

**Amendments to the Business Corporation Franchise
Tax Regulations Relating to the Receipts Factor of the
Business Allocation Percentage**

On July 12, 2000, the Commissioner of Taxation and Finance adopted amendments to section 4-4.2 of the Business Corporation Franchise Tax Regulations (Article 9-A of the Tax Law) with respect to the receipts factor of the business allocation percentage and the alternative business allocation percentage.

The regulation addresses the treatment of receipts from sales where a customer picks up goods from a taxpayer's place of business and transports them to another state. Under previous regulations and Department policy, the receipts from such sales (dock sales) were attributed to the place where the customer picked up the goods. This regulation changes this policy.

The regulation sets forth a destination rule for the allocation of receipts from the sale of tangible personal property. It is presumed that if the possession of the property is transferred in New York State, then the destination of the property is a point in New York State. However, the regulation provides that this presumption can be overcome by evidence sufficient to demonstrate that the destination is outside the State.

The regulation contains a similar presumption that if the possession of the property is transferred outside New York State, then the destination of the property is a point outside New York State. Where there is sufficient evidence to overcome this presumption, the receipts from such a sale will be allocated to the State.

The regulation also changes the policy for shipments of tangible personal property made by a common or contract carrier by providing for a destination rule for all of these situations.

The amendments apply to taxable years beginning on or after January 1, 2000.

The text of the amended regulation is as follows:

Section 4-4.2 Receipts from sale of tangible personal property. (Tax Law, § 210(3)(a)(2))
Receipts from the sale of tangible personal property are allocable to New York State where shipments are made to points in this State or the receipts are otherwise earned within the State. Receipts from the sale of tangible personal property are allocated to New York State if subdivision (a), (b) or (c) below applies.

(a) The property is shipped via common or contract carrier, irrespective of whether the shipment is arranged by the taxpayer or the purchaser, or via the taxpayer's vehicle or other means of transportation, to a point in New York State (where property is so shipped to a point outside New York State, the receipts from the sale of such property are not allocated to New York State). See subdivision (d) of this section regarding evidence of destination.

(b) The possession of the property is transferred to a purchaser or purchaser's designee at a point in New York State, unless the destination of the property is a point outside New York State. Where possession of the property is transferred in New York State, it is presumed that the destination is a point in New York State unless there is sufficient evidence to demonstrate that the destination is a point outside New York State. See subdivision (d) of this section regarding evidence of destination.

(c) The possession of the property is transferred to a purchaser or purchaser's designee at a point outside New York State, where the destination of the property is a point in New York State. Where possession of the property is transferred outside New York State, it is presumed that the destination is a point outside New York State unless there is sufficient evidence to demonstrate that the destination is a point in New York State. See subdivision (d) of this section regarding evidence of destination.

(d) Examples of the types of evidence which will ordinarily be sufficient to demonstrate the destination of property include:

- (1) a bill of lading or other shipping document designating the destination location, regardless of the F.O.B. point, and
- (2) a purchase invoice designating the destination location.