

1981 Legislation

Franchise Tax on Transportation and Transmission Corporations
Subject to Tax under Sections 183 and 184 of the Tax Law

Chapters 486 and 1043 of the Laws of 1981 expand the jurisdictional standards to impose taxes under sections 183 and 184 of the Tax Law. Chapters 486 and 1043 of the Laws of 1981 also amended section 3 of the Tax Law. Section 3 of the Tax Law was amended to exempt from taxation those corporations which are exclusively engaged in the operation of vessels in foreign commerce.

Every domestic transportation or transmission corporation is subject to tax under sections 183 and 184 of the Tax Law for the privilege of exercising its corporate franchise. Every foreign transportation or transmission corporation is subject to tax under sections 183 and 184 of the Tax Law if its activities include one or more of the following:

- (i) doing business in New York State in a corporate or organized capacity or in a corporate form; or
- (ii) employing capital in New York State in a corporate or organized capacity or in a corporate form; or
- (iii) owning or leasing property in New York State in a corporate or organized capacity or in a corporate form; or
- (iv) maintaining an office in New York State.

For the purposes of (i) above, the term "doing business" is used in a comprehensive sense and includes all activities which occupy the time and labor of men for profit. Regardless of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization is deemed to be "doing business" for purposes of the tax. Whether a foreign transportation or transmission corporation is doing business in New York State is determined by the facts in each case. Consideration is given to such factors as:

- (i) the nature, continuity, frequency and regularity of the activities in New York State, compared with the nature, continuity, frequency and regularity of its activities elsewhere;
- (ii) the purposes for which the corporation was organized, compared with its activities in New York State;
- (iii) the location of its offices and other places of business;
- (iv) the income of the corporation and the portion thereof derived from activities in New York State;
- (v) the employment in New York State of agents, officers and employees; and
- (vi) the location of the actual seat of management or control of the corporation.

A foreign transportation or transmission corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in New York State for purposes of sections 183 and 184 of the Tax Law, because of:

- (i) the maintenance of cash balances with banks or trust companies in New York State;
- (ii) the ownership of shares of stock or securities kept in New York State, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts;
- (iii) 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;
- (iv) 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 otherwise is not doing business in New York State, and does not employ capital or own or lease property in New York State;
- (v) the keeping of books or records of a corporation in this 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;
- (vi) any combination of the foregoing activities.

The provisions of Chapter 486 and 1043 of the Laws of 1981 are effective for all taxable periods beginning on or after January 1, 1981.