

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 and subsection (a) of section 1096 of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the regulations of the Department of Taxation and Finance, as published in Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, by amending the Business Corporation Franchise Tax Regulations, as published in Subchapter A of Chapter I of such Title, to read as follows:

Section 1. The index of Subpart 1-3 is amended to read as follows:

Sec.

1-3.1 Domestic corporations subject to tax

1-3.2 Foreign corporations subject to tax

1-3.3 Activities deemed insufficient to subject foreign [corporation] corporations to tax

1-3.4 Corporations not subject to tax

1-3.5 Change of classification

Section 2. Subdivision (e) of section 1-3.2 is amended to read as follows:

(e) “Foreign corporation— maintaining an office.” A foreign corporation which maintains an office in New York State is engaged in an activity which makes it subject to tax. An office is any area, enclosure or facility which is used in the regular course of the corporate business. A [salesman’s] salesperson’s home, a hotel room, or a trailer used on a construction job site may constitute an office.

Section 3. Paragraph (7) of subdivision (f) of section 1-3.2 is amended to read as follows:

(7) A foreign corporation which operates several retail stores outside New York State leases an office in

New York City for the convenience of its buyers when they come to New York State. [Salesmen] Salespeople call at the office to solicit orders. The merchandise is shipped by the sellers directly to the offices of the corporation outside New York State. The corporation is subject to tax.

Section 4. Paragraph (9) of subdivision (f) of section 1-3.2 is amended to read as follows:

(9) A foreign corporation sends [salesmen] salespeople into New York State to solicit orders. The orders must be accepted at the home office of the corporation located in another state. The corporation displays goods in New York City at a space leased occasionally and for short terms. The corporation is subject to tax.

Section 5. Section 1-3.3 is amended to read as follows:

Section 1-3.3 Activities deemed insufficient to subject foreign [corporation] corporations to tax. (Tax Law, Sections 209(2) and 209(2-a))

(a) A foreign corporation will not be deemed to be doing business, employing capital, owning or leasing property in a corporate or organized capacity or maintaining an office in New York State because of:

[(a)] (1) the maintenance of cash balances with banks or trust companies in New York State;

[(b)] (2) the ownership of shares of stock or securities kept in New York State in a safe deposit box, safe, vault or other receptacle rented for this purpose, or if pledged as collateral security, or if deposited in safekeeping or custody accounts with one or more banks or trust companies, or brokers who are members of a recognized security exchange;

[(c)] (3) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation;

[(d)] (4) the maintenance of an office in this State by one or more officers or directors of the corporation who are not employees of the corporation if the corporation is not otherwise doing business or employing capital in New York State and does not own or lease property in New York State;

~~[(e)] (5) the keeping of books or records of a corporation in New York State, if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property, or maintain an office in New York State;~~~~[or]~~

~~(6) the use of fulfillment services of a person, other than an affiliated person, located in New York State and the ownership of property stored on the premises of such person in conjunction with such services. For purposes of this paragraph, the terms “fulfillment services”, “person” and “affiliated person” are defined in sections 208(19), 1101(a) and 209(2) of the Tax Law respectively;~~

~~(7) the participation in a trade show or shows, regardless of whether the corporation has employees or other staff present at such trade shows, provided the corporation’s activity at the trade show is limited to displaying goods or promoting services, no sales are made, any orders received are sent outside New York State for acceptance or rejection and are filled from outside the state, and provided that such participation is for not more than 14 days, or part thereof, in the aggregate during the corporation’s taxable year for Federal income tax purposes; or~~

~~[f] (8) any combination of the foregoing activities.~~

~~(b) An alien corporation, as defined in section 209(2-a) of the Tax Law, will not be deemed to be doing business, employing capital, owning or leasing property in a corporate or organized capacity or maintaining an office in New York State if its activities in New York State are limited solely to investing or trading for its own account in (a) stocks and securities within the meaning of section 864(b)(2) (A)(ii) of the Internal Revenue Code, or (b) commodities within the meaning of section 864(b)(2)(B)(ii) of the Internal Revenue Code or (c) any combination of stocks, securities and commodities described in paragraphs (a) and (b) above.~~

Section 6. The heading of section 1-3.4 is amended to read as follows:

Section 1-3.4 Corporations not subject to tax. (Tax Law, Sections 3, ~~[5]~~ 8, 13, 208(9)(i), 209(4), (9), ~~(10)~~)

Section 7. Paragraph (3) of subdivision (a) of section 1-3.4 of such regulations is amended to read as

follows:

(3) [waterworks companies, gas companies, electric or steam heating, lighting and power companies] continuing section 186 taxpayers subject to tax under former section 186 of the Tax Law as it was in effect on December 31, 1999 (section 44 of Part Y of Chapter 63 of the Laws of 2000);

Section 8. Subparagraph (i) of paragraph (5) of subdivision (b) of section 1-3.4 is amended to read as follows:

(i) The domestic corporation must operate the vessels regardless of whether it owns them or has leased them from another person or corporation. “Operation of the vessels” means the direction and supervision of the crew and of the actual movements or routes of the vessels. The Commissioner [of Taxation and Finance] generally deems the furnishing of the crew as the operation of the vessel.

Section 9. Clause (h) of subparagraph (iv) of paragraph (9) of subdivision (b) of section 1-3.4 is amended and a new clause (i) is added to read as follows:

“(h)” use of space at the salesperson’s home solely for the salesperson’s convenience. (However, see subparagraph [vi] of this paragraph as to loss of immunity for maintaining an office.)

“(i)” participating in a trade show or shows, provided that participation is for not more than 14 days, or part thereof, in the aggregate during the corporation’s taxable year for Federal income tax purposes. (However, see subparagraph [vi] of this paragraph as to loss of immunity for maintaining an office.)

Section 10. Paragraph (13) of subdivision (b) of section 1-3.4 of such regulations is amended and new paragraphs (14), (15) and (16) are added to read as follows:

(13) for any taxable year beginning on or after January 1, 1987, an organization described in paragraph (2) or (25) of subdivision (c) of section 501 of the Internal Revenue Code[.];

(14) redevelopment companies organized pursuant to article 5 of the Private Housing Finance Law;

(15) a qualified subchapter S subsidiary (QSSS) corporation, as defined in section 208(1-B) of the Tax Law, provided it meets the requirements for exemption pursuant to section 208(9)(k) of such article;

(16) a qualified settlement fund under section 468B of the Internal Revenue Code or an entity that is treated as such for federal purposes or a grantor trust, either of which is used for Nazi reparations.

Section 11. These amendments shall take effect on the date the Notice of Adoption regarding such amendments is published in the *State Register* except the amendments relating to participation in a trade show or shows made by Section 5 which added paragraph (7) to subdivision (a) of section 1-3.3 of the Regulations and by Section 9 which added clause “(i)” to subparagraph (iv) of paragraph (9) of subdivision (b) of section 1-3.4 of the Regulations shall apply to taxable years beginning on or after January 1, 2002.

Dated: Albany, New York

October 28, 2003

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Andrew S. Eristoff  
Commissioner of Taxation and Finance