

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, sections 171, subdivision First; and 1096(a) authorize the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. This authority also provides for the adoption of rules and regulations that are appropriate to carry out and administer the New York State Franchise Tax on Business Corporations imposed by and pursuant to the authority of Article 9-A of the Tax Law.

2. Legislative Objectives: The rule is being proposed pursuant to such authority and in accordance with the legislative objectives that the Commissioner equitably administer the provisions of the Tax Law and take judicious regulatory actions when such actions are warranted. Regulatory action is necessary to provide guidance on the taxation of foreign corporations participating in trade shows in New York State and to update various provisions of the Business Corporation Franchise Tax Regulations.

3. Needs and benefits: The primary purpose of this rule is to set forth Department policy to allow that the limited participation of 14 days or less per taxable year in a trade show(s) to display goods or promote services is an activity that will not subject a foreign corporation to tax under Article 9-A of the Tax Law. The rule addresses participation in trade shows both in the general context of nexus and in the context of foreign corporations otherwise eligible for the protection of Public Law 86-272. The rule provides a bright-line test for foreign corporations participating in trade shows in New York State. This rule is also beneficial to the State and local economies including businesses involved in or affected by the trade show industry.

The Department worked on this rule with the New York City Department of Finance to promote consistency in the trade show nexus rules for ease of compliance by foreign corporations. The New York City Department of Finance adopted its amendments on January 9, 2003.

Updates to the regulations were made to reflect the following statutory amendments: the fulfillment services legislation enacted by Chapter 681 of the Laws of 1997 and its subsequent amendment by Chapter 75 of the Laws of 1998; the exemption for offshore funds enacted by Chapter 340 of the Law of 1998; the repeal of section 186 of Article 9, including the provisions for continued application of former section 186 as provided in section 44 of Chapter 63 of the laws of 2000; and the exemptions from Article 9-A for redevelopment companies organized pursuant to article 5 of the Private Housing Finance Law enacted by Chapter 659 of the Laws of 1993, qualified subchapter S subsidiary corporations as enacted by Chapter 389 of the Laws of 1997, and qualified settlement funds and grantor trusts established for the benefit of victims or targets of Nazi persecution by or in the Swiss Confederation pursuant to section 13 of the Tax Law enacted by Chapter 407 of the Laws of 1999. Lastly, technical and editorial corrections of some provisions are included in the amendments.

4. Costs:

(i) Costs to regulated parties: It is estimated that there would be minimal costs to regulated parties associated with the implementation of, and continued compliance with, this rule. A foreign corporation which currently participates in trade shows for 11 to 14 days annually, and whose activities are confined to the solicitation of orders or solicitation of services to be filled or performed out of state, would be affected. Such a corporation would no longer be subject to corporate franchise tax in New York State.

(ii) Costs to the State and its local governments including this agency: It is estimated that the implementation and continued administration of the trade show regulation will have a minimal fiscal impact on the Department of Taxation and Finance and to New York State. The amendments regarding trade show activities

increase the current maximum amount of time a foreign corporation can participate in trade shows in New York annually. Although not published in the regulations, the Department's current policy allows a foreign corporation to participate for up to ten days. The time period is being increased to a total of 14 days. A foreign corporation, which currently participates in trade shows in New York for 11 to 14 days annually and whose activities regarding trade shows are confined to the solicitation of orders or solicitation of services to be filled or performed out of state, would be affected. Such a corporation would no longer be subject to tax.

There are no costs to New York State local governments for the implementation and continued administration of this rule. The additional amendments that update the Department regulations to reflect various statutory and technical changes represent current policy and will not have any impact.

(iii) Information and methodology: These conclusions are based on discussions and information received from the Office of Tax Policy and Analysis, Client Support Services Bureau and Fiscal Services Bureau.

5. Local government mandates: This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The rule imposes no reporting requirements, forms, or other paperwork upon regulated parties.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. Alternatives: There were no significant alternatives to the rule considered by the Department. The Department could refrain from this proposal and continue the limited policy of exempting from tax only those foreign corporations participating in a trade show or shows in New York State whose activities at such show(s) are limited to the solicitation of orders of tangible personal property - an activity exempt by virtue of Public Law 86-272. However, this policy is limited because it does not apply to the solicitation of sales of services.

Additionally, New York City adopted similar regulations to encourage participation in trade shows in the City. The continuation of the current policy at the State level would not only affect the State's economic development, but the City's as well. Foreign corporations exempt from the New York City tax would be subject to franchise tax at the State level and therefore may be reluctant to participate in trade shows in the City. New York State and New York City strive to administer their tax laws consistently where possible. Therefore, no significant alternatives to the rule were considered by this Department.

The Tax Section of the New York State Bar Association was asked to comment on this rule prior to its proposal. In its comments, the Association requested that the Department make parallel amendments to its Sales and Use Tax regulations with this proposal. After careful consideration of the comments, the Department has decided to address the sales and use tax issue apart from this proposal because it requires further study. The Department has concluded that corporate New York State trade show participants will be better served by the timely promulgation of this corporation franchise tax rule. Additionally, as noted in the Needs and benefits section, the New York City Department of Finance promulgated its rule on January 9, 2003.

9. Federal standards: The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

10. Compliance schedule: No measurable time is needed in order for regulated parties to comply with this rule. The amendments relating to participation in a trade show or shows made in the rule, shall apply to taxable years beginning on or after January 1, 2002, which corresponds to the effective date of the rule adopted by the New York City Department of Finance. The other amendments in the rule will take effect on the date the Notice of Adoption regarding such amendments is published in the *State Register*.