

STATEMENT IN LIEU OF A REGULATORY FLEXIBILITY ANALYSIS FOR
SMALL BUSINESSES AND LOCAL GOVERNMENTS
DEPARTMENT OF TAXATION AND FINANCE

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or any additional reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

The purpose of the rule is to implement the sweeping reform of New York State's corporate tax framework effected by Part A of Chapter 59 of the Laws of 2014, together with primarily technical and conforming amendments enacted by Part T of Chapter 59 of the Laws of 2015 and Part P of Chapter 60 of the Laws of 2016 (hereinafter referred to collectively as "Tax Reform"). The proposed rule is necessary to implement and administer the Tax Law, as amended by Tax Reform. The objective of the rule is to interpret the Tax Reform statutes and provide guidance to enhance voluntary compliance, consistent with the overarching goals of Tax Reform. The proposed rule also would interpret and integrate other related provisions of the Tax Law regarding business models that have developed since these regulations were last comprehensively updated, such as the emergence of limited liability companies. The resulting rule provides regulated parties with detailed direction regarding the computation of tax under Tax Law article 9-A, as revised by Tax Reform.

The 2014 Tax Reform legislation represents the most extensive restructuring of New York State's corporate tax framework since the 1940's. In particular, the new Tax Law article 9-A structure modernized and simplified the Tax Law, enhanced certainty and clarity, and addressed the most common areas of dispute between taxpayers and the department. The amendments to Tax Law article 9-A established an economic nexus standard (deriving receipts from activity in this state), changed the apportionment scheme from one based generally on the location where services were performed to a market-based approach, changed the rules for mandatory and permissive combined reporting, eliminated the separate taxation of subsidiary capital,

established new definitions of investment capital and income, and changed how investment capital and income are taxed. This rule repeals existing 20 NYCRR Chapter I, Subchapter A, the Business Corporation Franchise Tax, Parts 1 through 9, and adds new Parts 1 through 9 to implement these changes in corporate taxation.

Tax Reform also merged the bank tax imposed under Tax Law article 32 into the corporate franchise tax imposed under Tax Law article 9-A. This repeal of the bank tax crucially eliminated the differing schemes of taxation of taxpayers involved in essentially the same activities, thereby removing the opportunity to exploit differences in the rules of the two articles of the Tax Law. The proposed rule repeals 20 NYCRR Chapter I, Subchapter B, the Franchise Tax on Banking Corporations, Parts 16 through 23, to reflect the repeal of Tax Law article 32, under which banks were previously taxed, to make banks taxable under Tax Law article 9-A, like other financial institutions.

Because the changes to the combined reporting rules in Tax Law article 9-A effected by Tax Reform were not incorporated into Tax Law article 33, insurance corporations still rely on the pre-reform Tax Law article 9-A rules. The guidance relating to combined reporting provided in the existing regulations was minimal and directed insurance corporations to use the pre-reform combination rules contained in Subpart 6-2. The proposed rule repeals 20 NYCRR Chapter I, Subchapter C, the Franchise Taxes on Insurance Corporations, Part 32 to eliminate obsolete tax credit provisions, as well as Part 33 of such regulations, relating to combined reporting by insurance corporations. The amendments add a new Part 32, which provides updated combined reporting requirements for insurance corporations in place of those previously set forth in Part 33. New Part 32 incorporates the pre-reform combination rules that are in the current Subpart 6-2 and makes them applicable specifically to insurance corporations.

The proposed rule itself has no impact on small businesses and local governments. Rather, the amendments implement and provide guidance relating to New York State's corporate tax scheme, as revised by Tax Reform.