

**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 City Charter and section 11-687(1) 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 which are necessary to carry out the powers and duties delegated to the Commissioner of Finance by chapter 6 of title 11 of the Administrative Code of the City of New York.

\S\ Alfred C. Cerullo, III
Commissioner of Finance

Section 1. Subdivision (c) of section 11-14 of Title 19 of the Compilation of the Rules of the City of New York Relating to the General Corporation Tax, promulgated August 23, 1972 is amended to delete the last sentence thereof as follows:

(c) A corporation which is a member of a group taxed on the basis of a combined report, and which ceases to be subject to tax under Subchapter 2 of Chapter 6 of Title 11 may, in the discretion of the Commissioner of Finance be permitted to be included in the next combined report of the group, instead of paying a separate tax covering the period up to the date of such cessation. [Application for permission to report in such manner should be mailed or delivered to the City of New York, Department of Finance, Department of Tax collection, 139 Centre St., New York, N.Y. 10013.]

§2. Subdivision (c) of section 11-88 of such rules promulgated August 23, 1972 and last amended May 8, 1993 is amended to read as follows:

(c) Notwithstanding subdivisions (a) and (b) of this section, a corporation need not file a separate report within 15 days of the date it ceases to be subject to tax under Subchapter 2 of Chapter 6 of Title 11 if:

(1) it is a member of a group taxed on the basis of a combined report for the period including the date of such cessation; and

(2) it [secures the permission of the Commissioner of Finance to be] is properly included in such combined report (see: §11-14(c), *supra.*)

§3. Subdivision (g) of section 11-91 of such rules promulgated August 23, 1972 and last amended December 14, 1983 is amended to read as follows:

(g) *Permission for filing combined reports.* (Sec. 11-605(4), Administrative Code.) (1) A [taxpayer must make a written request for permission to file a combined report. The request must be sent to: Department of Finance, 151 West Broadway, New York, N.Y. 10013. The request must be received by the Commissioner of Finance not later than 30 days after the close of its taxable year. A report filed on a combined basis does not constitute a request for permission to file a combined report. A request to file a combined report] group of corporations meeting the requirements set forth in §§ 11-91(e) and 11-91(f) does not need to request prior permission to file on a combined basis. To file on a combined basis, the group must file a completed combined report. The first year the group files on a combined basis, and each year thereafter in which the composition of the group changes, the group must include the following information, either on the report or attached thereto:

(i) the exact name, address, employer identification number

and the state of incorporation of each corporation [to be] included in the combined report,

(ii) information showing that each of the corporations meets the requirements of §§ 11-91(e) and 11-91(f) for the [current] taxable year,

(iii) the exact name, address, employer identification number and the state of incorporation of all corporations (except alien corporations) which meet the capital stock requirement of § 11-91(e)(1) for the [current] taxable year, which are not [to be] included in the combined report,

(iv) [for at least the first nine months of the current year submit the following information] for the taxable year:

(A) the nature of the business conducted by each corporation included in subparagraphs (i) and (iii) of this paragraph,

(B) the source and amount of gross receipts of each corporation and the portion derived from transactions with each of the other corporations for the taxable year,

(C) the source and amount of total purchases, services and other transactions of each corporation and the portion related to transactions with each of the other corporations for the taxable year, and

(D) any other data that shows the degree of involvement of the corporations with each other,

(v) a statement providing details as to why a combined report [which would include] including only the corporations listed in subparagraph (i) of this paragraph [will] equitably [reflect] reflects the New York City activities of the corporations which meet the capital stock requirement of §11-91(e)(1) and why the corporations [in] listed in subparagraph (iii) of this paragraph should be excluded, and

(vi) a statement indicating whether each corporation listed in subparagraphs (i) or (iii) of this paragraph [is permitted or required to file] files on a combined basis for purposes of Article 9-A of the New York State Tax Law for the same taxable year and indicating the first taxable year each such corporation [was permitted or required to file] filed on a combined basis for State purposes. A copy of the [original] State letter [granting permission] authorizing that corporation

to file on a combined basis, if one was received, and any subsequent document authorizing the continued filing on a combined basis, must be submitted with this statement. In addition, if any corporation was required to file on a combined basis for purposes of Article 9-A of the State Tax Law, documentation evidencing that such combined filing has been required must also be submitted.

(2) [A written request for permission to include or exclude a corporation from an existing combined report must be received by the Commissioner of Finance not later than 30 days after the close of the taxable year of the corporations filing the combined report. The information required by subparagraphs (ii), (iv), (v) and (vi) of paragraph (1) of this subdivision must be submitted with the request.

(3) The Commissioner of Finance's approval to file] The filing of a combined report or [to include or exclude a] the inclusion of a corporation in, or the exclusion of a corporation from, a combined report is [tentative pending receipt of the final report and] subject to revision or [revocation] disallowance on audit in which event [. If a combined report is submitted without the Commissioner of Finance's permission, or if a corporation is included in a combined report without permission,] the Commissioner of Finance may compute and assess the tax of each taxpayer not permitted to be included in a combined report [filing without permission] on a separate basis.

[(4) Any corporation permitted or required to file on a combined basis for the taxable year next preceding its taxable year beginning in 1983 must request permission to continue or discontinue filing on a combined basis for the taxable year beginning in 1983. The request must be received by the Commissioner of Finance not later than 30 days after the close of its taxable year. Such request must include the information required under paragraph (1) of this subdivision (g).

(5)] (3) If a corporation [has been required or permitted to report] properly reports on a combined basis [for any taxable year beginning after December 31, 1982], it must continue to file its reports on a combined basis until the facts relevant to the requirements of §§ 11-91(e) and 11-91(f) materially change. [If the facts materially change from the time when the corporation was required or permitted to file on a combined basis, such corporation must notify the Commissioner of Finance of such change not later than 30 days after the close of its taxable year. The Commissioner of Finance will then notify such corporation whether it will be required or permitted to be included in the combined

report.

(6)](4) If [a taxpayer has been notified that, beginning with any taxable year ending on or after December 31, 1983, it will be required or permitted to report or discontinue reporting on a combined basis] the New York State Department of Taxation and Finance disallows the filing of a combined report or the inclusion of a corporation in, or the exclusion of a corporation from, a combined report, for purposes of Article 9-A of the New York State Tax Law, [it] the taxpayer must report such fact to the Commissioner of Finance within 30 days following such [notification] disallowance.

§4. These amendments are effective for taxable years ending on or after December 31, 1997.

BASIS AND PURPOSE OF AMENDMENTS

These amendments affect the portion of the Rules Relating to the New York City General Corporation Tax governing the permission process for filing combined returns. Under the amendments, corporations will no longer be required to request permission to file combined returns within 30 days after the end of the taxable year. Corporations meeting the requirements for combined filing may file a combined return without advance permission, however, the filing of the combined return is subject to modification or disallowance on audit.

\S\ Alfred C. Cerullo, III
Commissioner of Finance