New York State Department of Taxation and Finance

1986

CT-245-I

Instructions for Form CT-245

Maintenance Fee and Activities Report of Foreign Corporations Disclaiming Tax Liability

Who Must File

(a) All corporations incorporated outside of New York State who are authorized to do business in New York State and who wish to disclaim tax liability.

(b) All corporations incorporated outside of New York State having an employee, including any officer, in this state and disclaiming tax liability must file this report. Officers or employees are considered to be working in this state if they come into New York State on corporate business (Tax Law, Art. 9-A, Sec. 211.1, Art. 32, Sec. 1462(a) and Art. 33, Sec. 1515(a)).

Annual Maintenance Fee

Any foreign corporation, other than an insurance corporation (Article 33), that is authorized to do business in New York State must pay an annual maintenance fee of $200.00 (Tax Law, Article 9, Section 181.2).

Chapter 298 of the laws of 1985 amended Article 9 of the Tax Law, Section 181.2 to provide that a foreign banking corporation subject to tax under Article 32 pursuant to Section 1452(a)(9) is subject to the annual maintenance fee of $200.00 if authorized to do business in New York State. Section 1452(a)(9) includes a corporation that is 65% or more owned or controlled, directly or indirectly, by one of the following corporations:

(1) A corporation subject to Article 3-A of the New York Banking Law.

(2) A corporation registered under the Federal Bank Holding Company Act of 1956, as amended.

(3) A corporation registered as a savings and loan holding company (but excluding a diversified savings and loan holding company) under the Federal National Housing Act, as amended.

(4) A corporation described in Section 1452(a)(1) thru (a)(8).

This fee may be claimed as a credit against tax due under Articles 9 and 9-A. Corporations which file New York State franchise tax reports and pay the franchise taxes are considered to have met the maintenance fee requirements and should not file a CT-245 report.

Failure to pay the annual maintenance fee may result in the annulment of the corporation's authority to do business in New York State (Art. 9, Sec. 203-b).

Short Periods — Maintenance Fee

In 1978 the Tax Law was amended to provide for a reduction of the maintenance fee for short periods beginning on or after January 1, 1979 as follows:

Period	Maintenance Fee
A short period of not more than 6 months ....50% Reduction	$100.00
A short period of more than 6 months, but not more than 9 months....25% Reduction	$150.00
Periods in excess of 9 months must pay the full amount of the maintenance fee	$200.00

S Corporations

Authorized Foreign S Corporations that are doing business in New York State but whose shareholders have made an election to be treated as an S Corporation for New York State purposes must file Form CT-3S.

Time for Filing

This report must be filed two and one-half months after the close of your annual reporting period.

Interest

If the maintenance fee is not paid on or before the due date (determined without regard to any extension of time) interest must be paid on the amount of the underpayment from the due date to the date paid. The interest rate should be determined in accordance with Part 603 of the Tax Regulations.

Late Filing — Additional Charges

Additional charges for late filing are computed on the amount of tax less any payment made on or before the prescribed due date.

(a) If a return is not filed when due or if the application for extension is invalid, add to the tax 5% per month, up to 25% (Section 1085(a)(1)(A)).

(b) If a return is not filed within 60 days of the prescribed due date the addition to tax cannot be less than the smaller of $100 or 100% of the amount required to be shown as tax (Section 1085(a)(1)(B)).

(c) In case of failure to pay the tax shown on a return, add to the tax, ½% per month up to 25% (Section 1085(a)(2)).

(d) The total of the additional charges in (a) and (c) may not exceed 5% for any one month, except as provided for in (b) above (Section 1085(a)).

If you think you are not liable for these additional charges, attach a statement to your return explaining the delay in filing and/or payment (Section 1085).

General Business Corporations and Transportation Corporations – Activities Report – Tax Law, Article 9, Section 183 and Article 9-A, Section 209.1 and Article 9-A Regulations, Section 1-3.2 Foreign Corporation Subject to Tax

A corporation incorporated outside New York State is subject to franchise tax if it:

(1) Does business in New York State.

(2) Employs capital in New York State.

(3) Owns or leases property in New York State.

(4) Maintains an office in New York State.

The term "doing business" is used in a comprehensive sense and includes all activities which occupy the time or labor of men for profit. Regardless of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization is deemed to be "doing business" for the purpose of the tax. In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or a loss.

The term "employing capital" is used in a comprehensive sense. Any of a large variety of uses, which may overlap other activities, may give rise to taxable status. In general, the use of assets in maintaining or aiding the corporate enterprise or activity in New York State will make the corporation subject to tax.

Activities Deemed Insufficient to Subject a Foreign Corporation to Tax

Tax Law, Article 9, Section 183 and Article 9-A, Section 209.2 and Article 9-A Regulations, Section 1-3.3

A corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in New York State because of:

(1) The maintenance of cash balances with banks or trust companies in New York State.

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

(3) The taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation.

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

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

(6) Any combination of the foregoing activities.

Petroleum Business — Article 13-A

A petroleum business is taxed under Article 13-A for the privilege of engaging in business, doing business, employing capital, owning or leasing property, or maintaining an office in New York State, for all or any part of each of its taxable years.

A "petroleum business" is any incorporated or unincorporated business in New York State that (a) extracts, produces, refines, manufactures, or compounds petroleum for sale in New York State; or (b) imports petroleum, or causes petroleum to be imported by a person not subject to tax under Article 13-A, for sale or consumption by the buyer in New York State.

An "unincorporated business" is any trade, business or occupation conducted, engaged in, or being liquidated by an individual or unincorporated entity including a partnership, joint venture, sole proprietorship, unincorporated association, fiduciary, or a corporation in liquidation.

For purposes of the consumption tax, a petroleum business is "importing" petroleum into New York State if it takes title to petroleum outside New York State and ships or causes to be shipped into New York State such petroleum during its taxable year, for consumption by it within New York State. If petroleum is purchased outside New York State and subsequently delivered by a seller which is not an Article 13-A taxpayer, then the purchaser is considered to have "caused the importation" of petroleum into New York State and thus becomes taxable under the consumption tax imposed by Article 13-A.

Banks — Article 32

Every banking corporation or association doing business in New York State in a corporate or organized capacity which is organized under the laws of the United States or any other state or country is subject to a franchise tax under Article 32. Activities that constitute doing business in New York State include but are not limited to the following: operating a branch, loan production office, representative office, or a bona fide office.

A banking corporation subject to tax must file a franchise tax return on Form CT-32.