

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-M-78 (12)C  
Corporation Tax  
Instructions and Interpretations Section  
August 2, 1978

Subject: Insurance Exchange and Insurance "Free Zone" Legislation

Chapter 480, Laws of 1978 provides for the creation of the New York Insurance Exchange. The purpose of the exchange is to provide a facility for underwriting direct and reinsurance business and for the management of the facility. The legislation also creates an insurance "free zone" within New York by exempting authorized companies from certain policy and rate requirements with respect to large commercial risks (premiums in excess of \$100,000) and special classes of unique and/or unusual coverage.

Tax provisions applicable to the exchange and to participants in business of the exchange are as follows:

Article 33 - Tax on Insurance Corporations

The New York Insurance Exchange shall collect and remit all premium taxes due on business done on or through such exchange. The premiums tax is imposed on premiums written, procured or received in New York if the risk is located in New York. However, except for the premiums tax, the exchange itself is not subject to a tax measured by income or any of the other alternative measures of tax under Article 33, Article 9-A or any other article. (Insurance Law Section 425-a)

Any entity, doing an insurance business as a member of the New York Insurance Exchange, including a partnership, is an insurance corporation subject to Article 33. (Section 1500(a))

The entire net income of a partnership is presumably the same as the taxable income of a partnership, as reported to the U.S. Treasury Department. (Section 1503(a))

Entire net income of a corporation which, either separately or as a partner of a partnership, is doing an insurance business as a member of the New York Insurance Exchange, shall not include any item of income, gain, loss or deduction of such business which was reported to the U.S. Treasury Department. (Section 1503(b) (1)(E))

Entire net income of a corporation which, either separately or as a partner of a partnership, is doing an insurance business as a member of the New York Insurance Exchange, shall include in its entire net income, its distributive or pro rata share of the allocated entire net income of such insurance business, determined under Article 33, except that where such distributive or pro rata share is a loss, such loss shall not be subtracted. (Section 1503(b)(2)(H))

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Every entity, doing an insurance business as a member of the New York Insurance Exchange, shall file with the Tax Commission, an annual information report in which it computes its allocated entire net income. Such entities are exempt from the premiums tax, the tax on income and the alternative taxes under Article 33. (Section 1512(c))

Special risk premiums are defined by reference to the Insurance Law and Regulations. With respect to special risk premiums in the allocation computation, "New York premiums" will include marine insurance "special risk premiums" and other special risk premiums written, procured or received in New York on risks located or resident in New York. (Sections 1500(k), 1504(b)(2)(A) and 1504 (b)(2)(C))

In the allocation computation, "total premiums" do not include special risk premiums, except those written, procured or received in New York on risks located or resident in New York. (Section 1504(b)(3))

Every taxpayer more than 95% of whose premiums are from annuity contracts, group insurance on the elderly and ocean marine insurance must treat such insurance as taxable insurance when computing the cap under Section 1505 of Article 33. (Section 1505(b))

Special risk premiums, except for those written, procured or received in New York on risks located or resident in New York, are not subject to the tax on premiums. Also, they are not included in the numerator or denominator of the premiums factor of the allocation percentage for net income tax purposes. (Section 1510(c)(1))

The "deemer" clause does not apply to special risk insurance. Such clause requires a premiums tax on premiums written, procured or received in New York, which are not properly allocated or apportioned and, in the case of the premiums tax, reported as taxable, to some other state or states. (Section 1510(c) (4))

Eliminates the adjusted basis tax on risks outside the United States in computing the premiums tax. (Section 1510(d))

Exempts from the tax on premiums, premiums on risks located outside the United States which were written, procured or received in New York except for insurance written by foreign and alien title insurance corporations and accident and health insurance. (Section 1512(b)(3))

Example: Computation of allocated entire net income of ABC Insurance Corporation, a participant in a syndicate doing business on the New York Insurance Exchange. Additional information is as follows:

|   |           |
|---|-----------|
| Syndicate federal taxable income                                | \$500,000 |
| Syndicate allocated entire net income                           | \$200,000 |
| ABC Insurance Corporation is a 60% participant in the syndicate |           |

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|--|--------------|
| ABC Insurance Corporation                        |              |
| Federal taxable income                           | \$1,250,000  |
| Franchise tax deduction                          | \$ 5,000     |
| Syndicate Income reported for federal purposes   | \$ 300,000   |
| N.Y. Premiums (excluding special risk premiums)  | \$8,355,000  |
| Total Premiums (excluding special risk premiums) | \$35,355,000 |
| N.Y. Special risk premiums                       | \$ 645,000   |
| Total Special risk premiums                      | \$ 5,950,000 |
| N.Y. Wage Allocation 15%                         |              |

Computation:

|                                   |              |
|-----------------------------------|--------------|
| ABC Insurance Corporation         |              |
| Federal taxable income            | \$ 1,250,000 |
| add franchise tax                 | 5,000        |
| Total                             | \$ 1,255,000 |
| less: distribution from syndicate | 300,000      |
| Balance                           | \$ 955,000   |
| add: allocated syndicate income   | 120,000      |
| Entire Net Income                 | \$ 1,075,000 |

|   |              |
|---|--------------|
| New York premiums (including N.Y. special risk) | \$ 9,000,000 |
| Total premiums (including N.Y. special risk)    | 36,000,000   |
| Premium percentage $25\% \times 9 = 225\%$      |              |
| Wage percentage                                 | 15%          |
| Total   | 240%         |
| Allocation                                      | 24%          |
| Entire Net Income allocated to New York         | \$ 258,000   |

Article 9A - Tax on Business Corporations

Entire net income of a corporation which, either separately or as a partner of a partnership, is doing an insurance business as a member of the New York Insurance Exchange, shall not include any item of income, gain, loss or deduction of such business which was reported to the U.S. Treasury Department. (Section 208.9(a)(8))

Entire net income of a corporation which, either separately or as a partner of a partnership, is doing an insurance business as a member of the New York Insurance Exchange, shall include in its entire net income, its distributive or pro rata share of the allocated entire net income of such insurance business, determined under Article 33, except that where such distributive or pro rata share is a loss, such loss shall not be subtracted. (Section 208.9(b)(7))

Article 22 - Personal Income Tax

Include in a resident individual's partner's modifications those which relate to items of income, gain, loss or deductions of a partnership doing an insurance business as a member of the New York Insurance Exchange under section 425-a of the insurance law and section 617-a. (Section 612(e))

A resident individual or partner shall not include in New York adjusted gross income or New York taxable income any item of income, gain, loss or deduction which is the distributive or pro rata share of such income for federal income tax purposes. However, such individual's New York adjusted gross income shall include his distributive or pro rata share of the allocated entire net income of such insurance business as determined under Article 33 of the Tax Law. If the allocated entire net income is a loss there shall not be subtracted from federal adjusted gross income in computing New York adjusted gross income the individual distributive share of such loss. (Section 617-a)

Any item of income, gain, loss or deduction of a nonresident individual or partner of a partnership doing an insurance business as a member of the New York insurance exchange - shall not constitute income, gain, loss or deduction derived from New York sources. (Dividend income) (Section 632(b)(5))

Article 23 - Unincorporated Business Tax

Excludes entities doing an insurance business as a member of the New York Insurance Exchange as an unincorporated business. (Section 703(a))

Title T - City Personal Income Tax - Resident

Include in a resident individual's partner's modifications those which relate to items of income, gain, loss or deductions of a partnership doing an insurance business as a member of the New York Insurance Exchange under section 425-a of the insurance law and section T46-117.1. (Title T46-117.0)

A resident individual or partner shall not include in New York adjusted gross income or New York taxable income any item or income, gain, loss or deduction which is the distributive or pro rata share of such income for federal income tax purposes. However, such individual's New York adjusted gross income shall include his distributive or pro rata share of the allocated entire net income of such insurance business as determined under Article 33 of the Tax Law. If the allocated entire net income is a loss there shall not be subtracted from federal adjusted gross income in computing New York adjusted gross income the individual distributive share of such loss. (Title T46-117.1)

Title U - Earnings Tax on Nonresidents

Amends the law to exclude under the definition of wages any item of income, gain, loss or deduction of a nonresident individual or partner of a partnership doing an insurance business as a member of the New York Insurance Exchange under section 425-a of the insurance law when such items are included in such individual's distributive or pro rata share for federal income tax purposes. (Title U46-1.0(e))

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Amends the law to exclude under the definition of "Net earnings from self-employment" any item of income, gain, loss or deduction of a nonresident individual or partner of a partnership doing an insurance business as a member of the New York Insurance Exchange under section 425-a of the insurance law when such items are included in such individual's distributive or pro rata share for federal income tax purposes. (Title U46-1.0(f))

Title R - City Corporation Tax

Entire net income of a corporation which, either separately or as a partner of a partnership, is doing an insurance business as a member of the New York Insurance Exchange, shall not include any item of income, gain, loss or deduction of such business which was reported to the U.S. Treasury Department. (Title R46-2.0(8)(a)(6))

Entire net income of a corporation which, either separately or as a partner of a partnership, is doing an insurance business as a member of the New York Insurance Exchange, shall include in its entire net income, its distributive or pro rata share of the allocated entire net income of such insurance business, determined under Article 33, except that where such distributive or pro rata share is a loss, such loss shall not be subtracted. (Title R46-2.0(a)(b)(6))

The New York Insurance Exchange will not become operational until 1979. However, these provisions apply to taxable years beginning on or after January 1, 1978.