to members of a unitary group pursuant to  
418 paragraph (2)(i)(b) of this subdivision, based on an annual year-end review of the Consumer  
419 Price Index by the Department, as follows:

420 (a) In November of each year, the Commissioner will calculate the average  
421 Consumer Price index for the preceding twelve months and will use that average to  
422 determine the cumulative percentage change in the Consumer Price Index.

423 (b) In the first instance, if the Consumer Price Index has changed by 10 percent or  
424 more from the Consumer Price Index available on January 1, 2015, then the  
425 Commissioner will adjust the receipts thresholds as provided in clause (c) of this  
426 subparagraph. Thereafter, if the Consumer Price Index has changed by 10 percent or  
427 more from the Consumer Price Index ascertained at the time of and used by the  
428 Commissioner for the purpose of making the previous adjustment in the receipts  
429 thresholds, then the Commissioner will adjust the receipts thresholds as provided in  
430 clause (c) of this subparagraph.

431 (c) The receipts thresholds will be adjusted by the same percentage as the change  
432 in the Consumer Price Index and rounded to the nearest \$1,000 level.

433 (iii) For purposes of this paragraph, the term *Consumer Price Index* means the Consumer  
434 Price Index for all urban consumers, or the CPI-U.

435 (g) For purposes of this section, the term *unitary group that meets the ownership test*  
436 *under Tax Law section 210-C* means a group of corporations where:

437 (1) one corporation owns or controls, either directly or indirectly, more than 50 percent of  
438 the voting power of the capital stock of another corporation; or

439 (2) more than 50 percent of the voting power of the capital stock of one corporation is

440 owned or controlled, either directly or indirectly, by another corporation; or

441 (3) more than 50 percent of the voting power of the capital stock of two or more

442 corporations is owned or controlled, either directly or indirectly, by the same interests (e.g., the

443 same corporation, partnership or individual); and

444 (4) the corporations are engaged in a unitary business as defined in section 6-2.3 of this

445 Subchapter.

446 (h) Examples. The following are examples of foreign corporations that are subject to

447 tax under Article 9-A because they are doing business, or employing capital, or owning or

448 leasing property in a corporate or organized capacity, or maintaining an office or deriving

449 receipts from activity in New York State; or that, alternatively, are not subject to tax. Each of

450 these examples is intended for illustration purposes only and to be applicable only to the specific

451 activity, among the activities listed in subdivision (a)(1) of this section, as identified in each

452 example.

453 (1) A foreign corporation incorporated in another state operates or is organized for

454 the purposes of buying and selling securities. It does not maintain a physical office anywhere,

455 other than a statutory office in the state of its incorporation. Regular and continuous purchases

456 of securities are directed by its officers or agents located in New York State. The corporation is

457 subject to tax because it is doing business in New York State, under subdivision (b) of this

458 section.

459 (2) A foreign corporation participates in a joint venture that carries on business in this

460 State, but the foreign corporation is not otherwise engaged in any activities in New York State.  
461 The corporation is subject to tax because it is doing business in New York State, under  
462 subdivision (b) of this section.

463 (3) A foreign holding corporation coordinates and supervises in New York State  
464 activities of a subsidiary that is taxable in New York State. It also makes loans to its subsidiary  
465 and guarantees loans obtained by the subsidiary from sources other than the parent. The  
466 corporation is subject to tax because it is doing business in New York State, under subdivision  
467 (b) of this section.

468 (4) A foreign manufacturing corporation has its factories and offices located outside  
469 New York State. Its sole activity in New York State consists of holding or storing goods in a  
470 warehouse owned by an unrelated party. The corporation is subject to tax because it is  
471 employing capital in New York State, under subdivision (c) of this section.

472 (5) A foreign corporation that has no office or other place of business in New York  
473 State leases automobiles to customers in New York State, with receipts from this activity  
474 equaling less than \$1,000,000. The corporation is subject to tax because it owns property in  
475 New York State, under subdivision (d) of this section.

476 (6) A foreign manufacturing corporation has its factory outside New York State. Its  
477 only activity in New York State is the solicitation of orders for its products through a sales  
478 office located in New York State. The orders are forwarded to its home office outside the State  
479 for acceptance and the merchandise is shipped by common carrier from the factory direct to

480 the purchasers. The corporation is subject to tax because it maintains an office in New York  
481 State, under subdivision (e) of this section; and therefore its activities are not limited to those  
482 described in Public Law 86-272, and further described in section 1-3.4(b)(9) of this Subpart.

483 (7) A foreign corporation that operates several retail stores outside New York State  
484 leases an office in New York City for the convenience of its buyers when they come to New  
485 York State. Salespeople call at the office to solicit orders. The merchandise is shipped by the  
486 sellers directly to the offices of the corporation outside New York State. The corporation is  
487 subject to tax because it maintains an office in New York State, under subdivision (e) of this  
488 section; and therefore its activities are not limited to those described in Public Law 86-272, and  
489 further described in section 1-3.4(b)(9) of this Subpart.

490 (8) A foreign corporation formerly engaged in manufacturing in another state  
491 discontinues such business and transfers its office to New York State, where its activities  
492 consist solely of the acquisition of bonds and the receipt of interest on such bonds and the  
493 holding of directors' meetings. The corporation is subject to tax because it maintains an office  
494 in New York State, under subdivision (e) of this section.

495 (9) A foreign corporation sends salespeople into New York State to solicit orders. The  
496 orders must be accepted at the home office of the corporation located in another state. The  
497 corporation displays goods in New York City at a space leased occasionally and for short  
498 terms. The corporation is subject to tax because it is employing capital in New York State,  
499 under subdivision (c) of this section; and therefore its activities are not limited to those described

500 in Public Law 86-272, and further described in section 1-3.4(b)(9) of this Subpart.

501 (10) A foreign corporation has \$950,000 of receipts from activities in New York State  
502 that consist solely of the solicitation of orders by employees in New York State for sale of  
503 tangible personal property; all the orders are sent outside New York State for approval or  
504 rejection and, if approved, are filled by shipment from a point outside New York State. The  
505 corporation also has \$100,000 of receipts from the sale of services, as described in section 4-2.15  
506 of this Title, in New York State. The corporation is subject to tax because it is deriving receipts  
507 from activity in New York State, under subdivision (f) of this section. The corporation may not  
508 disclaim tax liability in New York State based on Public Law 86-272, since its activities in New  
509 York State are not limited to those described in Public Law 86-272, and further described in  
510 section 1-3.4(b)(9) of this Subpart.

511 (11) A foreign corporation issues credit cards to 500 customers with a mailing address in  
512 New York State as of the last day of its taxable year and has contracts with merchants covering  
513 500 locations in New York State to which it remits payments during the taxable year. Since the  
514 corporation issues credit cards to customers with a mailing address in the state and has merchant  
515 customer contracts that cover locations in the state to which it remits payments for credit card  
516 transactions, and the sum of the number of customers and the number of locations is 1,000, the  
517 corporation is subject to tax because it is doing business in New York State under subdivision (b)  
518 of this section.

519 (12) Three foreign corporations are part of the same unitary group that meets the

520 ownership test under Tax Law section 210-C. All of the members of which each have at least  
521 \$10,000 of receipts from activity in New York State. They are a bank, a broker-dealer, and an  
522 insurance company subject to tax under Article 33. The bank and the broker-dealer together have  
523 \$900,000 of receipts from activity in New York State. The insurance company has \$150,000 of  
524 receipts from activity in New York State. Since the insurance company is a corporation that  
525 cannot be included in a combined report under Tax Law section 210-C(2)(c) and the applicable  
526 regulations, its New York receipts will not be included for purposes of determining whether the  
527 unitary group has reached the \$1,000,000 receipts threshold. Therefore, the bank and the broker-  
528 dealer are not subject to tax under subdivision (f) of this section, because they are not deriving  
529 receipts from activity in New York State.

530 (13) A foreign corporation organized as a bank in another state has interest income from  
531 federal funds but no other New York receipts. Since the corporation's only New York receipts  
532 are from interest income from federal funds, the corporation is not subject to tax under  
533 subdivision (f) of this section, because it is not deemed to be deriving receipts from activity in  
534 New York State.

535 (14) Seven foreign corporations each have \$150,000 of receipts from activity in New  
536 York State and are part of the same unitary group that meets the ownership test under Tax Law  
537 section 210-C. Therefore, the seven corporations together exceed the \$1,000,000 receipts  
538 threshold. Three members of the group have activities in New York State that consist solely of  
539 the solicitation of orders by employees in New York State for sales of tangible personal property,

540 which orders are sent outside New York State for approval or rejection and, if approved, are  
541 filled by shipment from a point outside New York State. These three corporations are not subject  
542 to tax under subdivision (f) of this section, because their activities are limited to those described  
543 in Public Law 86-272, and further described in section 1-3.4(b)(9) of this Subpart; the other four  
544 corporations are subject to tax because they are deriving receipts from activity in New York  
545 State, under subdivision (f) of this section, and their activities are not limited to those described  
546 in Public Law 86-272, and further described in section 1-3.4(b)(9) of this Subpart. The seven  
547 corporations are required to file in a combined report, which will include the receipts, net  
548 income, net gains, net losses, and net deductions of all the corporations, together with their  
549 proportionate share of the unitary group's assets and liabilities.

550 Section 1-3.3 Activities deemed insufficient to subject foreign corporations to tax. [Tax Law,  
551 section 209(2), (2-a)].

552 (a) A foreign corporation will not be deemed to be doing business, employing capital,  
553 owning or leasing property in a corporate or organized capacity, maintaining an office or  
554 deriving receipts from activity in New York State because of:

555 (1) the maintenance of cash balances with banks or trust companies in New York State;

556 (2) the ownership of shares of stock or securities kept in New York State in a safe  
557 deposit box, safe, vault or other receptacle rented for this purpose, or if pledged as collateral  
558 security, or if deposited in safekeeping or custody accounts with one or more banks or trust  
559 companies, or brokers who are members of a recognized security exchange;

560 (3) the taking of any action by any such bank or trust company or broker that is  
561 incidental to the rendering of safekeeping or custodian service to such corporation;

562 (4) the maintenance of an office in this State by one or more officers or directors of the  
563 corporation who are not employees of the corporation if the corporation is not otherwise doing  
564 business or employing capital in New York State and does not own or lease property in New  
565 York State;

566 (5) the keeping of books or records of a corporation in New York State, if such books  
567 or records are not kept by employees of such corporation and such corporation does not  
568 otherwise do business, employ capital, own or lease property, or maintain an office in New  
569 York State;

570 (6) the participation in a trade show or shows, regardless of whether the corporation has  
571 employees or other staff present at such trade shows, provided the corporation's activity at the  
572 trade show is limited to displaying goods or promoting services, no sales are made, any orders  
573 received are sent outside New York State for acceptance or rejection and are filled from  
574 outside the state, and provided that such participation is for not more than 14 days, or part  
575 thereof, in the aggregate during the corporation's taxable year for Federal income tax purposes;

576 or

577 (7) any combination of the foregoing activities.

578 (b)(1) An alien corporation, as defined in Tax Law section 209(2-a), will not be  
579 deemed to be doing business, employing capital, owning or leasing property in a corporate or

580 organized capacity, maintaining an office or deriving receipts from activity in New York State if  
581 its activities in New York State are limited solely to investing or trading for its own account  
582 in:

- 583 (i) stocks and securities within the meaning of IRC section 864(b)(2)(A)(ii); or
- 584 (ii) commodities within the meaning of IRC section 864(b)(2)(B)(ii); or
- 585 (iii) any combination of stocks, securities and commodities described in (i) and
- 586 (ii).

587 (2) An alien corporation, as defined in Tax Law section 209(2-a), engaged in any one or  
588 more of the activities described in section 1-3.2(a)(1) of this Subpart that under any provision of  
589 the IRC is not treated as a *domestic corporation* as defined in IRC section 7701 and does not  
590 have effectively connected income, as defined in section 1-3.2(a)(10) of this Subpart, for the  
591 taxable year will not be subject to tax under Article 9-A of the Tax Law.

592 Section 1-3.4 Corporations not subject to tax. [Tax Law, sections 3, 8, 13, 208(9)(i) and 209(4),  
593 (9), (10), (12)]

594 (a) A corporation that is subject to any of the following taxes is not subject to tax under  
595 Article 9-A of the Tax Law:

596 (1) transportation and transmission corporations and associations subject to tax under  
597 Tax Law sections 183 and 184;

598 (2) farmers, fruit growers and other like agricultural corporations organized and  
599 operated on a cooperative basis subject to tax under Tax Law section 185, for tax years prior to

600 January 1, 2018;

601 (3) continuing section 186 taxpayers subject to tax under former Tax Law section 186  
602 as it was in effect on December 31, 1999 (section 44 of Part Y of Chapter 63 of the Laws of  
603 2000);

604 (4) insurance corporations subject to the franchise taxes on insurance corporations  
605 imposed by Article 33 of the Tax Law, including health maintenance organizations required to  
606 obtain a certificate of authority under Article 44 of the Public Health Law;

607 (5) cooperative corporations subject to the annual fee imposed by section 77 of the  
608 Cooperative Corporations Law;

609 (6) captive real estate investment trusts (REITs) included in a combined report under  
610 Article 33 of the Tax Law; and

611 (7) captive regulated investment companies (RICs) included in a combined report under  
612 Article 33 of the Tax Law.

613 (b) The following corporations are exempt from taxation under Article 9-A:

614 (1) limited-profit housing companies organized pursuant to Article 2 of the Private  
615 Housing Finance Law, effective for taxable years beginning on or after January 1, 1974;

616 (2) limited-dividend housing companies organized pursuant to Article 4 of the Private  
617 Housing Finance Law;

618 (3) any trust company organized under a law of New York State, all of the stock of  
619 which is owned by not less than 20 savings banks organized under a law of New York State;

620 (4) the Urban Development Corporation and subsidiary corporations of the Urban  
621 Development Corporation. A corporation is deemed a subsidiary of the Urban Development  
622 Corporation whenever and so long as:

623 (i) more than one half of any voting shares of the subsidiary are owned or held  
624 by the Urban Development Corporation; or

625 (ii) a majority of the subsidiary's directors, trustees or members are designees of  
626 the Urban Development Corporation;

627 (5) domestic corporations exclusively engaged in the operation of one or more vessels  
628 in foreign commerce.

629 (i) The domestic corporation must operate the vessels regardless of whether it  
630 owns them or has leased them from another person or corporation. *Operation of the*  
631 *vessels* means the direction and supervision of the crew and of the actual movements or  
632 routes of the vessels. The Commissioner generally deems the furnishing of the crew as  
633 the operation of the vessel.

634 (ii) A domestic corporation exclusively engaged in the operation of vessels in  
635 foreign commerce remains exempt where (a) it has investments in other domestic  
636 corporations exclusively engaged in the operation of vessels in foreign commerce or (b)  
637 average investments (other than investments in a domestic corporation qualifying for  
638 this exemption) are minimal in comparison to overall activities. Generally, where other  
639 investments are 10 percent or less of average total assets, these investments will be

640 considered minimal.

641 (iii) A domestic corporation engaged in other activities (except as described in  
642 subparagraph [ii] of this paragraph) is not exempt. A domestic corporation is not  
643 exempt if it acts as an agent for others by selling tickets, purchasing supplies and  
644 services, providing services for others, or operating any other business (e.g., a  
645 restaurant);

646 (6) corporations organized other than for profit that do not have stock or shares or  
647 certificates for stock or for shares and that are operated on a nonprofit basis no part of the net  
648 earnings of which inures to the benefit of any officer, director, or member, including Not-for-  
649 Profit Corporations and Religious Corporations.

650 (i) A corporation organized other than for profit, as described in this paragraph,  
651 that is exempt from Federal income taxation pursuant to IRC section 501(a), will be  
652 presumed to be exempt from tax under Article 9-A. If a corporation organized other  
653 than for profit is denied exemption from taxation under the IRC, such corporation will  
654 be presumed subject to tax under Article 9-A.

655 (ii) The determination of the Internal Revenue Service, denying or revoking  
656 exemption from Federal taxation under the IRC, will ordinarily be followed;

657 (7) certain DISCs. (See Subpart 3-10 of this Title—Domestic International Sales  
658 Corporation [DISC].) A DISC will be exempt from taxation under Article 9-A for any taxable  
659 year in which it:

- 660 (i) received more than five percent of its gross receipts from the sale of  
661 inventory or other property that it purchased from its stockholders; or
- 662 (ii) received more than five percent of its gross rentals from the rental of  
663 property that it purchased or rented from its stockholders; or
- 664 (iii) received more than five percent of its total receipts other than from sales  
665 and rentals from its stockholders;
- 666 (8) trusts that are not conducting a business (passive trusts). Where the functions of a  
667 trustee are only to hold property and to collect and distribute income the trust is not subject to  
668 tax under Article 9-A of the Tax Law. The power to sell, invest and reinvest must be clearly  
669 and expressly limited. For example, a power to sell stock and reinvest the proceeds if the bid  
670 price of the stock drops below a certain level will not make the trust taxable;
- 671 (9) corporations that are exempt pursuant to the provisions of Public Law 86-272 (15  
672 U.S.C.A. sections 381-384).
- 673 (i) A foreign corporation whose income is derived from interstate commerce is  
674 not subject to tax under Article 9-A of the Tax Law if the activities of the corporation  
675 in New York State are limited to either, or both of the following:
- 676 (a) the solicitation of orders by employees or representatives in New York State  
677 for sales of tangible personal property and the orders are sent outside New York State  
678 for approval or rejection; and if approved, are filled by shipment or delivery from a  
679 point outside New York State; and

680 (b) the solicitation of orders for sales of tangible personal property by  
681 employees or representatives in New York State in the name of or for the benefit of a  
682 prospective customer of such corporation if the customer's orders to the corporation are  
683 sent outside the State for approval or rejection; and, if approved, are filled by shipment  
684 or delivery from a point outside New York State.

685 (ii) For purposes of this exemption, a corporation will not be considered to have  
686 engaged in taxable activities in New York State during the taxable year merely by  
687 reason of sales in New York State or the solicitation of orders for sales in New York  
688 State, of tangible personal property on behalf of the corporation by one or more  
689 independent contractors. A corporation will not be considered to have engaged in  
690 taxable activities in New York State by reason of maintaining an office in New York  
691 State by one or more independent contractors whose activities on behalf of the  
692 corporation in New York State consist solely of making sales, or soliciting orders for  
693 sales, of tangible personal property.

694 (iii) The term *independent contractor* means a commission agent, broker, or  
695 other independent contractor who is engaged in selling, or in soliciting orders for the  
696 sale of tangible personal property for more than one principal and who holds himself  
697 out as such in the regular course of his business activities. The term *representative* does  
698 not include an independent contractor.

699 (iv) In order to be exempt by virtue of Public Law 86-272, the activities in New

700 York State of employees or representatives must be limited to the solicitation of orders  
701 for the sale of tangible personal property. The solicitation of orders includes offering  
702 tangible personal property for sale or pursuing offers for the purchase of tangible  
703 personal property and those ancillary activities, other than maintaining an office, that  
704 serve no independent business function apart from their connection to the solicitation  
705 of orders. Examples of activities performed by such employees or representatives in  
706 New York State that are entirely ancillary to the solicitation of orders include:

707 (a) the use of free samples and other promotional materials in connection with  
708 the solicitation of orders;

709 (b) passing product inquiries and complaints to the corporation's home office;

710 (c) using autos furnished by the corporation;

711 (d) advising customers on the display of the corporation's products and  
712 furnishing and setting up display racks;

713 (e) recruitment, training and evaluation of sales representatives;

714 (f) use of hotels and homes for sales-related meetings;

715 (g) intervention in credit disputes;

716 (h) use of space at the salesperson's home solely for the salesperson's  
717 convenience. (However, see subparagraph [vi] of this paragraph as to loss of immunity  
718 for maintaining an office.);

719 (i) participating in a trade show or shows, provided that participation is for not

720 more than 14 days, or part thereof, in the aggregate during the corporation's taxable  
721 year for Federal income tax purposes. (However, see subparagraph [vi] of this  
722 paragraph as to loss of immunity for maintaining an office.)

723 (v) The exemption under the provisions of Public Law 86-272, as described in  
724 subparagraph (i) of this paragraph, and limited to the solicitation of orders for the sale of  
725 tangible personal property, as further described in subparagraph (iv) of this paragraph,  
726 does not include the solicitation of orders for the sale of services or intangible property.

727 (vi) Activities in New York State beyond the solicitation of orders will subject a  
728 corporation to tax in New York State unless such activities are de minimis. Activities  
729 will not be considered de minimis if such activities establish a nontrivial additional  
730 connection with New York State. Solicitation activities do not include those activities  
731 that the corporation would have reason to engage in apart from the solicitation of orders  
732 but chooses to allocate to its New York State sales force. In determining whether a  
733 corporation's activities exceed the solicitation of orders, all of the corporation's  
734 activities in New York State will be considered. Examples of activities that go beyond  
735 the solicitation of orders include:

736 (a) making repairs to or installing the corporation's products;

737 (b) making credit investigations;

738 (c) collecting delinquent accounts;

739 (d) taking inventory of the corporation's products for customers or prospective

740 customers;

741 (e) replacing the corporation's stale or damaged products;

742 (f) giving technical advice on the use of the corporation's products after the  
743 products have been delivered to the customer.

744 (vii) Maintaining an office, shop, warehouse or stock of goods in New York  
745 State will make a corporation taxable. However, a corporation will not be made taxable  
746 solely by maintaining a supply of goods in New York State if such goods are used only  
747 as free samples in connection with the solicitation of orders. A corporation will be  
748 considered to be maintaining an office in New York State if the space is held out to the  
749 public as an office or place of business of the taxpayer. For example, a salesperson uses  
750 his or her house for business. A telephone, listed in the corporation's name, is  
751 maintained at the salesperson's house. The salesperson makes telephone contacts from  
752 the house or receives calls and orders at the house. The residence will be treated as an  
753 office of the corporation, and the corporation will be taxable.

754 (viii) A corporation, other than a corporation that cannot be included in a  
755 combined report under Tax Law section 210-C(2)(c) and the applicable regulations, may  
756 be included in a combined report required under Tax Law section 210-C, even if it is  
757 exempt from taxation under Article 9-A pursuant to the provisions of Public Law 86-272,  
758 as described in this paragraph. In addition, the receipts of such a corporation will be  
759 included in determining whether a unitary group, as defined in section 1-3.2 of this

760           Subpart, is deriving receipts from activity in this state;  
761           (10) an industrial development agency created pursuant to Article 18-A of the General  
762 Municipal Law;  
763           (11) housing development fund companies organized pursuant to the provisions of  
764 Article 11 of the Private Housing Finance Law;  
765           (12) an entity that is treated for Federal income tax purposes as a real estate mortgage  
766 investment conduit (REMIC);  
767           (13) for any taxable year beginning on or after January 1, 1987, an organization  
768 described in paragraph (2) or (25) of IRC section 501(c);  
769           (14) redevelopment companies organized pursuant to Article 5 of the Private Housing  
770 Finance Law;  
771           (15) a qualified subchapter S subsidiary (QSSS) corporation, as defined in Tax Law  
772 section 208(1-B), provided it meets the requirements for exemption pursuant to section  
773 208(9)(k) of such article;  
774           (16) a qualified settlement fund under IRC section 468B or an entity that is treated as  
775 such for Federal purposes or a grantor trust, either of which is used for Nazi reparations;  
776           (17) farmers, fruit growers and other like agricultural corporations organized and  
777 operated on a cooperative basis for the purposes expressed in and as provided under the  
778 Cooperative Corporations Law, whether or not such corporations have capital stock.  
779 Section 1-3.5 Change of classification. [Tax Law, section 209(1)].

780 (a) A corporation subject to tax under Article 9-A of the Tax Law may, by reason of a  
781 change in the nature of its activities or a change in the ownership or control of the voting  
782 powers of its capital stock, cease to be subject to such tax and become taxable under some  
783 other article of the Tax Law. Conversely, a corporation subject to tax under some other article  
784 of the Tax Law may, for the same reasons, cease to be taxable thereunder and become subject  
785 to tax under Article 9-A of the Tax Law. The date on which any such change of classification  
786 becomes effective will be determined by the facts of each case.

787 (b) (1) A corporation that becomes subject to tax under Article 9-A of the Tax Law  
788 during one of its fiscal or calendar years by reason of a change in classification is treated in the  
789 same manner as a corporation that became subject to tax during such year. (See section 1-1.1  
790 of this Part—Nature of tax – and sections 1-3.1 and 1-3.2 of this Subpart.)

791 (2) A corporation subject to tax under Article 32 for its 2014 tax year that has a change in  
792 classification and becomes subject to tax under Article 9-A of the Tax Law during its fiscal year  
793 beginning in 2014 but ending in 2015, and which change of classification occurs as the result of  
794 amendments to the Tax Law taking effect on January 1, 2015, is not permitted to file a short-  
795 period return for its 2014 tax year.

796 (c) A corporation that ceases to be subject to the franchise tax imposed by Article 9-A  
797 of the Tax Law during one of its fiscal or calendar years by reason of a change of  
798 classification is treated, insofar as Article 9-A of the Tax Law is concerned, in the same  
799 manner as a corporation that is dissolved or ceases to be taxable in New York State during

800 such year. (See section 2-3.1 of this Title—Cessation period.)

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