

**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York New York City Charter and section 11-687 of the Administrative Code of the City of New York, I hereby promulgate the within amendments to the Rules Relating to the New York City General Corporation Tax.

Section 1. Example (7) of subdivision (f) of section 11-03 of the Rules of the City of New York is amended to read as follows:

(7) A corporation that operates several retail stores outside New York State, leases an office in New York City for the convenience of its buyers when they come to New York City. [Salesmen]Salespeople for its suppliers call at the office to solicit orders. The merchandise is shipped by the suppliers directly to the offices of the corporation outside New York City. The corporation is subject to tax.

§2. Example (12) of subdivision (f) of such section is amended to read as follows:

(12) A foreign corporation sends [salesmen]salespeople into New York City to solicit orders. The orders must be accepted at the home office of the corporation located in another state. The corporation displays goods in New York City at a space leased occasionally and for short terms. The corporation is subject to tax. (For further discussion of solicitation of sales issues, see §11-04(b)(11), *infra*, dealing with Public Law 86-272.)

§3. Example 13 of subdivision (f) of such section is repealed as follows:

[(13) A foreign corporation has no activity in New York City other than the leasing of an unmanned exhibit booth in the City for two weeks each year which is used for display purposes only. The corporation is subject to tax.]

§4. Clause (H) of subparagraph (iv) of paragraph (11) of subdivision (b) of section 11-04 of such Rules is amended to read as follows:

(H) use of space at the salesperson's home solely for the salesperson's convenience. (However, see subparagraph (vi) of this paragraph as to loss of exemption for maintaining an office[.];)

§5. Such subparagraph iv is amended by adding a new clause (I) to read as follows:

(I) participating in a trade show or shows provided that such participation is for not more than 14 days, or parts thereof, in the aggregate during the corporation's taxable year for Federal income tax purposes. (However, see subparagraph (vi) of this paragraph as to loss of exemption for maintaining an office.)

§6. Subparagraph (v) of paragraph (1) of subdivision (c) of section 11-04 of such Rules is amended to read as follows:

(v) the keeping of books or records of a corporation in New York City, 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 City; [or]

§7. Subparagraph (vi) of such paragraph is renumbered as subparagraph (vii) and a new subparagraph (vi) is added thereto to read as follows:

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

(vii) any combination of the foregoing activities.

§8. Such subdivision (c) is amended by adding a new paragraph (3) to read as follows:

(3) Effective for taxable years beginning on or after January 1, 1998, an alien corporation, as defined in section 11-603(2-a) of the Administrative Code, will not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in New York City if its activities in the City are limited solely to investing or trading, for its own account, in (a) stocks and securities within the meaning of section 864(b)(2)(A)(ii) of the Internal Revenue Code, (b) commodities within the meaning of section 864(b)(2)(B)(ii) of the Internal Revenue Code, or (c) any combination of stocks, securities and commodities described in subparagraphs (a) and (b) above.

§9. These amendments shall take effect immediately except the amendments relating to participation in a trade show or shows made by sections 5 and 7 shall take effect and shall apply to taxable years beginning on or after January 1, 2002.

BASIS AND PURPOSE OF AMENDMENTS

These amendments affect the portion of the Rules Relating to the New York City General Corporation Tax governing the circumstances under which a corporation will be subject to the tax. Specifically these amendments address the issue of under which circumstances a foreign corporation's participation in a trade show in the City will cause the corporation to become subject to the tax. The amendments provide that participation in one or more trade shows for not more than 14 days, or parts thereof, in the aggregate during the year will not cause a foreign corporation to be subject to tax if its activities at the trade shows are limited to displaying goods and promoting services and its other activities in the City are otherwise limited to those listed in Administrative Code section 11-603(2). The rules also provide that in the case of a foreign corporation that is otherwise exempt from the tax under the provisions of Public Law 86-272, participation in one or more trade shows for not more than 14 days, or parts thereof, in the aggregate during the year will be considered ancillary to soliciting orders.

In addition, these amendments reflect the enactment of Administrative Code section 11-603(2-a) by section 3 of Chapter 340 of the Laws of 1998 exempting from tax alien corporations whose activities in the City are limited to investing in stocks, securities and commodities for their own account consistent with changes in applicable Federal law.

Finally, these amendments make minor stylistic changes to the rules.

/S/ Martha E. Stark
Commissioner of Finance