



Instructions for Form CT-245
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, including a Qualified Subchapter S Subsidiary (QSSS).
- 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.

Make your payment in United States funds. A foreign check or foreign money order will only be accepted if payable through a United States bank or if marked Payable in U.S. Funds.

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:

Table with 2 columns: Period and Maintenance Fee Due. Rows include 6 months or less (\$150), More than 6 months but not more than 9 months (\$225), and 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.

Where to File

Mail returns to: NYS CORPORATION TAX, PROCESSING UNIT, PO BOX 22038, ALBANY NY 12201-2038. If you use a delivery service other than the U.S. Postal Service, see Private Delivery Services below.

Private Delivery Services

The date recorded or marked by certain private delivery services, as designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance, will be treated as a postmark, and that date will be considered to be the date of delivery in determining whether your return was filed on time. (Designated delivery services are listed in Publication 55, Designated Private Delivery Services. See Need Help? on the back page of these instructions for information on ordering forms and publications.) If you use any private delivery service, address your return to: State Processing Center, 431C Broadway, Menands, NY 12204.

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.

Business Activity Code Number

Enter the business activity code number from your federal return. Please check the appropriate box for the type of code you are using. Check the box marked NAICS if you use the North American Industry Classification System. If you have entered a Principal Industrial Activity (PIA) or Standard Industrial Classification (SIC) code, check the box marked Other.

Interest

If you do not pay the maintenance fee on or before the due date of the return, you must pay interest on the amount of the underpayment from the due date to the date paid. For the current rate, call the Business Tax Information Center (see Need Help? on back).

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 1/2% (.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).

Note: You may have the interest (line 4) and penalty (line 5) computed for you by calling the Business Tax Information Center at the number listed under the Need Help? section.

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 that 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 Section 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**

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 custodial 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. This 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 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 **1 800 462-8100**. From areas outside the U.S. and outside Canada, call (518) 485-6800 to request one.

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### **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 Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 924, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.

## **Need Help?**

**Telephone Assistance** is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday. **For business tax information and forms**, call the Business Tax Information Center at 1 800 972-1233. **For general information**, call toll free 1 800 225-5829. **To order forms and publications**, call toll free 1 800 462-8100. **From areas outside the U.S. and outside Canada**, call (518) 485-6800.

**Fax-on-Demand Forms Ordering System** - Most forms are available by fax 24 hours a day, 7 days a week. Call toll free from the U.S. and Canada 1 800 748-3676. You must use a Touch Tone phone to order by fax. A fax code is used to identify each form.

**Internet Access** - <http://www.tax.state.ny.us>

Access our website for forms, publications, and information.

**Hotline for the Hearing and Speech Impaired** - If you have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free from the U.S. and Canada 1 800 634-2110. Assistance is available from 8:30 a.m. to 4:15 p.m. (eastern time), 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.

**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 numbers listed above.

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