



# Instructions for Form CT-245

## Maintenance Fee and Activities Return

### For a Foreign Corporation Disclaiming Tax Liability

Tax Law — Article 9, Section 181.2

**Important reminder to file a complete return:** You must complete all required schedules and forms that make up your return, and include **all pages** of those forms and schedules when you file. Returns that are missing required pages or that have pages with missing entries are considered incomplete and cannot be processed, and may subject taxpayers to penalty and interest.

#### Up-to-date information affecting your tax return

Visit our Web site for tax law changes or forms corrections that occurred after the forms and instructions were printed (see *Need help?*).

#### Changes for 2008

##### Collection costs or fees for tax debts owed to New York

**State** — The Tax Department has been authorized to charge the taxpayer, as part of the taxpayer's tax debt, any cost or fee imposed or charged by the United States, or any state, for the payment or remittance of a taxpayer's overpayment to satisfy a New York State tax debt.

**Voluntary Disclosure and Compliance Program** — A Voluntary Disclosure and Compliance Program has been established. The program provides relief from certain penalties and criminal prosecution to eligible taxpayers who come forward and reveal previously undisclosed liabilities. Visit our Web site at [www.nystax.gov](http://www.nystax.gov) for additional information.

**Extension of tax shelter reporting requirements** — The expiration date of the reporting requirements and related administrative provisions concerning the disclosure of certain transactions and related information regarding tax shelters, including those related to New York reportable transactions, has been extended to July 1, 2011. Visit our Web site at [www.nystax.gov](http://www.nystax.gov) for additional information.

**Electronic filing and electronic payment mandate** — Certain tax preparers using tax software to prepare tax documents, and certain taxpayers preparing their own tax documents using tax software, must, for the applicable calendar year and all succeeding calendar years, e-file all documents authorized by the Commissioner to be e-filed. Any tax liability or other amount due required to be paid with a tax document that must be e-filed must also be e-paid. For more information, visit our Web site at [www.nystax.gov](http://www.nystax.gov) and click on *e-file*.

#### General information

A foreign corporation that is **authorized** to do business in New York must pay an annual maintenance fee. The following entities are exempt from this fee:

- banking corporations as defined in section 1452(a), paragraphs 1 through 8;
- insurance corporations;
- limited liability companies (LLCs);
- limited liability partnerships (LLPs); and
- publicly traded partnerships taxed as corporations under the Internal Revenue Code (IRC).

The maintenance fee is \$300. However if the foreign authorized corporation filed a short period return, the maintenance fee may be less than \$300. See *Short periods – reduced maintenance fee*.

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).

If the foreign authorized corporation is disclaiming tax liability, it does not file a tax return under Article 9, 9-A, or 32. However, it must file and pay the \$300 maintenance fee on Form CT-245.

If the foreign authorized corporation files a tax return under Article 9, 9-A, or 32, the payment of corporation tax of at least \$300 on that tax return satisfies the maintenance fee requirement and Form CT-245 should not be filed.

#### Short periods — reduced 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
More than 9 months .....	\$300

#### Who must file Form CT-245

- Any business incorporated outside New York State that is authorized to do business in New York State and wishes to disclaim tax liability.
- A **Qualified Subchapter S Subsidiary (QSSS)** incorporated outside New York State and authorized to do business in New York State that is included in the parent corporation's return.
- 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 that are authorized to do business in New York State and wish to disclaim tax liability.

Foreign banking corporations described in Article 32 sections 1452(a)(2) through 1452(a)(8), insurance corporations, LLCs, LLPs, and publicly traded partnerships taxed as corporations under the IRC that are authorized to do business in New York State are **not** required to file Form CT-245.

#### Foreign corporations subject to tax under Article 9 or 9-A and not required to file Form CT-245

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 Form CT-245 (except section 1452(a)(9) corporations)

A foreign banking corporation or association described in Article 32 sections 1452(a)(2)-(8) 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 Article 9 section 181.

## Activities deemed insufficient to subject a foreign corporation to tax under Article 9, 9-A, or 32

A foreign 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, or 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.

In addition, a foreign corporation is not considered to be doing business, employing capital, owning or leasing property, or maintaining an office in New York State under Article 9-A because of one or more of the following activities:

- the use of a non-affiliated fulfillment service or the ownership of property stored on the premises of such fulfillment service (see TSB-M-98(7)C, 1998 Summary of Corporation Tax Legislative Changes); or
- the participation in trade shows in New York State for 14 days or less during its tax year for federal income tax purposes. This is regardless of whether the corporation has employees or other staff present at the trade shows, providing that:
  - the corporation's trade show activity is limited to displaying goods or promoting services;
  - no sales are made at the trade show; and
  - any orders received are sent outside New York State for acceptance or rejection and are filled from outside the state.

## When to file

File this return within 2½ 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*.

## Private delivery services

If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to mail in your return and tax payment. However, if, at a later date, you need to establish the date you filed your return or paid your tax, you cannot use the date recorded by a private delivery service **unless** you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services*. See *Need help?* for information on obtaining forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your return, contact that private delivery service for instructions on how to obtain written proof of the date your return was given to the delivery service for delivery. If you use **any** private delivery service, whether it is a designated service or not, send the forms covered by these instructions to: State Processing Center, 431C Broadway, Albany NY 12204-4836.

## Reporting period

Use this tax return for calendar year 2008 and fiscal years that begin in 2008 and end in 2009.

You can also use the 2008 return if:

- you have a tax year of less than 12 months that begins and ends in 2009, **and**
- the 2009 return is not yet available at the time you are required to file the return.

In this case you must show your 2009 tax year on the 2008 return and take into account any tax law changes that are effective for tax years beginning after December 31, 2008.

All filers must complete the beginning and ending tax year boxes in the upper right corner on page 1 of the form.

**Line A** — Make your check or money order payable in United States funds. We will accept a foreign check or foreign money order only if payable through a United States bank or if marked **Payable in U.S. funds**.

## 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 (see *Note*).

## 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 Article 27 section 1085.

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).

**Note:** You may compute your penalty and interest by accessing our Web site and clicking on *Online Tax Center*, or you may call and we will compute the interest and penalty for you (see *Need help?*).

## Collection of debts from your refund or overpayment

We will keep all or part of your refund or overpayment if you owe a past-due, legally enforceable debt to a New York State agency, or if you owe a New York City tax warrant judgment debt. We may also keep all or part of your refund or overpayment if you owe a past-due legally enforceable debt to another state, provided that state has entered into a reciprocal agreement with New York State. If we keep your refund or overpayment, we will notify you.

A New York State agency includes any state department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, office, or other entity performing a governmental or proprietary function for the state or a social services district. We will refund or apply as an overpayment any amount over your debt.

If you have any questions about whether you owe a past-due, legally enforceable debt to a state agency, or to another state, or whether you owe a New York City tax warrant judgment debt, contact the state agency, the other state, or the New York City Department of Finance.

For New York State tax liabilities only, call 1 800 835-3554 (from areas outside the U.S. and outside Canada, call (518) 485-6800) or write to: NYS Tax Department, Collections and Civil Enforcement Division, W A Harriman Campus, Albany NY 12227.

### **Amended return**

If you are filing an amended return, mark an **X** in the *Amended return* box.

### **Final return**

Mark an **X** in the *Final return* box on page 1 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).

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 mark the box** if you are only changing the type of return that you file (for example, 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 (such as sales tax) imposed under the Tax Law that have accrued against the corporation have been paid.

Call 1 800 327-9688 (Dissolution Unit) if you have questions concerning surrendering authority to do business in New York State.

### **Change of address**

If your address has changed, please enter your new address in the appropriate area and mark an **X** in the box under the address so that we can update your address for this tax type. Do not mark an **X** in this box for any change of business information other than for your address.

### **Changes in business information**

You must report any changes in your business name, ID number, mailing address, physical address, telephone number, or owner/officer information on Form DTF-95, *Business Tax Account Update*. If only your address has changed, you may use Form DTF-96, *Report of Address Change for Business Tax Accounts*, to correct your address for this and all other tax types. You can get these forms from our Web site, or by fax or phone. See *Need help?*

### **Third-party designee**

If you want to authorize another person (third-party designee) to discuss this tax return with the New York State Tax Department, mark an **X** in the *Yes* box in the *Third-party designee* area of your return. Also **print** the designee's name, phone number, and any five-digit number the designee chooses as his or her personal identification number (PIN). If you want to authorize the paid preparer who signed your return to discuss the return with the Tax Department, **print** the preparer's name in the space for the

designee's name and enter the preparer's phone number in the space for the designee's phone number. You do not have to provide the other information requested. If you do not want to authorize another person, mark an **X** in the *No* box.

If you mark the *Yes* box, you are authorizing the Tax Department to discuss with the designee any questions that may arise during the processing of your return. You are also authorizing the designee to:

- give the Tax Department any information that is missing from your return;
  - call the Tax Department for information about the processing of your return or the status of your refund or payment(s); and
  - respond to certain Tax Department notices that you shared with the designee about math errors, offsets, and return preparation.
- The notices will not be sent to the designee.

You are not authorizing the designee to receive your refund check, bind you to anything (including any additional tax liability), or otherwise represent you before the Tax Department. If you want the designee to perform those services for you, you must file Form POA-1, *Power of Attorney*, making that designation with the Tax Department. Copies of statutory tax notices or documents (such as a *Notice of Deficiency*) will only be sent to your designee if you file Form POA-1.

You cannot change the PIN. The authorization will automatically end on the due date (without regard to extensions) for filing your next year's tax return.

### **Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

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

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

### **Need help?**

 **Internet access:** [www.nystax.gov](http://www.nystax.gov)  
(for information, forms, and publications)

 **Fax-on-demand forms:** 1 800 748-3676

 **Telephone assistance** is available from 8:00 A.M. to 5:00 P.M.  
(eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

**Corporation Tax** Information Center: 1 888 698-2908

From areas outside the U.S. and outside Canada: (518) 485-6800

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): 1 800 634-2110

 **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 1 800 972-1233.