New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

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Corporation Tax
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Amendments to the Business Corporation Franchise
Tax Regulations Relating to Foreign Corporations and Trade Shows

On January 22, 2004, the Commissioner of Taxation and Finance adopted amendments to sections 1-3.3 and 1-3.4 of the Business Corporation Franchise Tax Regulations (Article 9-A of the Tax Law) regarding the taxability of foreign corporations participating in trade shows in New York State. Regulation sections 1-3.3(a)(7) and 1-3.4(b)(9)(iv)(i) were added to set forth a bright-line nexus test for foreign corporations participating in trade shows in New York State for 14 days or less during the taxable year. These amendments apply to taxable years beginning on or after January 1, 2002.

Activities deemed insufficient to subject a foreign corporation to tax (Regulation section 1-3.3)

Section 1-3.3(a)(7) of the regulations provides that a foreign corporation's participation in a trade show or shows in New York State for 14 days or less during its taxable year for federal income tax purposes will be deemed insufficient to subject a foreign corporation to the Business Corporation Franchise Tax. This is regardless of whether the corporation has employees or other staff present at the trade shows, provided 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.

Corporations not subject to tax (Regulation section 1-3.4)

Section 1-3.4(b)(9)(iv)(i) of the regulations provides that participation in a trade show or shows in New York State for 14 days or less by a corporation otherwise exempt from the Business Corporation Franchise Tax pursuant to the provisions of Public Law 86-272, is an activity that is entirely ancillary to the solicitation of orders.