New York State Department of Taxation and Finance

Instructions for Form CT-245

CT-245-I

Maintenance Fee and Activities Return For a Foreign Corporation Disclaiming Tax Liability

Tax Law — Article 9, Section 181.2

Who Must File

- Any business incorporated outside New York State that is authorized to do business in New York State and wishes to disclaim tax liability.
- Any business incorporated outside New York State having an employee (including any officer) in this state and disclaiming tax liability. Employees are considered to be working in this state if they come into New York State on corporate business.
- Foreign banking corporations described in section 1452(a)(9) of Article 32.

Foreign banking corporations described in sections 1452(a)(2) through 1452(a)(8) of Article 32 and insurance corporations that are authorized to do business in New York State **are not required to file Form CT-245**.

Annual Maintenance Fee

Foreign corporations, except those listed in the last paragraph of the above section, that are authorized to do business in New York State must pay an annual maintenance fee of $300 when disclaiming tax liability.

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

Form CT-245 should not be filed by a foreign corporation that files a New York State franchise tax return under Article 9, 9-A or 32. The maintenance fee is allowed as a credit against the tax due on the franchise tax return.

Short Periods - Maintenance Fee

The Tax Law allows a reduction of the maintenance fee for periods of 9 months or less:

Period	Maintenance Fee Due
6 months or less	**$150**
More than 6 months but not more than 9 months	**$225**
The full amount of the maintenance fee is due for periods of more than 9 months	**$300**

When to File

File this return within two and one-half months after the end of your annual reporting period. New York State Tax Law does not provide for an extension of time to file Form CT-245.

Reporting Period

If you are a calendar year filer, check the box in the upper right corner on the front of the form.

If you are a fiscal year filer, complete the beginning and ending tax period boxes in the upper right corner on the front of the form.

Interest

If you do not pay the maintenance fee on or before the original due date of the return, you must pay interest on the amount of the underpayment from the original due date to the date paid. You may call the Taxpayer Assistance Bureau for the current rate or to have the interest computed for you. From within New York State call 1 800 CALL TAX (1 800 225-5829); from outside New York State call (518) 438-8581.

Late Filing and Late Payment - Additional Charges

Corporations required to pay the maintenance fee will be subject to the penalties for late filing and late payment imposed under section 1085 of Article 27.

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

A If you do not file a return when due, add 5% (.05) per month to the maintenance fee, up to a maximum of 25% (.25) (section 1085(a)(1)(A)).

B If you do not file a return within 60 days of the due date, the addition to the maintenance fee in item A above cannot be less than the smaller of $100 or 100% of the amount required to be shown as the maintenance fee (section 1085(a)(1)(B)).

C If you fail to pay the maintenance fee shown on the return, add ½% (.005) per month to the maintenance fee, up to a maximum of 25% (.25) (section 1085(a)(2)).

D The total of the additional charges in items A and C above may not exceed 5% (.05) in any one month, except as provided for in item 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, payment, or both (section 1085).

Foreign Corporations Subject to Tax Under Article 9 or 9-A and Not Required To File the Maintenance Fee Return

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

- does business in New York State;
- employs capital in New York State;
- owns or leases property in New York State; or
- maintains an office in New York State.

The term *doing business* includes all activities which occupy the time or labor of people for profit. Regardless of the nature of its activities, a corporation organized for profit and carrying out any activities for that purpose is deemed to be *doing business* and subject to the tax. It is immaterial whether its activities result in a profit or loss.

The term *employing capital* includes any use of assets in maintaining or aiding the corporate enterprise or activity in New York State.

Foreign Banking Corporations Subject To Tax Under Article 32 and Not Required To File the Maintenance Fee Return (Except 1452(a)(9) Corporations)

A foreign banking corporation or association described in sections 1452(a)(2)-(8) of Article 32 that is doing business in New York State in a corporate or organized capacity and is organized under the laws of the United States or the laws of any other state or country is subject to a franchise tax under Article 32 but not the maintenance fee under section 181.

Only foreign banking corporations described in section 1452(a)(9) of Article 32 are subject to the maintenance fee and activities return (Form CT-245).

Activities Deemed Insufficient to Subject a Foreign Corporation to Tax Under Article 9, 9-A, or 32 or to the Maintenance Fee Under Section 181.2

A corporation is not considered to be doing business, employing capital, owning or leasing property, or maintaining an office in New York State because of one or more of the following activities:

- the maintenance of cash balances with banks or trust companies in New York State;

- the ownership of shares of stock or securities kept in New York State in a rented safe deposit box, safe, or vault, if pledged as collateral security, or deposited in safekeeping or custody accounts with banks, trust companies or brokers who are members of a recognized security exchange;
- any action by a bank, trust company or broker, that is incidental to the rendering of safekeeping or custodian service to the corporation;
- the maintenance of an office in this state by one or more officers or directors of the corporation who are not corporation employees; or
- the keeping of a corporation's books or records in New York State by someone other than an employee of the corporation.

Final Return

Check the *Final Return* box on the front of the return, under the form number, only if filing a final tax return for one of the following reasons:

- Surrender of Authority by a Foreign Corporation (New York Business Corporation Law Section 1310);
- Merger or Consolidation (New York Business Corporation Law Section 907); or
- Termination of Existence - Foreign Corporation (New York Business Corporation Law Section 1311).

See Publication 110, *Information and Instructions for Termination of Business Corporations*, for the proper procedures to follow when terminating your business.

In the case of a merger or consolidation, the *Final Return* check box would only be used by the nonsurviving foreign corporation.

The return will be treated as a final return if your business is terminated with the Department of State and the return covers the tax period from the last return filed to the date of the termination.

Do not check the box if you are only changing the type of return that you file (i.e., CT-245 to CT-3, CT-245 to CT-4).

Surrender of Authority and Liability for Taxes and Fees

In order to surrender the authority of a foreign corporation that is authorized to do business in this state, the Tax Law requires the consent of the Commissioner of Taxation and Finance. Such consent will be given only if the commissioner ascertains that all fees, franchise taxes, and other taxes (e.g., sales tax) imposed under the Tax Law that have accrued against the corporation have been paid. The procedure for obtaining such a consent and the forms that are required to be filed with this department are set forth in Publication 110. You can request this publication by calling the Business Tax Information Center at the number listed below.

Change of Business Information

If there have been any changes in your business name, identification number, mailing address, business address, telephone number or owner/officer information and you have not previously notified us, complete **Form DTF-95**, *Change of Business Information*. If you don't have a form call toll free (from New York State only) **1 800 462-8100**. From areas outside New York State, call (518) 483-1073 to request one.

Privacy Notification

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions and forms, is found in Articles 8, 9, 9-A, 13, 19, 27, 32, 33 and 33-A of the Tax Law and 42 USC 405(c)(2)(C)(i).

The Tax Department will use this information primarily to determine and administer corporate tax liabilities under the Tax Law, for certain tax refund offsets, and for any other purpose authorized by law.

Failure to provide the required information may result in civil or criminal penalties, or both, under the Tax Law.

This information will be maintained by the Director of the Data Management Services Bureau, NYS Tax Department, Building 8 Room 905, W A Harriman Campus, Albany NY 12227; telephone (from New York State only) 1 800 CALL TAX (1 800 225-5829); from areas outside New York State call (518) 438-8581.

Need Help?

For forms or publications, call toll free (from New York State only) 1 800 462-8100. From areas outside New York State, call (518) 438-1073.

For information, forms or publications, call the Business Tax Information Center at 1 800 972-1233. The call is toll free from anywhere in the U.S. (including Alaska and Hawaii) and Canada. For information, you can also call toll free (from New York State only) 1 800 CALL TAX (1 800 225-5829). From areas outside New York State, call (518) 438-8581.

Telephone assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday.

Persons with Disabilities - In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call the information and assistance numbers listed above.

Hotline for the Hearing and Speech Impaired - If you have a hearing or speech impairment and have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling 1 800 634-2110 toll free from anywhere in the U.S. (including Alaska and Hawaii) and Canada. Hours of operation are from 8:30 a.m. to 4:15 p.m., Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.