

## **Certain Domestic Business Corporations Exempt from the Article 9-A Fixed Dollar Minimum Tax**

Chapter 61 of the Laws of 2006 was signed by Governor George Pataki on April 20, 2006. Part O of this legislation adds section 209.8 to the Tax Law to provide an exemption for certain domestic business corporations from the Article 9-A tax measured by the fixed dollar minimum. The amendment is effective for taxable years beginning on or after January 1, 2006.

Under this exemption, a domestic corporation that is no longer doing business, employing capital, or owning or leasing property in this state is exempt from the fixed dollar minimum tax for tax years following its final tax year provided that the corporation:

- is not doing business in this state;
- is not employing capital in this state;
- does not own or lease property in this state;
- does not have any outstanding Article 9-A franchise taxes for its final tax year or any prior tax year; and
- has filed an Article 9-A franchise tax return (original or amended) which it intends to be its final return and marks it final by checking the “final return” box. (The return marked final must cover the period through the date the corporation no longer does business, employs capital, or owns or leases property in this state.)<sup>\*</sup>

As a result of this legislation, a domestic corporation that meets all of the above criteria will no longer owe the fixed dollar minimum tax and no longer needs to file any additional franchise tax returns for taxable years or periods occurring after the period covered by its final return. After filing its final return, the domestic corporation can seek consent to be dissolved. For information on the procedure for corporate dissolution, call 1 800 327-9688 or access the department’s Internet website ([www.nystax.gov](http://www.nystax.gov)).

A domestic corporation that meets the above requirements and that does not voluntarily dissolve will be subject to dissolution by proclamation pursuant to section 203-a of the Tax Law after it has not filed franchise tax returns for at least two years.

A domestic corporation that does not meet all of the exemption requirements listed above and that ceases to file Article 9-A corporate franchise tax returns does not qualify for the exemption from the fixed dollar minimum tax. Such a corporation may be issued assessments, including penalties and interest, for failure to file an Article 9-A franchise tax return and failure to pay the

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<sup>\*</sup> A corporation that has filed a return marked final can file an amended return to indicate that it no longer intends the return for that period to be its final return. The amended return should have a note attached that states this is the corporation’s intent.

Article 9-A franchise tax. Pursuant to section 1092(j) of the Tax Law, all unpaid Article 9-A franchise taxes become a lien.

A domestic corporation that ceases to do business, employ capital, or own or lease property in New York State but wishes to retain its certificate of incorporation must continue to file Article 9-A franchise tax returns and pay the applicable tax. It should not file a return marked final.

### **Examples**

*Example 1:* A domestic corporation stops doing business in New York State and wishes to be dissolved. It stopped employing capital and owning or leasing property in New York State when it stopped doing business. It files its Article 9-A corporate franchise tax return covering the period up to and including the date it went out of business and marks the return final. It has no outstanding franchise tax liabilities for any tax year.

The corporation is not subject to the fixed dollar minimum tax for periods after the period covered by the final tax return, even though it does not request voluntary dissolution until a later date. If the corporation does not request voluntary dissolution, it may be dissolved by proclamation two years after filing its final return pursuant to section 203-a of the Tax Law.

*Example 2:* A domestic corporation stops doing business in New York State. It stopped employing capital and owning or leasing property in New York State when it stopped doing business. It files its Article 9-A corporate franchise tax return covering the period up to and including the date it stopped doing business but does NOT mark the return final.

Since the corporation did not mark its last return final, it does not qualify for the exemption from the fixed dollar minimum tax. Therefore, the corporation is required to continue to file Article 9-A franchise tax returns and pay any franchise taxes due.

If the corporation decides to request voluntary dissolution, it must file any past due returns, and pay all outstanding franchise taxes (including interest and penalties) before the request will be granted. If the corporation does not seek voluntary dissolution and it fails to file any Article 9-A franchise tax returns or pay any Article 9-A franchise taxes for at least two years, it may be dissolved by proclamation pursuant to section 203-a of the Tax Law. In either situation, any unpaid franchise taxes become a lien pursuant to section 1092(j) of the Tax Law.

*Example 3:* A domestic corporation had a manufacturing facility in New York State. It relocates all of its operations to a city located outside of New York State. It no longer does business, employs capital or owns or leases property in New York State. The corporation does not want to dissolve. Therefore, it should not mark any of its Article 9-A tax returns as final and must continue to file Article 9-A tax returns and pay any franchise taxes due.

*Example 4:* A domestic corporation that owned real estate in New York sold the property. It currently does not own or lease any other real or personal property. The corporation is not doing business or employing capital in New York State. It does not have any outstanding Article 9-A franchise taxes for any tax year. The corporation intends to purchase real estate in the future and does not want to dissolve. The corporation should not mark any of its Article 9-A corporate franchise tax returns as final and must continue to file Article 9-A tax returns and pay any franchise taxes due.

*Example 5:* A domestic corporation owns a building in New York State and operates a store in the building. The store goes out of business but the corporation continues to own the building. The corporation files an Article 9-A corporate franchise tax return covering the period up to and including the date the store stopped doing business and marks the return final.

Following the filing of its final tax return, the taxpayer does not seek voluntary dissolution and does not file franchise tax returns or pay franchise taxes for subsequent tax years. The corporation is dissolved by proclamation pursuant to section 203-a of the Tax Law. Subsequently, the sole shareholder of the corporation enters into a contract to sell the building. The prospective purchaser of the building discovers that the building is owned by the dissolved corporation and there are tax liens on the building.

Since the corporation owned real property in New York State at the time it filed its return marked final, it does not qualify for the exemption from the fixed dollar minimum tax. Therefore, the corporation is required to file corporate franchise tax returns and pay the corporate franchise tax for periods until the date of its dissolution. Pursuant to section 1092(j) of the Tax Law, the unpaid franchise taxes are a lien on the corporation's assets (the building) until paid. Additionally, the dissolved corporation may also continue to be subject to the Article 9-A franchise tax if it is determined to have continued to conduct business pursuant to section 209.3 of the Tax Law. Such determination would be dependent on the dissolved corporation's specific facts and circumstances.