

Note: The following highlights are an overview of the revisions to Regulation section 1-3.2, *Foreign Corporations Subject to Tax*, previously dated January 22, 2016.

The draft regulation begins on page 2 below.

Section 1-3.2(a)(8)

Paragraph (8) has been revised to reflect more accurately the language of Article 8-A of the New York Partnership Law, to which the paragraph makes reference.

Before the change, paragraph (8) made no distinction between the participation of members of an LLC in the activities of the LLC and the participation of limited partners in the activities of a limited partnership. These revisions clarify the difference: members of an LLC participate in the *management* of the LLC; limited partners participate in the *control of the business* of the limited partnership, as described in Article 8-A of the New York Partnership Law.

The rule is retained: corporate members of LLCs will be treated comparably to limited partners of partnerships for purposes of determining whether they are subject to tax.

Also, the exception for LLCs that are treated as portfolio investment partnerships is now noted, consistent with other provisions of section 1-3.2.

Finally, other minor revisions have been made, including emphasizing that paragraph (8), as part of section 1-3.2, relates to *foreign* corporations.

Section 1-3.2(f)

Subdivision (f) has been revised by adding a new clause (c) to subparagraph (i) of paragraph (2). The new clause (c) provides that the \$1 million receipts threshold of subdivision (f) is applied at the partnership and the LLC level. Generally, the deriving receipts test is determined by combining a corporate partner's receipts in New York with the partnership's receipts in New York; and by combining the corporate member's receipts in New York with the LLC's receipts in New York. (An exception is made for portfolio investment partnerships and for LLCs that are treated as portfolio investment partnerships.) Specifically, there is nexus for general corporate partners if their receipts in New York, if any, and the receipts in New York of the partnership total at least \$1 million; likewise for limited corporate partners that have some level of participation or control over the partnership's activities. And there is nexus for LLC corporate members where the LLC's operating agreement does not limit their participation in its management if their receipts in New York, if any, and the receipts in New York of the LLC total at least \$1 million; likewise for LLC corporate members where the LLC's operating agreement does limit their participation in its management but where the LLC corporate members have some level of participation or control over of the LLC's activities.

Also, the statutory source of the Commissioner's authority to adjust the receipts threshold is now explicitly identified: Tax Law section 209(1)(e).

Finally, other minor revisions have been made, including reiterating throughout that the provisions of subdivision (f) relate to *New York* receipts.

June 3, 2016

1 STATE OF NEW YORK

2 DEPARTMENT OF TAXATION AND FINANCE

3 COMMISSIONER OF TAXATION AND FINANCE

4 ALBANY, NEW YORK

5 Pursuant to the authority contained in subdivision First of section 171, subdivision , the
6 Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendment to the
7 Corporation Franchise Tax Regulations, as published in Title 20 of the Official Compilation of Codes, Rules
8 and Regulations of the State of New York.

9 Section 1-3.1 Domestic corporations subject to tax. (Tax Law, § 209(1) and 209(8)).

10 (a) The tax is imposed on every domestic corporation, not specifically exempt as provided in section
11 1-3.4 of this Subpart, for the privilege of exercising its corporate franchise, that is to say, for the mere
12 possession of the privilege. Accordingly, a domestic corporation is subject to tax for each fiscal or calendar
13 year, or part thereof, during which it is in existence, regardless of whether it does any business, employs any
14 capital, owns or leases any property, maintains any office, derives any receipts from any activity in this state or
15 engages in any activity, within or without New York State. A domestic corporation is subject to tax even
16 though it carries on its business or derives its receipts entirely outside New York State.

17 *Example:* A corporation is incorporated under the laws of New York State on July 1, [~~1989~~] 2015. It
18 begins to do business on February 1, [~~1990~~] 2016, setting up its books on the basis of a calendar year. The
19 corporation is subject to tax from July 1, [~~1989~~] 2015 to December 31, [~~1989~~] 2015, since it had the privilege of
20 exercising its corporate franchise for that period. It is also subject to tax for the period beginning January 1,
21 [~~1990~~] 2016.

22 (b)(1) A domestic corporation that is no longer doing business, employing capital, owning or leasing

23 property, or deriving receipts from activity in this state in a corporate or organized capacity is exempt from the
24 fixed dollar minimum tax for tax years following its final tax year, provided that the corporation:

25 (i) is not doing business in New York State;

26 (ii) is not employing capital in New York State;

27 (iii) does not own or lease property in New York State;

28 (iv) does not derive receipts from activity in New York State;

29 (v) does not have any outstanding Article 9-A franchise taxes for its final tax year or any prior tax year;

30 and

31 (vi) has filed its final Article 9-A franchise tax return.

32 (2) A domestic corporation that meets the requirements of paragraph (1) of this subdivision:

33 (i) will no longer need to file any additional Article 9-A franchise tax returns for taxable years or periods
34 occurring after the period covered by its final Article 9-A tax return; and

35 (ii) after filing its final Article 9-A tax return, may seek consent to be dissolved.

36 (3) A domestic corporation that meets the requirements of paragraph (1) of this subdivision but does not
37 seek consent to be dissolved under subparagraph (ii) of paragraph (2) of this subdivision will be subject to
38 dissolution by proclamation, pursuant to Tax Law section 203-a, after it has not filed Article 9-A franchise tax
39 returns for at least two years.

40 (4) A domestic corporation that does not meet the requirements of paragraph (1) of this subdivision and
41 that ceases to file Article 9-A franchise tax returns:

42 (i) will not qualify for the exemption from the fixed dollar minimum tax ; and

43 (ii) may be issued assessments, including penalties and interest for failure to file an Article 9-A

44 franchise tax return or to pay the Article 9-A franchise tax, or for failure to do both.

45 (5) A domestic corporation that is no longer doing business, employing capital, owning or leasing
46 property, or deriving receipts from activity in this state in a corporate or organized capacity, as described in
47 paragraph (1) of this subdivision, but which wishes to retain its certificate of incorporation shall:

48 (i) continue to file Article 9-A franchise tax returns;

49 (ii) continue to pay all applicable tax; and

50 (iii) not file a final return, that is, not file a return marked final.

51 1-3.2 Foreign corporations subject to tax. (Tax Law, § 209(1)).

52 (a) General.

53 (1) The tax is imposed on every foreign corporation, not specifically exempt as provided in section 1-
54 3.4 of this Subpart, whose activities include one or more of the following:

55 (i) doing business in New York State in a corporate or organized capacity or in a corporate form; or

56 (ii) employing capital in New York State in a corporate or organized capacity or in a corporate form;

57 or

58 (iii) owning or leasing property in New York State in a corporate or organized capacity or in a
59 corporate form; or

60 (iv) maintaining an office in New York State; or

61 (v) deriving receipts from activity in New York State.

62 (2) [A] Except as specified in paragraph (3) of this subdivision, a foreign corporation engaged in New
63 York State in any one or more of the activities described in paragraph (1) of this subdivision is subject to tax
64 even though its activities are wholly or partly in interstate or foreign commerce.

65 (3) (i) Pursuant to Public Law 86-272 (15 U.S.C.A. sections 381-384), a foreign corporation is not
66 subject to the tax imposed by article 9-A of the Tax Law if its activities are limited to those described in that
67 law[. That] ; that is, the solicitation of orders by the corporation's employees, representatives or independent
68 contractors for sales of tangible personal property, which orders are sent outside New York State for approval
69 or rejection, and, which if approved, are filled by shipment or delivery from a point outside New York State.
70 For a description of corporations which are exempt from taxation under Article 9-A of the Tax Law pursuant
71 to the provisions of Public Law 86-272, see section 1-3.4(b)(9) of this Subpart.

72 (ii) A foreign corporation not subject to tax because its activities are limited to those described in Public
73 Law 86-272, and further described in this paragraph and in section 1-3.4(b)(9) of this Subpart, but which is a
74 member of a unitary group that meets the ownership test under section 210-C of the Tax Law will have its
75 receipts, net income, net gains, net losses, and net deductions, together with its proportionate share of the
76 unitary group's assets and liabilities included in the receipts, net income, net gains, net losses, net deductions,
77 and assets and liabilities of such unitary group. However, inclusion of its receipts, net income, net gains, net
78 losses, net deductions, and its proportionate share of the unitary group's assets and liabilities in the receipts, net
79 income, net gains, net losses, net deductions, and assets and liabilities of the unitary group will not subject the
80 foreign corporation to tax.

81 (4) A foreign corporation engaged in New York State in any one or more of the activities described in
82 paragraph (1) of this subdivision is subject to tax regardless of whether it is authorized to do business in New
83 York State.

84 (5) (i) A foreign corporation engaged in New York State in any of the activities described in paragraph
85 (1) of this subdivision is subject to tax:

86 (a) for any taxable year or part of a taxable year during which it engages in any of the activities
87 described in paragraph (1) of this subdivision; and

88 (b) for any subsequent taxable year during which it engages in any of the activities described in
89 paragraph (1) of this subdivision.

90 (ii)(a) A foreign corporation deriving receipts from activity in New York State, under subdivision (f) of
91 this section, is deemed to be deriving receipts for all of its taxable year or part of its taxable year, under clause
92 (a) of subparagraph (i) of this paragraph, from the date of its first receipt derived from activity in New York
93 State.

94 (b) A foreign corporation doing business in New York State because it issues credit cards, under
95 subdivision (b) of this section, is deemed to be doing business for all of its taxable year or part of its taxable
96 year, under clause (a) of subparagraph (i) of this paragraph, from the date on which it issues its first credit card
97 in New York State.

98 (iii)(a) A foreign corporation deriving receipts from activity in New York State, under subdivision (f) of
99 this section, in its first taxable year is deemed to be deriving receipts in the subsequent taxable year, under
100 clause (b) of subparagraph (i) of this paragraph, from the beginning of the subsequent taxable year.

101 (b) A foreign corporation doing business in New York State because it issues credit cards, under
102 subdivision (b) of this section, in its first taxable year is deemed to be doing business in the subsequent taxable
103 year, under clause (b) of subparagraph (i) of this paragraph, from the beginning of the subsequent taxable year.

104 (6) If a partnership is doing business, employing capital, owning or leasing property, [Ø] maintaining
105 an office, or deriving receipts from activity in New York State, as determined pursuant to the rules
106 under article 9-A of the Tax Law, then all of its corporate general partners are subject to the tax imposed

107 by article 9-A of the Tax Law.

108 [~~(6)~~] (7) (i) A foreign corporation is doing business, employing capital, owning or leasing property,
109 [~~or~~] maintaining an office, or deriving receipts from activity in New York State if it is a limited partner of a
110 partnership, other than a portfolio investment partnership, which is doing business, employing capital, owning
111 or leasing property, [~~or~~] maintaining an office, or deriving receipts from activity in New York State and if
112 it is engaged, directly or indirectly, in the participation in or the domination or control of all or any portion of
113 the business activities or affairs of the partnership. A foreign corporation is engaged in such manner in the
114 business activities or affairs of the partnership if one or more of certain factual situations, including but not
115 limited to the following, exist during the taxable year or, except for clause (a) of this subparagraph, any
116 previous taxable year:

117 (a) The foreign corporation has a one percent or more interest as a limited partner in a partnership
118 and/or the basis of the foreign corporation's interest in the limited partnership, determined pursuant to section
119 705 of the Internal Revenue Code, is more than \$1,000,000. For purposes of determining whether the level of
120 interest in the partnership or level of basis of the interest in the partnership is met, the percentage of interest
121 in the partnership and basis of interest in the partnership of members of the foreign corporation's affiliated
122 group, of officers or directors of the foreign corporation or of officers or directors of members of the foreign
123 corporation's affiliated group are added to the foreign corporation's interest in the partnership or the basis of
124 its interest in the partnership, respectively.

125 (b) An officer, employee, or director of the foreign corporation or an officer, employee, or director of
126 a member of an affiliated group which includes such foreign corporation or a member of such an affiliated
127 group, is a general partner of the partnership.

128 (c) The foreign corporation or a member of an affiliated group which includes the foreign corporation
129 is a five percent or more stockholder in a general partner of the partnership.

130 (d) One or more officers, employees, directors or agents of the foreign corporation, or of a member of
131 an affiliated group which includes such foreign corporation, perform acts usually performed by a general
132 partner.

133 (e) The foreign corporation becomes a limited partner after one or more officers, employees, directors
134 or agents of such corporation, or of a member of an affiliated group which includes such foreign corporation,
135 negotiates the terms of the partnership agreement instead of merely accepting an existing agreement.

136 (f) There is substantial communication between one or more officers, employees, directors or agents
137 of the foreign corporation, or of a member of an affiliated group which includes such foreign corporation, and
138 the general partner regarding the business activities or affairs of the partnership.

139 (g) The foreign corporation, a member of an affiliated group which includes such foreign corporation,
140 or an officer, employee, or director of the foreign corporation or of a member of such an affiliated group,
141 guarantees payment of one or more loans to the partnership.

142 (h) The foreign corporation, a member of an affiliated group which includes such foreign corporation,
143 or an officer, employee, or director of the foreign corporation or of a member of such an affiliated group,
144 makes loans to the partnership.

145 (i) The foreign corporation is a limited partner which for purposes of section 469 of the Internal
146 Revenue Code is materially participating in the partnership as defined in section 1.469-5T(e)(2) of the
147 Federal income tax regulations (26 CFR 1.469-5T[e][2]). For purposes of this clause, references to taxpayer
148 in such section 469 shall be deemed to mean any person, as defined in section 7701(a)(1) of the Internal

149 Revenue Code.

150 (j) The foreign corporation entered into the limited partnership arrangement not for a valid business or
151 economic purpose, but for the principal purpose of avoiding or evading the payment of tax.

152 (ii) Other factual situations, during the taxable year or any previous taxable year, to be considered as
153 indications that a foreign corporation is engaged, directly or indirectly, in the participation in or the
154 domination or control of all or any portion of the business activities or affairs of the partnership, include the
155 following:

156 (a) The foreign corporation, or a member of an affiliated group which includes such foreign
157 corporation, sells its products and/or services to the partnership.

158 (b) The foreign corporation, or a member of an affiliated group which includes such foreign
159 corporation, purchases the partnership's products and/or services.

160 (c) The foreign corporation, or a member of an affiliated group which includes such foreign
161 corporation, is engaged in a similar or identical business to that of the partnership.

162 (d) 50 percent or more of the foreign corporation's assets or those of a member of an affiliated group
163 which includes such foreign corporation are a limited partnership interest in the partnership.

164 (e) The business carried on by the partnership is integrally related to the business of the foreign
165 corporation or a member of an affiliated group which includes such foreign corporation.

166 (f) The foreign corporation exercises its voting rights as a limited partner to remove a general partner,
167 to approve the sale of the partnership assets, to amend the partnership agreement or to dissolve the
168 partnership.

169 (g) The foreign corporation, or a member of an affiliated group which includes such foreign

170 corporation, is interrelated with the partnership through one or more of the following factors:

171 (1) common management;

172 (2) common policy and directives including policy and directives relating to legal services,
173 assignment or transfer of executive personnel, determination and enforcement of procedures to ensure
174 compliance with the law, salary guidelines or uniform pay scale and/or labor relations activities;

175 (3) common or inter-entity use of intelligent assets, such as patents, trademarks or copyrights;

176 (4) common or inter-entity use of product distribution systems and/or warehousing functions;

177 (5) common or inter-entity use of facilities, equipment, or employees;

178 (6) common or inter-entity personnel recruitment;

179 (7) common or inter-entity research and development activities;

180 (8) common or inter-entity marketing and/or advertising;

181 (9) common or inter-entity information processing and computer support, printing,
182 telecommunications, and/or other support services;

183 (10) common or inter-entity transfer or pooling of technical information;

184 (11) common or inter-entity pension plans and/or insurance plans; or

185 (12) common or inter-entity credit analysis and coordination of credit extension.

186 (iii) As used in this paragraph, the following terms have these meanings:

187 (a) The term one percent or more interest means a distributive share of one percent or more of a
188 limited partnership's income, gain, loss, deduction, or credit determined pursuant to section 704 of the
189 Internal Revenue Code.

190 (b) The term inter-entity means business activities or affairs carried on between a foreign corporation

191 which is a limited partner of a partnership, or a member of an affiliated group which includes such foreign
192 corporation, and such partnership.

193 (c) The term affiliated group shall have the same meaning as such term is defined in section 1504 of
194 the Internal Revenue Code, except that the term common parent corporation shall be deemed to mean any
195 person, as defined in section 7701(a)(1) of the Internal Revenue Code, and except that references to "at least
196 eighty percent" in such section 1504 shall be read as "50 percent or more." Such section 1504 shall be read
197 without regard to the exclusions provided for in section 1504(b).

198 (d) The term portfolio investment partnership means a limited partnership which meets the gross
199 income requirement of section 851(b)(2) of the Internal Revenue Code. For purposes of the preceding
200 sentence, income and gains from commodities (not described in section 1221[1] of such Code) or from
201 futures, forwards, and options with respect to such commodities shall be included in income which qualifies
202 to meet such gross income requirement. Such commodities must be of a kind customarily dealt in on an
203 organized commodity exchange and the transaction must be of a kind customarily consummated at such
204 place, as required by section 864(b)(2)(B)(iii) of such Code. To the extent that such a partnership has income
205 and gains from commodities (not described in section 1221[1] of such code) or from futures,
206 forwards, and options with respect to such commodities, such income and gains must be derived by a
207 partnership which is not a dealer in commodities and is trading for its own account as described in section
208 864(b)(2)(B)(ii) of the Internal Revenue Code. The term portfolio investment partnership shall not include a
209 dealer (within the meaning of section 1236 of the Internal Revenue Code) in stocks or securities.

210 (8) If a limited liability company that is treated as a partnership for tax purposes, other than a limited
211 liability company that is treated as a portfolio investment partnership, is doing business, employing capital,

212 owning or leasing property, maintaining an office or deriving receipts from activity in New York State, then all
213 of its members that are foreign corporations (other than foreign corporations that are or would be subject to tax
214 under article 9 or 33 of the Tax Law) are subject to the tax imposed by article 9-A of the Tax Law; provided,
215 however, that if the operating agreement of such limited liability company imposes limitations on the foreign
216 corporate member's participation in the management of the limited liability company either equivalent to or
217 more stringent than the limitations on the participation in the control of the business of a limited partnership
218 imposed on limited partners under article 8-A of the New York Partnership Law, the foreign corporate member
219 will be subject to the rules applicable to foreign corporate limited partners set out in paragraph (7) of this
220 subdivision.

221 (b) Foreign corporation – doing business. (1) The term doing business is used in a comprehensive
222 sense and includes all activities which occupy the time or labor of people for profit. Regardless of the nature
223 of its activities, every corporation organized for profit and carrying out any of the purposes of its
224 organization is deemed to be doing business for the purposes of the tax. In determining whether a corporation
225 is doing business, it is immaterial whether its activities actually result in a profit or a loss.

226 (2) Whether a corporation is doing business in New York State is determined by the facts in each
227 case. Consideration is given to such factors as:

228 (i) the nature, continuity, frequency, and regularity of the activities of the corporation in New York
229 State;

230 (ii) the purposes for which the corporation was organized;

231 (iii) the location of its offices and other places of business;

232 (iv) the employment in New York State of agents, officers and employees; and

233 (v) the location of the actual seat of management or control of the corporation.

234 (3) A corporation is doing business in New York State if it:

235 (i) issues credit cards to at least 1000 customers with a mailing address in the state as of the last day of
236 its taxable year;

237 (ii) has merchant customer contracts that cover at least 1000 locations in the state to which it remits
238 payments for credit card transactions during its taxable year;

239 (iii) the sum of the number of customers and the number of locations in subparagraphs (i) and (ii) totals
240 at least 1000; or

241 (iv) is part of a unitary group that meets the ownership test under section 210-C of the Tax Law, unless
242 it is a corporation described in section 210-C.2(c) of the Tax Law, and:

243 (a) issues credit cards to at least 10 customers with a mailing address in the state as of the last day of its
244 taxable year;

245 (b) has merchant customer contracts that cover at least 10 locations in the state to which it remits
246 payments for credit card transactions during its taxable year; or

247 (c) the sum of the number of customers and the number of locations in items (a) and (b) totals at least
248 10, and

249 provided that the members of the unitary group that meet the requirements of either (a), (b) or (c)
250 together meet the requirements of paragraph (3)(i), (3)(ii) or (3)(iii) of this subdivision.

251 (4) The term “credit cards” includes bank, credit, travel and entertainment cards.

252 (c) Foreign corporation – employing capital. The term employing capital is used in a
253 comprehensive sense. Any of a large variety of uses, which may overlap other activities, may give rise to

254 taxable status. In general, the use of assets in maintaining or aiding the corporate enterprise or activity in
255 New York State will make the corporation subject to tax. Employing capital includes such activities as:

256 (1) maintaining stockpiles of raw materials or inventories; or

257 (2) owning materials and equipment assembled for construction.

258 (d) Foreign corporation – owning or leasing property. The owning or leasing of real or personal
259 property within New York State constitutes an activity which subjects a foreign corporation to tax. Property
260 owned by or held for the taxpayer in New York State, whether or not used in the taxpayer's business, is
261 sufficient to make the corporation subject to tax. Property held, stored or warehoused in New York State
262 creates taxable status. Property held as a nominee for the benefit of others creates taxable status. Also,
263 consigning property to New York State may create taxable status if the consignor retains title to the
264 consigned property.

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

269 (f) Foreign corporation – deriving receipts from activity. (1) A foreign corporation that derives receipts
270 from any activity in New York State is subject to tax.

271 (2)(i) A corporation derives receipts from activity in New York State if its receipts within the
272 state during the taxable year, as defined and apportioned pursuant to Subpart 4-4:

273 (a) equal or exceed \$1,000,000; or

274 (b) total less than \$1,000,000 but equal or exceed \$10,000 and:

275 (1) the corporation is part of a unitary group that meets the ownership test
276 under section 210-C of the Tax Law, unless it is a corporation described in section
277 210-C.2(c) of the Tax Law; and

278 (2) the members of the unitary group that each have at least \$10,000 of
279 New York receipts together have at least \$1,000,000 of such receipts; or

280 (c) total less than \$1,000,000 and:

281
282 (1) the corporation is a general partner of a partnership and its New York
283 receipts, if any, when combined with the New York receipts of the partnership total at
284 least \$1,000,000; or

285 (2) the corporation is a limited partner of a partnership, other than a
286 portfolio investment partnership, and its New York receipts, if any, when combined
287 with the New York receipts of the partnership total at least \$1,000,000, provided that
288 the limited partner is engaged, directly or indirectly, in the participation in or the
289 domination or control of all or any portion of the business activities or affairs of the
290 partnership, as described in paragraph (7) of subdivision (a) of this section; or

291 (3) the corporation is a member of a limited liability company that is treated
292 as a partnership for tax purposes, other than a limited liability company that is treated
293 as a portfolio investment partnership, the operating agreement of which does not
294 impose limitations on the corporate member's participation in the management of the
295 limited liability company either equivalent to or more stringent than the limitations on

296 the participation in the control of the business of a limited partnership imposed on
297 limited partners under article 8-A of the New York Partnership Law, and its New
298 York receipts, if any, when combined with the New York receipts of the limited
299 liability company total at least \$1,000,000; or

300 (4) the corporation is a member of a limited liability company that is treated
301 as a partnership for tax purposes, other than a limited liability company that is treated
302 as a portfolio investment partnership, the operating agreement of which imposes
303 limitations on the corporate member's participation in the management of the limited
304 liability company either equivalent to or more stringent than the limitations on the
305 participation in the control of the business of a limited partnership imposed on limited
306 partners under article 8-A of the New York Partnership Law, and its New York
307 receipts, if any, when combined with the New York receipts of the partnership total at
308 least \$1,000,000, provided that the member is engaged, directly or indirectly, in the
309 participation in or the domination or control of all or any portion of the business
310 activities or affairs of the limited liability company, pursuant to the rules for limited
311 partners as described in paragraph (7) of subdivision (a) of this section.

312 (ii) For purposes of determining whether a corporation is deriving receipts in New York
313 State, a corporation that is part of a unitary group will not be included when determining if
314 the standards specified in this subparagraph are met if, under Tax Law section 210-C.2(c), it
315 cannot be included in a combined report.

316 (3) A corporation that is part of a unitary group that meets the ownership test under

317 section 210-C of the Tax Law, unless it is a corporation described in section 210-C.2(c) of the
318 Tax Law, but which is not subject to tax because its activities are limited to those described in
319 Public Law 86-272, and further described in subdivision (b)(9) of section 1-3.4, will have its
320 New York receipts included in the New York receipts of such unitary group for purposes of
321 paragraph (2)(ii) of this subdivision, as described in subdivision (a)(3)(ii) of this section.
322 Inclusion of such receipts in the New York receipts of the unitary group will not subject the
323 corporation to tax.

324 (4) In determining the amount of a corporation's New York receipts, merchant discount
325 fees received by a corporation for processing credit card transactions are included in its New
326 York receipts.

327 (5) A corporation will not be deemed to be deriving receipts from activity in the state if
328 the only New York receipts included in the numerator of its apportionment fraction (as described
329 in Subpart 4-1) are (i) interest income and net gains received by a corporation from securities
330 issued by government agencies, including but not limited to securities issued by the government
331 national mortgage association, the federal national mortgage association, the federal home loan
332 mortgage corporation, and the small business administration, (ii) interest income from federal
333 funds, or (iii) interest and net gains from sales of debt instruments issued by other states or their
334 political subdivisions.

335 (6)(i) In addition to any powers granted to the Commissioner in the Tax Law, the
336 Commissioner is authorized by section 209(1)(e) of the Tax Law to adjust by regulation the
337 receipts thresholds of this subdivision.

338 (ii) The receipts thresholds of this subdivision are subject to adjustment by the
339 Commissioner, based on an annual year-end review by the Department of the Consumer
340 Price Index, as follows:

341
342 (a) In December of each year, the Commissioner will ascertain the Consumer
343 Price Index available at the end of the year from the United States Department of Labor,
344 Bureau of Labor Statistics, as published during such month;

345 (b) if the Consumer Price Index has changed by 10% or more from the Consumer
346 Price Index available on January 1, 2015, as published during December of 2014, or
347 thereafter from the Consumer Price Index ascertained at the time of and used by the
348 Commissioner for the purpose of making the previous adjustment, then the
349 Commissioner will adjust the receipts thresholds;

350 (c) the receipts thresholds will be adjusted by the same percentage as the change
351 in the Consumer Price Index and rounded up to the nearest \$1,000 level;

352 (iii) (a) The Commissioner will publish the following information with respect to any
353 adjustment made pursuant to this paragraph on the Department's Web site:

354 (1) the newly adjusted receipts thresholds;

355 (2) the consumer price indices used to adjust the receipts thresholds, as described
356 in clauses (a) and (b) of subparagraph (ii) of this paragraph;

357 (3) an explanation of the calculation used to make the adjustment; and

358 (4) such other information as may deemed necessary and proper by the

359 Commissioner.

360 (b) Publication by the Commissioner of the foregoing information will be made as
361 soon as is practicable but not later than 30 days after publication by the United States
362 Department of Labor, Bureau of Labor Statistics of the Consumer Price Index used to
363 adjust the receipts thresholds, as described in clause (a) of subparagraph (ii) of this
364 paragraph.

365 (iv) Any adjustments made pursuant to this paragraph will apply prospectively; that is,
366 the revised threshold will apply to tax years beginning after the adjustment has been made.

367 (v) For purposes of this paragraph, the “Consumer Price Index” means the Consumer
368 Price Index for all urban consumers, or the CPI-U.

369 (g) For purposes of this section, the term “unitary group that meets the ownership test under section 210-
370 C of the Tax Law” shall mean a group of corporations where:

371 (1) one corporation owns or controls, either directly or indirectly, more than fifty percent of the voting
372 power of the capital stock of another corporation; or

373 (2) more than fifty percent of the voting power of the capital stock of one corporation is owned or
374 controlled, either directly or indirectly, by another corporation; or

375 (3) more than fifty percent of the voting power of the capital stock of two or more corporations is
376 owned or controlled, either directly or indirectly, by the same interests (e.g., the same corporation, partnership
377 or individual); and

378 (4) the corporations are engaged in a unitary business as defined in section 6-2.3 of this part.

379 (h) Examples. The following are examples of foreign corporations which are subject to tax under

380 Article 9-A because they are doing business, or employing capital, or owning or leasing property in a
381 corporate or organized capacity, or maintaining an office or deriving receipts from activity in New York
382 State; or which, alternatively, are not subject to tax. Each of these examples is intended for illustration purposes
383 only and to be applicable only to the specific activity, among the activities listed in paragraph (1) of subdivision
384 (a) of this section, as identified in each example.

385 (1) A foreign corporation incorporated in another state operates or is organized for the purposes of
386 buying and selling securities. It does not maintain a physical office anywhere, other than a statutory office in
387 the state of its incorporation. Regular and continuous purchases of securities are directed by its officers or
388 agents located in New York State. The corporation is subject to tax because it is doing business in New York
389 State, under subdivision (b) of this section.

390 (2) A foreign corporation participates in a joint venture which carries on business in this State, but the
391 foreign corporation is not otherwise engaged in any activities in New York State. The corporation is subject
392 to tax because it is doing business in New York State, under subdivision (b) of this section.

393 (3) A foreign holding corporation coordinates and supervises in New York State activities of a
394 subsidiary which is taxable in New York State. It also makes loans to its subsidiary and guarantees loans
395 obtained by the subsidiary from sources other than the parent. The corporation is subject to tax because it is
396 doing business in New York State, under subdivision (b) of this section.

397 (4) A foreign manufacturing corporation has its factories and offices located outside New York State.
398 Its sole activity in New York State consists of holding or storing goods in a warehouse owned by an unrelated
399 party. The corporation is subject to tax because it is employing capital in New York State, under subdivision
400 (c) of this section.

401 (5) A foreign corporation which has no office or other place of business in New York State leases
402 automobiles to customers in New York State, with receipts from this activity equaling less than \$1,000,000.
403 The corporation is subject to tax because it owns property in New York State, under subdivision (d) of this
404 section.

405 (6) A foreign manufacturing corporation has its factory outside New York State. Its only activity in
406 New York State is the solicitation of orders for its products through a sales office located in New York State.
407 The orders are forwarded to its home office outside the State for acceptance and the merchandise is shipped
408 by common carrier from the factory direct to the purchasers. The corporation is subject to tax because it
409 maintains an office in New York State, under subdivision (e) of this section; and therefore its activities are not
410 limited to those described in Public Law 86-272, and further described in subdivision (b)(9) of section 1-3.4.

411 (7) A foreign corporation which operates several retail stores outside New York State leases an office
412 in New York City for the convenience of its buyers when they come to New York State. Salespeople call at
413 the office to solicit orders. The merchandise is shipped by the sellers directly to the offices of the corporation
414 outside New York State. The corporation is subject to tax because it maintains an office in New York State,
415 under subdivision (e) of this section; and therefore its activities are not limited to those described in Public Law
416 86-272, and further described in subdivision (b)(9) of section 1-3.4.

417 (8) A foreign corporation formerly engaged in manufacturing in another state discontinues such
418 business and transfers its office to New York State, where its activities consist solely of the acquisition of
419 bonds and the receipt of interest on such bonds and the holding of directors' meetings. The corporation is
420 subject to tax because it maintains an office in New York State, under subdivision (e) of this section.

421 (9) A foreign corporation sends salespeople into New York State to solicit orders. The orders must be

422 accepted at the home office of the corporation located in another state. The corporation displays goods in
423 New York City at a space leased occasionally and for short terms. The corporation is subject to tax because it
424 is employing capital in New York State, under subdivision (c) of this section; and therefore its activities are not
425 limited to those described in Public Law 86-272, and further described in subdivision (b)(9) of section 1-3.4.

426 (10) A foreign corporation issues credit cards to 500 customers with a mailing address in New York
427 State as of the last day of its taxable year and has contracts with merchants covering 500 locations in New York
428 State to which it remits payments during taxable year. The corporation is subject to tax because it is doing
429 business in New York State under subdivision (b) of this section.

430 (11) Three foreign corporations are part of the same unitary group that meets the ownership test under
431 section 210-C of the Tax Law, all of the members of which each have at least \$10,000 of receipts from activity
432 in New York State. They are a bank, a broker-dealer, and an insurance company subject to tax under Article 33.
433 The bank and the broker-dealer together have \$900,000 of receipts from activity in New York State. The
434 insurance company has \$150,000 of receipts from activity in New York State. The bank and the broker-dealer
435 are not subject to tax under subdivision (f) of this section, because they are not deriving receipts in New York
436 State.

437 (12) A foreign corporation organized as a bank in another state has interest income from federal funds
438 but no other apportionable New York receipts. The corporation is not subject to tax under subdivision (f) of this
439 section, because it is not deriving receipts in New York State.

440 (13) Seven foreign corporations each have \$150,000 of receipts from activity in New York State and are
441 part of the same unitary group that meets the ownership test under section 210-C of the Tax Law. Therefore, the
442 seven corporations together exceed the \$1,000,000 economic nexus threshold. Three members of the group

443 have activities in New York State which consist solely of the solicitation of orders by employees in New York
444 State for sales of tangible personal property, which orders are sent outside New York State for approval or
445 rejection and, if approved, are filled by shipment from a point outside New York State. These three corporations
446 are not subject to tax under subdivision (f) of this section, because their activities are limited to those described
447 in Public Law 86-272, and further described in subdivision (b)(9) of section 1-3.4; the other four corporations
448 are subject to tax because they are deriving receipts in New York State, under subdivision (f) of this section,
449 and their activities are not limited to those described in Public Law 86-272, and further described in subdivision
450 (b)(9) of section 1-3.4. The seven corporations are required to file in a combined report, which will include the
451 receipts, net income, net gains, net losses, and net deductions of all the corporations, together with their
452 proportionate share of the unitary group's assets and liabilities.

453 Section 1-3.3 Activities deemed insufficient to subject foreign corporations to tax. (Tax Law, §§
454 209(2) and 209(2-a)).

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

- 458 (1) the maintenance of cash balances with banks or trust companies in New York State;
- 459 (2) the ownership of shares of stock or securities kept in New York State in a safe deposit box, safe,
460 vault or other receptacle rented for this purpose, or if pledged as collateral security, or if deposited in
461 safekeeping or custody accounts with one or more banks or trust companies, or brokers who are members of
462 a recognized security exchange;
- 463 (3) the taking of any action by any such bank or trust company or broker, which is incidental to the

464 rendering of safekeeping or custodian service to such corporation;

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

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

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

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

481 ~~[(8)]~~ (7) any combination of the foregoing activities.

482 (b)(1) An alien corporation, as defined in section 209(2-a) of the Tax Law, will not be deemed to be
483 doing business, employing capital, owning or leasing property in a corporate or organized capacity, ~~[or]~~
484 maintaining an office or deriving receipts from activity in New York State if its activities in New York State

485 are limited solely to investing or trading for its own account in:

486 ~~[(1)]~~(i) stocks and securities within the meaning of section 864(b)(2)(A)(ii) of the Internal Revenue
487 Code; or

488 ~~[(2)]~~(ii) commodities within the meaning of section 864(b)(2)(B)(ii) of the Internal Revenue Code; or

489 ~~[(3)]~~(iii) any combination of stocks, securities and commodities described in ~~[paragraphs (1)]~~ (i) and
490 ~~[(2)]~~ (ii) ~~[above]~~.

491 (2) An alien corporation will not be subject to tax under Article 9-A of the Tax Law unless:

492 (i) under any provision of the Internal Revenue Code it is treated as a “domestic corporation” as defined
493 in section 7701 of the Internal Revenue Code; or

494 (ii) it has effectively connected income for the taxable year.

495 Section 1-3.4 Corporations not subject to tax. (Tax Law, §§ 3, 8, 13, 208(9)(i), 209(4) and (9),(10))

496 (a) A corporation which is subject to any of the following taxes is not subject to tax under article 9-A
497 of the Tax Law:

498 (1) transportation and transmission corporations and associations subject to tax under sections 183 and
499 184 of the Tax Law;

500 (2) farmers, fruit growers and other like agricultural corporations organized and operated on a
501 cooperative basis subject to tax under section 185 of the Tax Law, for tax years prior to January 1, 2018;

502 (3) continuing section 186 taxpayers subject to tax under former section 186 of the Tax Law as it was
503 in effect on December 31, 1999 (section 44 of Part Y of Chapter 63 of the Laws of 2000);

504 (4) ~~[bank holding companies filing a combined return in accordance with Subpart 21-2 of this Title;~~

505 (5) ~~banking corporations subject to the franchise tax on banking corporations imposed by article 32 of~~

506 ~~the Tax Law;~~

507 ~~(6)] insurance corporations subject to the franchise taxes on insurance corporations imposed by article~~
508 ~~33 of the Tax Law, including health maintenance organizations required to obtain a certificate of authority~~
509 ~~under Article 44 of the Public Health Law; [and]~~

510 ~~[(7)] (5) cooperative corporations subject to the annual fee imposed by section 77 of the Cooperative~~
511 ~~Corporations Law[-];~~

512 ~~(6) captive real estate investment trusts (REITs) included in a combined report under Article 33 of the~~
513 ~~Tax Law; and~~

514 ~~(7) captive regulated investment companies (RICs) included in a combined report under Article 33 of~~
515 ~~the Tax Law.~~

516 (b) The following corporations are exempt from taxation under article 9-A:

517 (1) limited-profit housing companies organized pursuant to article 2 of the Private Housing Finance
518 Law, effective for taxable years beginning on or after January 1, 1974;

519 (2) limited-dividend housing companies organized pursuant to article 4 of the Private Housing
520 Finance Law;

521 (3) any trust company organized under a law of New York State, all of the stock of which is owned by
522 not less than 20 savings banks organized under a law of New York State;

523 (4) the Urban Development Corporation and subsidiary corporations of the Urban Development
524 Corporation. A corporation is deemed a subsidiary of the Urban Development Corporation whenever and so
525 long as:

526 (i) more than one half of any voting shares of the subsidiary are owned or held by the Urban

527 Development Corporation; or

528 (ii) a majority of the subsidiary's directors, trustees or members are designees of the Urban

529 Development Corporation;

530 (5) domestic corporations exclusively engaged in the operation of one or more vessels in foreign
531 commerce.

532 (i) The domestic corporation must operate the vessels regardless of whether it owns them or has
533 leased them from another person or corporation. Operation of the vessels means the direction and supervision
534 of the crew and of the actual movements or routes of the vessels. The Commissioner generally deems the
535 furnishing of the crew as the operation of the vessel.

536 (ii) A domestic corporation exclusively engaged in the operation of vessels in foreign commerce
537 remains exempt (a) where it has investments in other domestic corporations exclusively engaged in the
538 operation of vessels in foreign commerce or (b) where average investments (other than investments in a
539 domestic corporation qualifying for this exemption) are minimal in comparison to overall activities.

540 Generally, where other investments are 10 percent or less of average total assets, these investments will be
541 considered minimal.

542 (iii) A domestic corporation engaged in other activities (except as described in subparagraph (ii) of
543 this paragraph) is not exempt. A domestic corporation is not exempt if it acts as an agent for others by selling
544 tickets, purchasing supplies and services, providing services for others, or operating any other business (e.g.,
545 a restaurant);

546 (6) corporations organized other than for profit which do not have stock or shares or certificates for
547 stock or for shares and which are operated on a nonprofit basis no part of the net earnings of which inures to

548 the benefit of any officer, director, or member, including Not-for-Profit Corporations and Religious
549 Corporations.

550 (i) A corporation organized other than for profit, as described in this paragraph, which is exempt from
551 Federal income taxation pursuant to subsection (a) of section 501 of the Internal Revenue Code, will be
552 presumed to be exempt from tax under article 9-A. If a corporation organized other than for profit is denied
553 exemption from taxation under the Internal Revenue Code, such corporation will be presumed subject to tax
554 under article 9-A.

555 (ii) The determination of the Internal Revenue Service, denying or revoking exemption from Federal
556 taxation under the Internal Revenue Code, will ordinarily be followed;

557 (7) certain DISCs. (See Subpart 3-9 of this Title – Domestic International Sales Corporation [DISC].)
558 A DISC will be exempt from taxation under article 9-A for any taxable year in which it:

559 (i) received more than five percent of its gross sales from the sale of inventory or other property
560 which it purchased from its stockholders; or

561 (ii) received more than five percent of its gross rentals from the rental of property which it purchased
562 or rented from its stockholders; or

563 (iii) received more than five percent of its total receipts other than sales and rentals from its
564 stockholders;

565 (8) trusts which are not conducting a business (passive trusts). Where the functions of a trustee are
566 only to hold property and collect and distribute income the trust is not subject to tax under article 9-A of the
567 Tax Law. The power to sell, invest and reinvest must be clearly and expressly limited. For example, a power
568 to sell stock and reinvest the proceeds if the bid price of the stock drops below a certain level will not make

569 the trust taxable;

570 (9) corporations which are exempt pursuant to the provisions of Public Law 86-272 (15 U.S.C.A. §§
571 381-384)

572 (i) A foreign corporation whose income is derived from interstate commerce is not subject to tax
573 under article 9-A of the Tax Law if the activities of the corporation in New York State are limited to either, or
574 both of the following:

575 (a) the solicitation of orders by employees or representatives in New York State for sales of tangible
576 personal property and the orders are sent outside New York State for approval or rejection; and if approved,
577 are filled by shipment or delivery from a point outside New York State; and

578 (b) the solicitation of orders for sales of tangible personal property by employees or representatives in
579 New York State in the name of or for the benefit of a prospective customer of such corporation if the
580 customer's orders to the corporation are sent outside the State for approval or rejection; and, if approved, are
581 filled by shipment or delivery from a point outside New York State.

582 (ii) For purposes of this exemption, a corporation will not be considered to have engaged in taxable
583 activities in New York State during the taxable year merely by reason of sales in New York State or the
584 solicitation of orders for sales in New York State, of tangible personal property on behalf of the corporation
585 by one or more independent contractors. A corporation will not be considered to have engaged in taxable
586 activities in New York State by reason of maintaining an office in New York State by one or more
587 independent contractors whose activities on behalf of the corporation in New York State consist solely of
588 making sales, or soliciting orders for sales, of tangible personal property.

589 (iii) The term independent contractor means a commission agent, broker, or other independent

590 contractor who is engaged in selling, or in soliciting orders for the sale of tangible personal property for more
591 than one principal and who holds himself out as such in the regular course of his business activities. The term
592 representative does not include an independent contractor.

593 (iv) In order to be exempt by virtue of Public Law 86-272, the activities in New York State of
594 employees or representatives must be limited to the solicitation of orders for the sale of tangible personal
595 property. The solicitation of orders includes offering tangible personal property for sale or pursuing offers for
596 the purchase of tangible personal property and those ancillary activities, other than maintaining an office, that
597 serve no independent business function apart from their connection to the solicitation of orders. Examples of
598 activities performed by such employees or representatives in New York State that are entirely ancillary to the
599 solicitation of orders include:

- 600 (a) the use of free samples and other promotional materials in connection with the solicitation of
601 orders;
- 602 (b) passing product inquiries and complaints to the corporation's home office;
- 603 (c) using autos furnished by the corporation;
- 604 (d) advising customers on the display of the corporation's products and furnishing and setting up
605 display racks;
- 606 (e) recruitment, training and evaluation of sales representatives;
- 607 (f) use of hotels and homes for sales-related meetings;
- 608 (g) intervention in credit disputes;
- 609 (h) use of space at the salesperson's home solely for the salesperson's convenience. (However, see
610 subparagraph (vi) of this paragraph as to loss of immunity for maintaining an office.);

611 (i) participating in a trade show or shows, provided that participation is for not more than 14 days, or
612 part thereof, in the aggregate during the corporation's taxable year for Federal income tax purposes.

613 (However, see subparagraph (vi) of this paragraph as to loss of immunity for maintaining an office.)

614 (v) The exemption under the provisions of Public Law 86-272, as described in subparagraph (i) of this
615 paragraph, and limited to the solicitation of orders for the sale of tangible personal property, as further described
616 in subparagraph (iv) of this paragraph, does not include the solicitation of orders for the sale of services or
617 intangible property.

618 [~~(v)~~] (vi) Activities in New York State beyond the solicitation of orders will subject a corporation to
619 tax in New York State unless such activities are de minimis. Activities will not be considered de minimis if
620 such activities establish a nontrivial additional connection with New York State. Solicitation activities do not
621 include those activities that the corporation would have reason to engage in apart from the solicitation of
622 orders but chooses to allocate to its New York State sales force. In determining whether a corporation's
623 activities exceed the solicitation of orders, all of the corporation's activities in New York State will be
624 considered. Examples of activities which go beyond the solicitation of orders include:

625 (a) making repairs to or installing the corporation's products;

626 (b) making credit investigations;

627 (c) collecting delinquent accounts;

628 (d) taking inventory of the corporation's products for customers or prospective customers;

629 (e) replacing the corporation's stale or damaged products;

630 (f) giving technical advice on the use of the corporation's products after the products have been

631 delivered to the customer.

632 [~~(vi)~~] (vii) Maintaining an office, shop, warehouse or stock of goods in New York State will make a
633 corporation taxable. However, a corporation will not be made taxable solely by maintaining a supply of goods
634 in New York State if such goods are used only as free samples in connection with the solicitation of orders. A
635 corporation will be considered to be maintaining an office in New York State if the space is held out to the
636 public as an office or place of business of the taxpayer. For example, a salesperson uses his or her house for
637 business. A telephone, listed in the corporation's name, is maintained at the salesperson's house. The
638 salesperson makes telephone contacts from the house or receives calls and orders at the house. The residence
639 will be treated as an office of the corporation, and the corporation will be taxable[;].

640 (viii) A corporation that is exempt from taxation under article 9-A pursuant to the provisions of Public
641 Law 86-272, as described in this paragraph, may still be included in a combined report filed under section 210-
642 C of the Tax Law. In addition, the receipts of such a corporation will be included in determining whether a
643 unitary group, as defined in section 1-3.2 of this Subpart, is deriving receipts in this state;

644 (10) an industrial development agency created pursuant to article 18-A of the General Municipal Law;

645 (11) housing development fund companies organized pursuant to the provisions of article 11 of the
646 Private Housing Finance Law;

647 (12) an entity that is treated for Federal income tax purposes as a real estate mortgage investment
648 conduit (REMIC);

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

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

652 (15) a qualified subchapter S subsidiary (QSSS) corporation, as defined in section 208(1-B) of the

653 Tax Law, provided it meets the requirements for exemption pursuant to section 208(9)(k) of such article;

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

656 Section 1-3.5 Change of classification. (Tax Law, § 209(1)).

657 (a) A corporation subject to tax under article 9-A of the Tax Law may, by reason of a change in the
658 nature of its activities or a change in the ownership or control of [~~its~~] the voting powers of its capital stock,
659 cease to be subject to such tax and become taxable under some other article of the Tax Law. Conversely, a
660 corporation subject to tax under some other article of the Tax Law may, for the same reasons, cease to be
661 taxable thereunder and become subject to tax under article 9-A of the Tax Law. The date on which any such
662 change of classification becomes effective will be determined by the facts of each case.

663 (b) (1) A corporation which becomes subject to tax under article 9-A of the Tax Law during one of its
664 fiscal or calendar years by reason of a change in classification is treated in the same manner as a corporation
665 which became subject to tax during such year. (See section 1-1.1 of this Part – Nature of tax – and sections 1-
666 3.1 and 1-3.2 of this Subpart.)

667 (2) A corporation subject to tax under article 32 for its 2014 tax year that has a change in classification
668 and becomes subject to tax under article 9-A of the Tax Law during its fiscal year beginning in 2014 but ending
669 in 2015, and which change of classification occurs as the result of amendments to the Tax Law taking effect on
670 January 1, 2015, is not permitted to file a short-period return for its 2014 tax year.

671 (c) A corporation which ceases to be subject to the franchise tax imposed by article 9-A of the Tax
672 Law during one of its fiscal or calendar years by reason of a change of classification is treated, insofar as
673 article 9-A of the Tax Law is concerned, in the same manner as a corporation which is dissolved or ceases to

674 be taxable in New York State during such year. (See section 2-3.1 of this Title – Cessation period.)

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