

1981 Legislation

Amendments to the Franchise Tax on Transportation and Transmission Corporations

(Sections 183 and 184 of Article 9)

Chapter 486, Laws of 1981 was signed by the Governor on July 11, 1981. Its provisions apply to taxable years beginning on or after January 1, 1981. The exemption from tax, by Section 3 of the Tax Law, previously provided to domestic corporations exclusively engaged in the operations of vessels or aircraft in foreign commerce, has been eliminated.

This legislation also amends the jurisdictional standards under Sections 183 and 184 of Article 9 to conform with jurisdictional standards under Article 9-A and eliminates the exemption under Section 184 previously granted to gross earnings of an interstate character. Foreign corporations doing business, employing capital, owning or leasing property or maintaining an office in this state are now subject to tax whether or not exclusively engaged in foreign or interstate commerce.

The arrival and departure factor, which is one of the three factors used to allocate capital stock of an aviation corporation, has been amended to require inclusion of both scheduled and non-scheduled arrivals and departures in the computation. Arrivals and departures for maintenance, repair, refueling, training and in emergency situations as well as non-revenue flights are not included.

Section 184, as amended, subjects to tax all gross earnings from sources within the state. Gross earnings from transportation and transmission services within the state are allocated on a mileage basis, except as described below.

Aviation corporations allocate gross earnings based on the formulas provided for in Section 183 for the allocation of capital stock of such corporations.

Corporations engaged in the operations of vessels allocate gross earnings from transportation services for Section 184 based on the ratio of the aggregate number of working days of the vessels it owns or leases in all navigable rivers, streams and water within New York State and in New York territorial waters to the aggregate number of working days of all vessels it owns or leases.

Telephone and telegraph corporations compute gross earnings from sources within the state by adding to gross earnings from services performed wholly within the state, a portion of gross earnings from services performed within and without this state.

The method to be used by telephone and telegraph corporations, for the allocation of gross earnings from services performed within and without this state will be published at a later date. Telephone and telegraph corporations should not use the mileage basis without first getting approval from the Tax Department.