

STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
COMMISSIONER OF TAXATION AND FINANCE  
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171, subdivision (8) of section 210, subsection (a) of section 1096, and paragraph (6) of subsection (a) of section 1454 of the Tax Law, the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner of Taxation and Finance, hereby proposes to make and adopt the following amendments to the Business Corporation Franchise Tax Regulations, as published in Subchapter A of Chapter I of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York and the Franchise Tax on Banking Corporations Regulations, as published in Subchapter B of Chapter I of such Title, such amendments to read as follows:

Section 1. Subdivision (c) of section 4-6.1 of such regulations is amended to read as follows:

(c) A taxpayer may not vary the statutory business allocation percentage or alternative business allocation percentage formulas described in sections [4-2.2 of this Part and 210(3-a)(a) of the Tax Law, respectively,] 210(3)(a) and 210(3-a)(a) of the Tax Law without the [prior] consent of the commissioner. A taxpayer making a request for an adjustment of its business allocation percentage or alternative business allocation percentage that does not have such consent prior to the time it files its report must file its report and compute its tax in accordance with the statutory formulas. A request to vary the statutory formula must be [attached to the report setting] submitted separately from the report as prescribed by the Department and must set forth full information on which the request is based[, together with a computation of the amount of tax which would be due under the proposed method].

Section 2. Section 19-8.4 of such regulations is amended to read as follows:

Section 19-8.4 Power of the [Tax Commission] Commissioner of Taxation and Finance to adjust or change the method of allocation. (Tax Law, Section 1454(a)(6))

(a) When it appears that the entire net income allocation percentage, the alternative entire net income allocation percentage or the asset allocation percentage described in [this Part] section 1454 of the Tax Law does not properly reflect the activity, business, income or assets of the taxpayer in New York State, the [Tax Commission, in its] commissioner, in his or her discretion, may adjust the entire net income allocation percentage, the alternative entire net income allocation percentage or the asset allocation percentage by:

- 1) excluding one or more factors; or
- 2) including one or more factors.

(b) The [Tax Commission] commissioner is authorized, in [its] his or her discretion, to permit or require the allocation of entire net income, alternative entire net income or taxable assets by a different method of allocation when it appears to the [Tax Commission] commissioner that such method of allocation will effect a fair and proper allocation of the taxpayer's income or assets reasonably attributable to New York State.

(c) A taxpayer may not adjust the entire net income allocation percentage, the alternative entire net income allocation percentage or the asset allocation percentage described in [this Part] section 1454 of the Tax Law, or use a different method of allocating its entire net income, alternative entire net income or taxable assets within and without New York State, without the [written] consent of the [Tax Commission] commissioner. A request to adjust the entire net income allocation percentage, the alternative entire net income allocation percentage or the asset allocation percentage, or to use a different method of allocation, must be [sent to:

State Tax Commission

Central Office Audit Bureau

Corporation Tax Section

Building 9

W. Averell Harriman State Office Campus

Albany, New York 12227

The request] submitted separately from the report as prescribed by the Department and must set forth complete information on which the request is made[, together with a computation of the amount of tax which would be due under the proposed method]. A taxpayer making a request for an adjustment of any of its allocation percentages, or to use a different method of allocation, that does not have such consent prior to the time it files its report, must compute and pay its tax in accordance with the entire net income allocation percentage, the alternative entire net income allocation percentage and the asset allocation percentage described in [this Part] section 1454 of the Tax Law, and it must file its return in accordance with the instructions shown on the return.

(d) If a taxpayer has been permitted or required to adjust the entire net income allocation percentage, alternative entire net income allocation percentage or asset allocation percentage described in [this Part] section 1454 of the Tax Law, or to use a different method of allocating its entire net income, alternative entire net income or taxable assets within and without New York State, the taxpayer must continue to use such permitted or required method in subsequent taxable years. If the facts materially change, the taxpayer must notify the [Tax Commission] commissioner of such change. If such permitted or required method no longer properly reflects the activity, business, income or assets of the taxpayer, the taxpayer must request permission, or the [tax Commission] commissioner may require the taxpayer, to change such permitted or required method.

(e) See section [18-1.3 of this Title] 1462(g) of the Tax Law concerning other powers of the [Tax Commission] commissioner to adjust entire net income, alternative entire net income and taxable assets.

Dated: Albany, New York  
November 18, 2010

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Jamie Woodward  
Acting Commissioner and Executive Deputy  
Commissioner of Taxation and Finance