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Subparts 1-1 and 1-2 of Subchapter A of Chapter 1 of Title 20 of the Codes, Rules, and Regulations of the State of New York are repealed and new Subpart 1-1, Definitions, is added to read as follows:

Part 1 Imposition of Tax

**Subpart 1-1 Definitions**

**Section 1-1.1 General. [Tax Law, § 208(9)].** Any term used in this Subchapter shall, unless a different meaning is clearly required, presumably have the same meaning as when used in a comparable context in:

- (a) the laws of the United States relating to Federal income taxes and the Federal tax regulations promulgated thereunder;
- (b) Article 1 of the Tax Law and the regulations promulgated thereunder;
- (c) Article 9-A of the Tax Law and the regulations promulgated thereunder; or
- (d) Article 27 of the Tax Law and the regulations promulgated thereunder.

Any reference in this Subchapter to the laws of the United States shall mean the provisions of the Internal Revenue Code (IRC) and other provisions of the laws of the United States relating to Federal income taxes, as the same are effective for the taxable year. Any reference to Article 1, Article 9, Article 9-A, Article 22, Article 27 or Article 33 is a reference to those articles of the Tax Law. Any reference to a section of law that is not described as a section of a specific law is a reference to a section of the Tax Law.

**Section 1-1.2 Department of Taxation and Finance. [Tax Law § 2 (1)].** The terms *Department, Tax Department, and Department of Taxation and Finance* mean the New York State Department of Taxation and Finance unless the text clearly requires a different meaning.

**Section 1-1.3 Commissioner of Taxation and Finance. [Tax Law § 2(1)].** The term *Commissioner* means the

26 Commissioner of Taxation and Finance or his or her delegate unless the text clearly requires a different  
27 meaning.

28

29 **Section 1-1.4 Taxpayer. [Tax Law, §§ 208(2), 209(3)].**

30 (a) The term *taxpayer* means any corporation that is subject to the tax imposed by article 9-A  
31 of the Tax Law.

32 (b) The term *taxpayer* also includes a receiver, referee, trustee, assignee or other fiduciary, or  
33 any officer or agent appointed by State or Federal court, who conducts the business of a corporation.  
34 For example, a trustee who, under the authority of a Federal court, conducts the business of a  
35 corporation in bankruptcy is a taxpayer subject to tax. If the activities of the trustee are limited to the  
36 liquidation of the business and the disposition of the assets of the corporation, neither the trustee nor  
37 the corporation is subject to the franchise tax.

38 (c) The term *taxpayer* also includes a corporation that continues to do business after it has  
39 been dissolved or surrenders its authority to do business in New York, by proclamation or otherwise.  
40 A dissolved corporation or a corporation that surrendered its authority to do business in New York is  
41 not taxable under Article 9-A of the Tax Law if its activities are limited to the liquidation of its business  
42 and affairs, the disposition of its assets (other than in the regular course of business), and the  
43 distribution of the proceeds.

44

45 **Section 1-1.5 Corporation. [Tax Law, §§ 208(1) and 209(2-a)].**

46 (a) The term *corporation* means an entity created as such under the laws of the United States,  
47 any state, territory or possession thereof, the District of Columbia, or any foreign country, or any  
48 political subdivision of any of the foregoing, which provides a medium for the conducting of business  
49 and the sharing of its gains. An entity conducted as a corporation is deemed to be a corporation. The  
50 term corporation includes:

51 (1) a domestic international sales corporation, as defined in IRC section 992(a)

- 52 (hereinafter referred to as a “DISC”);
- 53 (2) a limited liability company or other business entity classified as a corporation for  
54 Federal income tax purposes, except where otherwise provided; and
- 55 (3) (i) an association, within the meaning of IRC section 7701(a)(3), a joint stock  
56 company or association, a publicly traded partnership treated as a corporation pursuant  
57 to IRC section 7704 and any business conducted by a trustee or trustees wherein interest  
58 or ownership is evidenced by certificate or other written instrument.
- 59 (ii) The terms *joint stock company* and *association* include every unincorporated  
60 joint stock association, joint stock company or enterprise having written articles of association and  
61 capital stock divided into shares. The term *association* includes a joint stock association
- 62 (iii) A business conducted by a trustee or trustees in which interest or ownership  
63 is evidenced by certificate or other written instrument includes, but is not limited to, an association  
64 commonly referred to as a business trust or Massachusetts trust. In determining whether a trustee or  
65 trustees are conducting a business, the form of the agreement is of significance but is not controlling.  
66 The actual activities of the trustee or trustees, not their purposes and powers, will be regarded as  
67 decisive factors in determining whether a trust is subject to tax under Article 9-A of the Tax Law.  
68 The mere investment of funds and the collection of income therefrom, with incidental replacement  
69 of securities and reinvestment of funds, does not constitute the conduct of a business in the case of  
70 a business conducted by a trustee or trustees.
- 71 (b) There are generally three types of corporations - domestic corporations, foreign  
72 corporations, and alien corporations.
- 73 (1) The term *domestic corporation* means a corporation incorporated by or under the  
74 laws of the State or colony of New York State.
- 75 (2) The term *foreign corporation* means a corporation which is not a domestic  
76 corporation.
- 77 (3) The term *alien corporation* means a corporation organized under the laws of a

78 country, or any political subdivision thereof, other than the United States, or organized under the laws  
79 of a possession, territory, or commonwealth of the United States. An alien corporation is also  
80 considered a foreign corporation.

81 (c) Unless otherwise specified, whenever the term corporation is used in this Subchapter, it  
82 references a taxpayer and a non-taxpayer.

83

84 **Section 1-1.6 S corporation and QSSS. [Tax Law, § 208(1-A) and 208(1-B)].**

85 (a) An *S corporation* means a corporation for which the Federal S election under IRC section  
86 1362 is in effect for the tax year. An S corporation includes a limited liability company that is classified  
87 as an S corporation for Federal income tax purposes.

88 (b) A *New York S corporation* means an S corporation subject to tax under Article 9-A of the  
89 Tax Law that has made the election under Tax Law section 660(a), or that has been mandated a New  
90 York S corporation under Tax Law section 660(i).

91 (c) A *QSSS* means a corporation that is a qualified subchapter S subsidiary as defined in IRC  
92 section 1361(b)(3)(B).

93 (d) An *exempt QSSS* means a corporation that is a qualified subchapter S subsidiary exempt  
94 from tax under Article 9-A of the Tax Law.

95

96 **Section 1-1.7 Partnership and partner. [Tax Law § 2(6)].**

97 (a) The term *partnership* shall have the same meaning as set forth in IRC section 761(a) and 26 CFR §  
98 1.761-1(a) whether or not the election provided for therein has been made. Also, the term "partnership" does not  
99 include a corporation within the meaning of section 1-1.5 of this Subpart

100 (b) The term *partnership*, unless the context requires otherwise, includes a limited liability company or  
101 other business entity classified as a partnership for Federal income tax purposes.

102 (c) The term *partner* shall have the same meaning as set forth in IRC section 761(b) and shall include a  
103 member of a limited liability company classified as a partnership for Federal income tax purposes.

104

105 **Section 1-1.8 Taxable year.** The term *taxable year* means, in most cases, the taxpayer's taxable year  
106 for Federal income tax purposes, or the part thereof during which the taxpayer is subject to the tax  
107 imposed by Article 9-A of the Tax Law. In the case of a report made for a fractional part of the year,  
108 taxable year means the period for which such report is made. A taxable year must be a calendar year or  
109 a fiscal year ending during a calendar year. A taxable year shall not include more than 12 calendar  
110 months except in the case of a 52-53 week period. If a taxpayer does not have a taxable year for Federal  
111 income tax purposes, the taxable year must be a calendar year, unless the Commissioner of Taxation  
112 and Finance authorizes the use of a fiscal year. Any reference in Article 9-A or 27 to the term tax year  
113 or taxable period is a reference to taxable year as defined by this section.

114

115

116 **Section 1-1.9 Fiscal year. [Tax Law, § 208(10)].** The term *fiscal year* means any period not longer than 12  
117 calendar months, or any shorter period beginning on the date the taxpayer becomes subject to tax imposed by  
118 Article 9-A of the Tax Law, ending on the last day of any month other than December, provided the taxpayer  
119 keeps its books on such basis. It also includes the 52-53 week accounting period if such period has been elected  
120 by the taxpayer.

121

122 **Section 1-1.10 Tangible personal property [Tax Law § 208(11)].** The term *tangible personal property means*  
123 corporeal personal property such as machinery, tools, implements, goods wares and merchandise. It includes  
124 audio works, audiovisual works, literary works, visual works, graphic works, or games, delivered via a  
125 physical medium, which are not subject to section 4-2.3 of this Part. It does not mean money, deposits in  
126 banks, shares of stock, bonds, notes, credits or evidences of an interest in property and evidences of debt.

127

128 **Section 1-1.11 Real property.** The term *real property* means land, buildings, structures, and  
129 improvements thereon. In addition, it includes shares in a cooperative housing corporation in connection  
130 with the grant or transfer of a proprietary leasehold.

131

132 **Section 1-1.12. Stock. [Tax Law, § 208(4)].** (a) The term *stock* means an interest in a corporation that is  
133 treated as equity for Federal income tax purposes. The definition includes corporate equity instruments  
134 similar to stocks, such as the following: business trust certificates; units in publicly traded partnerships  
135 included in the definition of “corporation” in Tax Law section 208(1); shares of a RIC; and shares in a  
136 REIT.

137 (b) An interest in a corporation will be deemed to be treated as equity for Federal income tax  
138 purposes under this section if such interest would be treated as equity, rather than debt, based upon  
139 relevant Federal guidance and court decisions, and upon all surrounding facts and circumstances,  
140 including the following factors, provided that such factors may not be of equal weight or significance,  
141 and that no single factor is controlling:

142 (1) whether the interest lacks an unconditional promise to pay a sum-certain on demand  
143 or to pay at a fixed maturity date in the foreseeable future;

144 (2) whether the holder of the interest lacks the right to enforce the payment of principal  
145 and interest;

146 (3) whether the rights of holders of the interest are subordinate to the rights of general  
147 creditors;

148 (4) whether the holder of the interest has the right to participate in the management of the  
149 issuer;

150 (5) whether the issuer is inadequately capitalized;

151 (6) whether there is identity of interest between holders of the interest and shareholders of  
152 the issuer;

153 (7) whether either the holder or the issuer, or both, label the interest in a way consistent  
154 with the interest being considered an equity; and

155 (8) whether the interest is intended to be treated as an equity for nontax purposes.

156 (c) Generally, the determination of the Internal Revenue Service as to whether an instrument is  
157 equity will be followed, but such determination is not binding on the Commissioner.

158 **Section 1-1.13. Report.** The term *report* means a report or return of tax, but does not include a  
159 declaration of estimated tax.

