

New York City Department of Finance

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Finance (DOF) is proposing rules relating to the Business Corporation Tax, pursuant to Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code of the City of New York. This is the first in a series of proposed rules which will prescribe implementing regulations for the Business Corporation Tax.

When and where is the hearing? DOF will hold a public hearing on the proposed rule. The public hearing will take place at 11:00 AM on November 20, 2025. The hearing will be conducted remotely through Microsoft Teams. To participate in the public hearing, enter the URL <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>. If prompted to provide the meeting ID, please enter: 214 131 571 235 4; If prompted for a passcode, please enter the following: Pu2tr9st. You can also participate in the hearing via telephone by calling + 1 646-893-7101. The Phone conference ID: 228 425 39#.

This location has the following accessibility option(s) available:
Audio-only access

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DOF through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to DOFRules@finance.nyc.gov.
- **Mail.** You can mail comments to NYC Department of Finance, Legal Affairs Division, 375 Pearl Street, 30th Floor, New York, NY 10038, Attn: Timothy Byrne.
- **Fax.** You can fax comments to NYC Department of Finance, Attn: Timothy Byrne, at (212) 748-6981.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Joan Best at (212) 748-7214. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a "Question and Answer" format.

Is there a deadline to submit comments? The deadline to submit written comments is November 20, 2025.

Do you need assistance to participate in the hearing? You must contact DOF's Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone by calling Joan Best at (212) 748-7214; or by email at bestj@finance.nyc.gov. Advance notice is requested to allow sufficient time to arrange the

accommodation. Please provide at least 72 hours' notice prior to the hearing to ensure availability. This location has the following accessibility option(s) available: Audio-only access.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a video recording of oral comments concerning the proposed rule will be available on the DOF website. Copies of these documents may also be reviewed at NYC Department of Finance, Legal Affairs Division, 375 Pearl Street, 30th Floor, New York, N.Y. 10038.

What authorizes DOF to make this rule? Sections 1043 and 1504 of the City Charter as well as Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code, section 11-687 of the Administrative Code and Section 1 of Part D of Chapter 60 of the Laws of 2015, authorize DOF to make this proposed rule. This proposed rule was not included in DOF's regulatory agenda for this Fiscal Year because it was not contemplated when DOF published the agenda.

Where can I find the DOF rules? The DOF rules are in title 19 of the Rules of the City of New York. See the link below.

<https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-34211>

What rules govern the rulemaking process? DOF must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

This proposed rule would add the first subchapter of a new Chapter 11A to Title 19 of the Rules of the City of New York (RCNY), relating to business corporation taxes. This chapter would implement the sweeping reform of New York City's (the City) corporate tax framework enacted by the State Legislature in Section 1 of Part D of Chapter 60 of the Laws of 2015, which added the 2015 Business Corporation Tax (BCT), codified in Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code of the City of New York (Administrative Code).

The BCT statutory framework was modeled on that of the New York State Franchise Tax on Business Corporations (NYS Corporate Tax), as amended by Part A of Chapter 59 of the Laws of 2014 and as further amended subsequently. Corporations that were previously subject to tax under the General Corporation Tax (GCT) and the Banking Corporation Tax (BTX) became subject to the BCT for taxable years beginning on or after January 1, 2015. Corporations that have made an election pursuant to Section 1362(a) of the Internal Revenue Code (IRC), commonly known as S-corporations, continue to be subject to the GCT or BTX.

The BCT introduced a comprehensive restructuring of taxation on corporations engaged in certain business activity in the City. In particular, the BCT, as compared to the GCT:

- changed the allocation scheme from one based generally on the location where services were performed to a market-based approach,
- changed the rules for mandatory and permissive combined reporting,
- eliminated the separate taxation of subsidiary capital,
- established new definitions and treatment of investment capital and income, and
- for tax years starting in 2022, established an economic nexus standard, which governs the taxation of business entities that derive receipts from activity in the City.

The BCT is a new taxation framework that functions in parallel to the GCT and to the BTX. Because the BCT is a new tax in addition to the GCT and BTX, DOF is proposing to add a new Chapter 11A to Title 19 of the RCNY, to be introduced in a series of proposed rules over the coming months. Ultimately, this Chapter 11A would provide regulated parties with detailed direction regarding the computation of tax under the BCT. In proposing these rules, it is the Department of Finance's (DOF) intent to maintain conformity with the NYS Corporate Tax regulations, codified in Chapter 1 of Title 20 of the New York Codes, Rules and Regulations (NYCRR), where corresponding statutory conformity exists, while weighing the interests of the City to provide a distinct approach in areas where the parity was not historically maintained under the previous iterations of corporate taxes or where the BCT and NYS Corporate Tax statutes diverge.

Proposed Chapter 11A will be broken into nine Subchapters that roughly correspond to the organization of 20 NYCRR Chapter I, Subchapter A. Section 1 of this proposed rule adds Subchapter 1 of the proposed BCT regulations, which would pertain generally to the imposition of tax and would generally parallel 20 NYCRR Chapter I, Subchapter A, Part 1.

Part 1-1 of this proposed rule would provide definitions of relevant terms that are used throughout the regulations, including subsequent subchapters of Chapter 11A, which will be promulgated separately from this proposed rule at a later date.

Part 1-2 would set forth the required minimum activities in the City for corporations to be subject to tax under the BCT. The proposed nexus regulations are largely the same as those currently applicable to the GCT, with the addition of economic nexus provisions relating to deriving receipts from customers in the City, which applies for taxable years beginning on or after January 1, 2022. Nexus rules for corporations for which the only connection with the City is the ownership of partnership interest in a partnership that has nexus with the City would be subject to the BCT under the same provisions that are currently already applicable under the GCT. Nexus rules for limited partners subject to the GCT have historically diverged from the State, and the BCT regulations maintain the divergence pursuant to the regulatory power of the Commissioner of Finance under Administrative Code § 11-653(1)(f). This Part would also include examples of activity that does not give rise to nexus, corporations that are exempt from the BCT, and detailed guidance for corporations seeking protection under Public Law 86-272, a federal law that protects corporations from state taxation in certain circumstances.

In the coming months, DOF will publish additional proposed rules that set forth the remainder of Chapter 11A, relating to allocation and administration of the BCT. However, this proposed rule publication and notice of public hearing includes only Subchapter 1 of Chapter 11A, as noted above. DOF intends to promulgate one or more separate proposed rules and notices of public hearing regarding the remaining subchapters of Chapter 11A at a later time. In addition, DOF may promulgate a new proposed rule and notice of public hearing seeking further comment on Subchapter 1 of Chapter 11A at a later time, if necessary. The effective date of this proposed rule, as well as the effective date of future proposed rules adding the subsequent subchapters of Chapter 11A, will not occur until all subchapters of Chapter 11A have completed the rulemaking process under Section 1043 of the New York City Charter.

Department of Finance's authority for these rules is found in section 11-687 of the New York City Administrative Code.

New material is underlined.
[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Title 19 of the Rules of the City of New York is amended by adding a new chapter 11A to read as follows:

Chapter 11A
Business Corporation Tax
Subchapter 1
Imposition of Tax
Part 1-1
Definitions

§ 11A-01 General.

(a) Any term used in this Chapter shall, unless a different meaning is clearly required, have the same meaning as when used in a comparable context in:

(1) the laws of the United States relating to Federal income taxes and the Federal regulations promulgated thereunder;

(2) Subchapter 1 of Chapter 6 of Title 11 of the Administrative Code and the regulations promulgated thereunder;

(3) Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code and the regulations promulgated thereunder; or

(4) Subchapter 5 of Chapter 6 of Title 11 of the Administrative Code and the regulations promulgated thereunder.

(b) Any reference in this Chapter to the laws of the United States shall mean the provisions of the Internal Revenue Code (IRC) and other provisions of the laws of the United States relating to Federal income taxes, as the same are effective for the taxable year. Any reference to Federal regulations shall mean the provisions of Title 26 of the Code of Federal Regulations (CFR), relating to Federal income taxes, as the same are effective for the taxable year. Any reference to the Administrative Code is a reference to the Administrative Code of the City of New York.

(c) For purposes of this Chapter:

(1) The term “business corporation tax” shall mean the tax imposed by Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code.

(2) The term “banking corporation tax” shall mean the tax imposed by Part 4 of Subchapter 3 of Chapter 6 of Title 11 of the Administrative Code.

(3) The term “general corporation tax” shall mean the tax imposed by Subchapter 2 of Chapter 6 of Title 11 of the Administrative Code.

(4) The term “unincorporated business tax” shall mean the tax imposed by Chapter 5 of Title 11 of the Administrative Code.

(5) The term “utility tax” shall mean the tax imposed by Chapter 11 of Title 11 of the Administrative Code.

§ 11A-02 Definitions.

For purposes of this Chapter, the following terms have the following meanings:

(a) **Corporation.** (Administrative Code §§11-652(1), 11-653(2-a)) (1) The term “corporation” means:

(i) an entity created as such under the laws of the United States, any state, territory or possession thereof, the District of Columbia, or any foreign country, or any political subdivision of any of the foregoing, that provides a medium for the conducting of business and the sharing of its gains;

(ii) an entity conducted as a corporation;

(iii) a domestic international sales corporation (DISC), as defined in IRC section 992(a);

(iv) a limited liability company or other business entity classified as a corporation for Federal income tax purposes, except where otherwise provided;

(v) an association, within the meaning of IRC section 7701(a)(3), a joint stock company or association, a publicly traded partnership treated as a corporation pursuant to IRC section 7704 and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument. Provided, however, that any such association, joint-stock company or association, publicly traded partnership or business that made an election pursuant to section 11-652(1)(b) of the Administrative Code shall continue to be subject to the unincorporated business tax until such association, joint-stock company or association revokes such election. The terms “joint stock company” and “association” include every incorporated joint stock association, unincorporated joint stock association, joint stock company or enterprise having written articles of association and capital stock divided into shares;

(vi) a business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument, such as a Massachusetts or business trust. In determining whether a trustee or trustees are conducting a business, the form of the agreement

is of significance but is not controlling. The actual activities of the trustee or trustees, not their purposes and powers, will be regarded as decisive factors in determining whether a trust is subject to tax under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code. The mere investment of funds and the collection of income therefrom, with incidental replacement of securities and reinvestment of funds, does not constitute the conduct of a business in the case of a business conducted by a trustee or trustees.

(2) There are generally three types of corporations: domestic corporations, foreign corporations, and alien corporations.

(i) The term “domestic corporation” means a corporation incorporated by or under the laws of the state of New York.

(ii) The term “foreign corporation” means a corporation that is not a domestic corporation.

(iii) The term “alien corporation” means a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States, or organized under the laws of a possession, territory, or commonwealth of the United States. An alien corporation is also considered a foreign corporation.

(3) Unless otherwise specified, whenever the term “corporation” is used in this Chapter, it can refer to a taxpayer or a non-taxpayer.

(b) **Credit card.** The term “credit card” means credit, bank, debit, travel and entertainment or pre-paid payment cards or products that can be presented at a physical point-of-sale terminal, electronically, or by telephone.

(c) **Effectively connected income.** The term “effectively connected income” means income, gain, or loss that is effectively connected with the conduct of a trade or business within the United States as determined under IRC section 882 in the case of an alien corporation that under any provision of the IRC is not treated as a domestic corporation as defined in IRC section 7701. The term “effectively connected income” includes income, gain, or loss that is described in section 11-652(8)(b) of the Administrative Code and excluded from Federal taxable income under any provision of Federal law, including under a United States treaty obligation, that would be treated, in the absence of such exclusion, as effectively connected with the conduct of a trade or business within the United States. Income, gain, or loss excluded from Federal taxable income under a United States treaty obligation will be treated as effectively connected with the conduct of a trade or business within the United States unless such treaty prohibits state or local taxation of such income, gain, or loss.

(d) **Non-captive REIT.** (Administrative Code §11-601(10), (12)) The term “non-captive REIT” means a REIT as defined in section 11-601(10) of the Administrative Code that is not a captive REIT as defined in section 11-601(12) of the Administrative Code.

(e) **Non-captive RIC.** (Administrative Code §11-601(11), (13)) The term “non-captive RIC” means a RIC as defined in section 11-601(11) of the Administrative Code that is not a captive RIC as defined in section 11-601(13) of the Administrative Code.

(f) **Partner.** The term “partner” means a member of a partnership as defined in this section and includes a member of a limited liability company classified as a partnership for Federal income tax purposes.

(g) **Partnership.** (Administrative Code §11-652(13)) The term “partnership” means a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, or a trust or estate that is separate from its owner under Part 1 of Subchapter J of Chapter 1 of Subtitle A of the IRC, or, unless otherwise provided by law or rule, a limited liability company or other business entity classified as a partnership for Federal income tax purposes. The term “partnership” does not include a corporation within the meaning of section 11A-01 of this Chapter.

(h) **Real property.** The term “real property” means land, buildings, structures, and improvements thereon. The term “real property” includes shares in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold.

(i) **Regularly traded on an established securities market.** The term “regularly traded on an established securities market,” for purposes of determining whether a REIT is a captive REIT or whether a RIC is a captive RIC, means:

(1) (i) more than 50% of the REIT’s or RIC’s voting stock is listed during the taxable year on one or more established securities markets;

(ii) trades are made on shares of the REIT’s or RIC’s voting stock on such market or markets, other than trades made in de minimis quantities, on at least 60 days during a taxable year or one sixth of the number of days in a short taxable year; and

(iii) the number of shares of the REIT’s or RIC’s voting stock that are traded on such market or markets during a taxable year comprise at least 10% of the average number of such shares that are outstanding during such taxable year (or, in the case of a short taxable year, a percentage that equals at least 10% of the average number of shares outstanding during such short taxable year).

(2) For purposes of paragraph (1) of this definition, the shares of the REIT’s or RIC’s voting stock that are traded on an established securities market located in the United States will be deemed to meet the requirements of subparagraphs (ii) and (iii) of paragraph (1) of this definition, if such shares are regularly quoted by dealers making a market in such stock. A dealer “makes a market” in stock only if the dealer in the ordinary course of a trade or business regularly and actively offers to purchase and sell such stock and, in fact, does purchase such stock from, and sell such stock to, customers that are not related corporations as defined in section 6-2.6 of this Chapter, with respect to the dealer.

(3) The term “regularly traded on an established securities market” does not include trades made between or among related corporations, as defined in section 6-2.6 of this Chapter.

(4) For purposes of this section, the term “established securities market” means a securities market that meets the requirements of 26 CFR § 1.883-2(b).

(j) **Report.** The term “report” means a report or return of tax but does not include an estimated tax filing.

(k) **S corporation.** The term “S corporation” means a corporation for which the Federal S election under IRC section 1362 is in effect for the tax year. An S corporation includes a limited liability company that is classified as an S corporation for Federal income tax purposes.

(l) **Stock.** (1) The term “stock” means an interest in a corporation that is treated as equity for Federal income tax purposes, including corporate equity instruments similar to stocks, such as business trust certificates, units in publicly traded partnerships included in the definition of “corporation” in section 11-652(1)(a) of the Administrative Code, shares of a RIC, and shares in a REIT.

(2) An interest in a corporation will be deemed to be “treated as equity for Federal income tax purposes” under this section if such interest would be treated as equity, rather than debt, based upon relevant Federal guidance and court decisions, and upon all surrounding facts and circumstances.

(3) While the Commissioner of Finance will generally follow the determination of the Internal Revenue Service as to whether an instrument is treated as equity, such determination is not binding on such Commissioner.

(m) **Tangible personal property.** (Administrative Code §11-652(10)) The term “tangible personal property” means corporeal personal property such as machinery, tools, implements, goods, wares and merchandise. It includes audio works, audiovisual works, literary works, visual works, graphic works or games, delivered via a physical medium that are not subject to the rules for digital products under section 11-654.2(4) of the Administrative Code. It does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidences of an interest in property, or evidences of debt.

(n) **Taxable year.** The term “taxable year” means, unless otherwise provided by law or rule, a taxpayer’s taxable year for Federal income tax purposes, or the part thereof during which

a taxpayer is subject to the tax imposed by Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code. In the case of a report made for a fraction of the year, "taxable year" means the period for which the report is made. A taxable year must be a calendar year or a fiscal year ending during the corresponding calendar year. A taxable year shall not include more than 12 calendar months except in the case of a 52-53 week period. If a taxpayer does not have a taxable year for Federal income tax purposes, the taxable year must be a calendar year, unless the commissioner authorizes the use of a fiscal year. Any reference in Subchapter 3-A or 5 of Chapter 6 of Title 11 of the Administrative Code to the term "tax year" or "taxable period" is a reference to taxable year as defined by this section for purposes of the business corporation tax.

(o) **Taxpayer.** (Administrative Code §§11-652(2-a), 11-653(3)) The term "taxpayer" means:

(1) any corporation that is subject to the tax imposed by Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code;

(2) a receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court, who conducts the business of a corporation. For example, a trustee who, under the authority of a Federal court, conducts the business of a corporation in bankruptcy is a taxpayer subject to tax. If the activities of the trustee are limited to the liquidation of the business and the disposition of the assets of the corporation, neither the trustee nor the corporation is subject to the business corporation tax; and

(3) a corporation that continues to do business after it has been dissolved or surrenders its authority to do business in New York, by proclamation or otherwise, unless the activities of such business are limited only to the liquidation of its business and affairs, the disposition of its assets other than in the regular course of business, and the distribution of the proceeds. A corporation in liquidation that is not subject to the business corporation tax or the general corporation tax may be subject to the unincorporated business tax pursuant to the provisions of section 11-502(a) of the Administrative Code.

PART 1-2

CORPORATIONS SUBJECT TO TAX

§ 11A-03 Corporations subject to tax. General. (Administrative Code § 11-653(1), (3))

(a) The business corporation tax is imposed on every domestic or foreign corporation, not specifically exempt as provided in section 11A-12 of this Part, whose activities include one or more of the following:

(1) doing business in New York City in a corporate or organized capacity or in a corporate form;

(2) employing capital in New York City in a corporate or organized capacity or in a corporate form;

(3) owning or leasing property in New York City in a corporate or organized capacity or in a corporate form;

(4) maintaining an office in New York City; or

(5) for taxable years beginning on or after January 1, 2022, deriving receipts from activity in New York City.

(b) Except as specified in section 11A-11 of this Part, a corporation engaged in New York City in any one or more of the activities described in subdivision (a) of this section is subject to tax under this Chapter even though such corporation's activities are wholly or partly in interstate or foreign commerce.

(c) A corporation that is not subject to the business corporation tax or that is exempt from tax, other than a corporation that cannot be included in a combined report under section 11-654.3(2)(c) of the Administrative Code and section 11A-169 of this Chapter, is required to be included in a combined report with a taxpayer if the combined reporting requirements are met.

(d) A corporation engaged in New York City in any one or more of the activities described in subdivision (a) of this section is subject to tax under this Chapter regardless of whether such corporation is authorized to do business in New York State, including after it surrenders its authority to do business.

(e) A corporation engaged in New York City in any of the activities described in subdivision (a) of this section is subject to tax under this Chapter:

(1) for any taxable year or part of a taxable year during which such corporation engages in any of the activities described in subdivision (a) of this section; and

(2) for any subsequent taxable year during which such corporation engages in any of the activities described in subdivision (a) of this section.

(f) An alien corporation that under any provision of the IRC is treated as a domestic corporation as such terms are defined in IRC section 7701 or that has effectively connected income for the taxable year is subject to tax under this Chapter if such alien corporation is engaged in New York City in any one or more of the activities described in subdivision (a) of this section.

§ 11A-04 Partnership interests. (Administrative Code § 11-653(1))

(a) If a partnership is doing business, employing capital, owning or leasing property, maintaining an office, or, for taxable years beginning on or after January 1, 2022, deriving receipts from activity in New York City, as determined pursuant to the rules under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code, then all of such partnership's corporate general partners (other than corporate partners that are or would be subject to the general corporation tax or the banking corporation tax) are subject to the tax imposed by Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code.

(b) Subject to the provisions of subdivisions (c) and (d) of this section, a corporation shall be deemed to be doing business in New York City if such corporation owns a limited partnership interest in a partnership that is doing business, employing capital, owning or leasing property, maintaining an office, or, for taxable years beginning on or after January 1, 2022, deriving receipts from activity in New York City.

(c) A corporation whose only contact with New York City is the ownership of a limited partnership interest in a limited partnership that is doing business, employing capital, owning or leasing property, maintaining an office, or, for taxable years beginning on or after January 1, 2022, deriving receipts from activity in New York City will not be deemed to be doing business in New York City if such partnership is a publicly traded partnership as defined in IRC section 7704 unless:

(1) such corporation is actively engaged in the conduct of such partnership's business;

(2) such corporation effectively controls such partnership; or

(3) such corporation effectively controls any general partner in such partnership.

(d) A corporation whose only contact with New York City is the ownership of a limited partnership interest in a portfolio investment partnership will not be deemed to be doing business in New York City unless:

(1) such corporation is actively engaged in the conduct of such partnership's business;

(2) such corporation effectively controls such partnership;

(3) such corporation effectively controls any general partner in such partnership; or

(4) such corporation entered into the limited partnership arrangement not for a valid business or economic purpose, but for the principal purpose of avoiding or evading the payment of tax.

(e) For purposes of subdivision (d) of this section, the term "portfolio investment partnership" means a limited partnership that meets the gross income requirement of IRC section 851(b)(2). The term "portfolio investment partnership" does not include a dealer in stocks or securities as described in IRC section 1236.

§ 11A-05 Doing business. (Administrative Code, section 11-653(1))

(a) The term “doing business” is used in a comprehensive sense and includes all activities that occupy the time or labor of people 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 the purposes of the business corporation tax. In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or a loss.

(b) Whether a corporation is doing business in New York City is determined by the facts in each case. Consideration is given to such factors as:

(1) the nature, continuity, frequency, and regularity of the activities of such corporation in New York City;

(2) the purposes for which such corporation was organized;

(3) the location of such corporation’s offices and other places of business;

(4) the employment in New York City of agents, officers and employees; and

(5) the location of the actual seat of management or control of such corporation.

(c) A corporation is doing business in New York City if:

(1) such corporation has issued credit cards to at least 1,000 customers with a mailing address in New York City as of the last day of such corporation’s taxable year;

(2) such corporation has merchant customer contracts that cover at least 1,000 locations in New York City to which such corporation remits payments for credit card transactions during such corporation’s taxable year;

(3) the sum of the number of customers and the number of locations in paragraphs (1) and (2) of this subdivision totals at least 1,000; or

(4) for taxable years beginning on or after January 1, 2022, such corporation itself does not meet the thresholds in paragraphs (1), (2) or (3) of this subdivision but is part of a unitary group that meets the ownership test under section 11-654.3 of the Administrative Code and Part 6-2 of this Chapter, and:

(i) such corporation issues credit cards to at least 10 customers with a mailing address in New York City as of the last day of its taxable year; or

(ii) such corporation has merchant customer contracts that cover at least 10 locations in New York City to which such corporation remits payments for credit card transactions during its taxable year; or

(iii) the sum of the number of customers and the number of locations in subparagraph (i) and (ii) of this paragraph totals at least 10; and

(iv) the members of the unitary group that meet the requirements of either subparagraph (i), (ii) or (iii) of this paragraph together meet the requirements of paragraph (1), (2) or (3) of this subdivision, other than any member that is a corporation that cannot be included in a combined report under paragraph (c) of subdivision 2 of section 11-654.3 of the Administrative Code and section 11A-169 of this Chapter.

(d) (1) A corporation doing business in New York City because it issues credit cards is deemed to be doing business for all of its taxable year or part of its taxable year from the date in such taxable year on which it issues its first credit card in New York City.

(2) A corporation doing business in New York City because it issues credit cards in its first taxable year, if also doing business in the subsequent taxable year, is deemed to be doing business from the beginning of the subsequent taxable year.

§ 11A-06 Employing capital. (Administrative Code §11-653(1))

The term “employing capital” is used in a comprehensive sense. Any of a large variety of uses, which may overlap other activities, may make a corporation subject to tax under this Chapter. In general, the use of assets in maintaining or aiding the corporate enterprise or activity

in New York City will make the corporation subject to tax under this Chapter. Employing capital includes such activities as maintaining stockpiles of raw materials or inventories, or owning materials and equipment assembled for construction.

§11A-07. Owning or leasing property. (Administrative Code §11-653(1))

(a) The owning or leasing of real or personal property within New York City constitutes an activity that subjects a corporation to tax under this Chapter. Property owned by or held for a corporation in New York City, whether or not used in such corporation's business, is sufficient to make such corporation subject to tax under this Chapter. Property held, stored or warehoused in New York City make a corporation subject to tax under this Chapter. Property held as a nominee for the benefit of others makes a corporation subject to tax under this Chapter. Also, consigning property to New York City may make a corporation subject to tax under this Chapter if a consignor retains title to the consigned property.

(b) Shares in a cooperative housing corporation will be deemed to be real property owned within New York City if the real property owned or leased by such corporation, as described in IRC section 216(b)(1)(B), is located in New York City.

§11A-08. Maintaining an office. (Administrative Code §11-653(1))

A corporation that maintains an office in New York City is engaged in an activity that makes it subject to tax under this Chapter. An office is any area, enclosure or facility that is used in the regular course of the corporate business. A salesperson's home, a hotel room, or a trailer used on a construction job site may constitute an office.

§11A-09. Deriving receipts. (Administrative Code §11-653(1))

(a) For taxable years beginning on or after January 1, 2022, a corporation that derives receipts from any activity in New York City is subject to tax under this Chapter. For purposes of this section, "New York City receipts" means New York City receipts as computed under this Chapter.

(b) A corporation derives receipts from activity in New York City if its New York City receipts equal or exceed \$1 million.

(c) A corporation derives receipts from activity in New York City if:

(1) such corporation is part of a unitary group that meets the ownership test under section 11-654.3 of the Administrative Code and Part 6-2 of this Chapter,

(2) such corporation has New York City receipts of at least \$10,000, and

(3) the total New York City receipts of all the members of such unitary group that each have at least \$10,000 of New York City receipts is at least \$1 million of such receipts.

(d) A corporation derives receipts from activity in New York City if such corporation is a general or, except as provided in subdivisions (c) and (d) of section 11A-04, limited partner of a partnership and such corporation's New York City receipts, if any, when combined with the New York City receipts of such partnership, total at least \$1 million.

(e) For purposes of determining whether a corporation is deriving receipts from activity in New York City, a corporation's New York City receipts will include such receipts from activities described in Public Law 86-272, and further described in section 11A-11 of this Part.

(f) A corporation that is part of a unitary group will not be considered when determining if the standards specified in this section are met if it cannot be included in a combined report under paragraph (c) of subdivision 2 of section 11-654.3 of the Administrative Code and section 11A-169 of this Chapter.

(g) For purposes of subdivision (d) of this section, for a corporation that is a partner in one or more partnerships, and for a corporation that is a member of one or more limited liability companies treated as a partnership for tax purposes, such corporation's New York City receipts

include its distributive share of any New York City receipts of each such partnership or limited liability company.

(h) In determining the amount of a corporation's New York City receipts, merchant discount fees received by such corporation for processing credit card transactions are included in its New York City receipts.

(i) A corporation will not be deemed to be deriving receipts from activity in New York City if the only New York City receipts are:

(1) interest income and net gains received by such corporation from securities issued by government agencies, including but not limited to securities issued by the government national mortgage association, the Federal national mortgage association, the Federal home loan mortgage corporation, and the small business administration;

(2) interest income from Federal funds; or

(3) interest paid to such corporation directly by a federal reserve bank on reserves maintained with the federal reserve.

(j) The receipts thresholds of this Part are subject to adjustment by the Commissioner of Finance based on an annual year-end review of the Consumer Price Index by the department, as follows:

(1) In December of each year, such commissioner will calculate the average Consumer Price Index for the preceding twelve months and will use that average to determine the cumulative percentage change in the Consumer Price Index.

(2) If the Consumer Price Index has changed by 10% or more from the Consumer Price Index ascertained at the time of and used by such commissioner for the purpose of making the previous adjustment in the receipts thresholds, then the commissioner will adjust the receipts thresholds by the same percentage as the change in the Consumer Price Index, rounded to the nearest \$1,000. Any adjustments will apply to taxable years beginning on or after January 1 next succeeding the announcement of the adjustment. When such commissioner has adjusted the receipts thresholds as provided for in this subdivision, any reference to \$1 million or \$10,000 in this Part is deemed to be a reference to the receipts thresholds as adjusted.

(3) For purposes of this subdivision, the term "Consumer Price Index" means the Consumer Price Index for all urban consumers, or the CPI-U.

(k)(1) A corporation deriving receipts from activity in New York City is deemed to be deriving receipts for all of its taxable year or part of its taxable year from the date in such taxable year of such corporation's first receipt derived from activity in New York City.

(2) A corporation deriving receipts from activity in New York City, if also deriving receipts in the subsequent taxable year, is deemed to be deriving receipts from the beginning of the subsequent taxable year.

§11A-10. Activities deemed insufficient to subject corporations to tax. (Administrative Code §11-653(2), (2-a))

(a) A corporation will not be subject to tax under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code because of the activities specified in paragraphs (1) through (10) of this subdivision, provided such corporation is not otherwise doing business, employing capital, owning or leasing property in a corporate or organized capacity, maintaining an office or, for taxable years beginning on or after January 1, 2022, deriving receipts from activity in New York City.

(1) the maintenance of cash balances with banks or trust companies in New York City;

(2) the ownership of shares of stock or securities kept in New York City in a safe deposit box, safe, vault or other receptacle rented for this purpose, or if pledged as collateral security, or if deposited in safekeeping or custody accounts with one or more banks or trust companies, or brokers who are members of a recognized security exchange;

(3) the taking of any action by any such bank or trust company or broker that is incidental to the rendering of safekeeping or custodian service to such corporation;

(4) the maintenance of an office in New York City by one or more officers or directors of such corporation who are not employees of such corporation;

(5) the keeping of books or records of such corporation in New York City, if such books or records are not kept by employees of such corporation;

(6) the participation in a trade show or shows, regardless of whether such corporation has employees or other staff present at such trade shows, provided such 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 City for acceptance or rejection and are filled from outside New York City, and provided that such participation is for not more than 14 days, or part thereof, in the aggregate during such corporation's taxable year for Federal income tax purposes;

(7) the mere acquisition of one or more security interests in real or tangible personal property located in New York City;

(8) the mere acquisition of title to property located in New York City through the foreclosure of a security interest;

(9) the mere holding of meetings of the board of directors in New York City, where such directors are not employees of such corporation; or

(10) any combination of the foregoing activities.

(b)(1) An alien corporation will not be deemed to be doing business, employing capital, owning or leasing property in a corporate or organized capacity, maintaining an office or, for taxable years beginning on or after January 1, 2022, deriving receipts from activity in New York City if its activities in New York City are limited solely to investing or trading for its own account in:

(i) stocks and securities within the meaning of IRC section 864(b)(2)(A)(ii); or

(ii) commodities within the meaning of IRC section 864(b)(2)(B)(ii); or

(iii) any combination of stocks, securities and commodities described in subparagraphs (i) and (ii) of this paragraph.

(2) An alien corporation that under any provision of the IRC is not treated as a domestic corporation as defined in IRC section 7701 and does not have effectively connected income for the taxable year will not be subject to tax under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code.

§11A-11. Public Law 86-272.

(a) Pursuant to Public Law 86-272 (15 U.S.C. §§ 381-384), a foreign corporation is exempt from the tax imposed by Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code if its activities are limited to those described in Public Law 86-272. To be exempt under Public Law 86-272, the activities of a foreign corporation in New York State must be limited to one or more of the following:

(1) the solicitation of orders by employees or representatives in New York State for sales of tangible personal property, if the orders are sent outside New York State for approval or rejection and, if approved, are filled by shipment or delivery from a point outside New York State;

(2) the solicitation of orders for sales of tangible personal property by employees or representatives in New York State in the name of or for the benefit of a prospective customer of such foreign corporation, if such customer's orders to such corporation are sent outside New York State for approval or rejection and, if approved, are filled by shipment or delivery from a point outside New York State; and

(3) the solicitation of orders via the Internet in New York State for sales of tangible personal property, if the orders are sent outside New York State for approval or rejection and, if approved, are filled by shipment or delivery from a point outside New York State.

(a-1) The applicability of Public Law 86-272 to taxes imposed by New York City is determined by the nature of a foreign corporation's activities in the entire State. Therefore, if a foreign corporation's activities in New York City are limited to solicitation as described above and such foreign corporation has no other activities in the State or such corporation's activities in the State are limited to the solicitation of orders in the State as described above, such foreign corporation will not be subject to tax. However, if in addition to sales solicitation activities in New York City, a foreign corporation carries on other activities in New York State sufficient to take it outside the scope of Public Law 86-272 for purposes of taxes imposed by New York State, Public Law 86-272 will not exempt such foreign corporation from tax.

Example: A corporation incorporated in Delaware is engaged in the business of selling women's high end designer clothing and has a showroom with five employees in Scarsdale, New York. Such corporation solicits orders in New York City which it sends to its offices in Chicago for approval. The clothing is then delivered to the customer by common carrier. No other activities take place in New York City. Such corporation is not exempt from tax imposed by Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code under the provisions of Public Law 86-272.

(b) For purposes of this exemption, a foreign corporation will not be considered to have engaged in taxable activities in New York City during the taxable year merely by reason of sales in New York City or the solicitation of orders for sales in New York City, of tangible personal property on behalf of such foreign corporation by one or more independent contractors. A foreign corporation will not be considered to have engaged in taxable activities in New York City by reason of maintaining an office in New York City by one or more independent contractors whose activities on behalf of such foreign corporation in New York City consist solely of making sales, or soliciting orders for sales, of tangible personal property.

(c) For purposes of this section, the term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling, or in soliciting orders for the sale of tangible personal property for more than one principal and who holds themselves out as such in the regular course of their business activities. The term "representative" does not include an independent contractor.

(d) In order for a foreign corporation to be exempt by virtue of Public Law 86-272, the activities in New York State of employees or representatives of such foreign corporation, or activities engaged in via the Internet by such foreign corporation, must be limited to the solicitation of orders for the sale of tangible personal property. The solicitation of orders includes offering tangible personal property for sale or pursuing offers for the purchase of tangible personal property and those ancillary activities, other than maintaining an office, that serve no independent business function apart from their connection to the solicitation of orders. Examples of activities performed by such employees or representatives in New York State, or that are engaged in via the Internet, that are entirely ancillary to the solicitation of orders include:

(1) the use of free samples and other promotional materials in connection with the solicitation of orders;

(2) passing product inquiries and complaints to the foreign corporation's home office;

(3) using automobiles furnished by the foreign corporation;

(4) advising customers on the display of the foreign corporation's products and furnishing and setting up display racks;

(5) recruitment, training and evaluation of sales representatives;

(6) use of hotels and homes for sales-related meetings;

(7) intervention in credit disputes;

(8) use of space at a salesperson's home solely for the salesperson's convenience, provided that such use of space does not include activities described in subdivision (g) of this section; and

(9) participating in a trade show or shows, provided that participation is for not more than 14 days, or part thereof, in the aggregate during such foreign corporation's taxable year for Federal income tax purposes, and provided further that such participation does not include activities described in subdivision (g) of this section.

(e) The exemption under the provisions of Public Law 86-272 is limited to the solicitation of orders for the sale of tangible personal property and does not include the solicitation of orders for the sale of services or intangible property.

(f) Activities in New York State beyond the solicitation of orders will subject a foreign corporation to tax in New York State unless such activities are de minimis. Activities will not be considered de minimis if such activities establish a nontrivial additional connection with New York State. Solicitation activities do not include those activities that a foreign corporation would have reason to engage in apart from the solicitation of orders, but chooses to allocate to its New York State sales force, or to engage in via the Internet, including interacting with customers or potential customers through such corporation's website or computer application. However, a foreign corporation will not be made taxable solely by presenting static text or images on its website. In determining whether a foreign corporation's activities exceed the solicitation of orders, all of such foreign corporation's activities in New York State will be considered. Examples of activities that go beyond the solicitation of orders include:

(1) making repairs to or installing such foreign corporation's products;
(2) making credit investigations;
(3) collecting delinquent accounts;
(4) taking inventory of such foreign corporation's products for customers or prospective customers;

(5) replacing such foreign corporation's stale or damaged products; and
(6) giving technical advice on the use of such foreign corporation's products after the products have been delivered to the customer.

(g) Maintaining an office, shop, warehouse or stock of goods in New York State will make a foreign corporation subject to tax under this Chapter. However, a foreign corporation will not be made subject to tax under this Chapter solely by maintaining a supply of goods in New York State if such goods are used only as free samples in connection with the solicitation of orders. A foreign corporation will be considered to be maintaining an office in New York State if the space used by such foreign corporation is held out to the public as an office or place of business of the taxpayer. For example, a salesperson's house is used for business and meets the criteria to be considered a bona fide employer office for New York State personal income tax purposes. Such residence will be treated as an office of such foreign corporation, and the foreign corporation will be subject to tax under this Chapter.

(h) A foreign corporation (other than a corporation that cannot be included in a combined report under section 11-654.3(2)(c) of the Administrative Code and section 11A-169 of this Chapter) may be included in a combined report required under section 11-654.3 of the Administrative Code, even if such foreign corporation is exempt from taxation under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code pursuant to the provisions of Public Law 86-272, as described in this section. In addition, for taxable years beginning on or after January 1, 2022, the receipts of such a foreign corporation will be included in determining whether a unitary group is deriving receipts from activity in New York City. However, if all the members of such a unitary group are exempt from taxation under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code pursuant to the provisions of Public Law 86-272, as described in this section, then the unitary group would not be required to file a combined report.

(i) Examples.

The following are examples of foreign corporations that either are exempt or not exempt from tax under this section. Each of these examples is provided for illustration purposes only and is intended to be applicable only to the specific activity identified in each example.

- Example 1: A foreign manufacturing corporation has its factory outside New York State. Its only activity in New York State is the solicitation of orders for its products through a sales office located in New York City. The orders are forwarded to its home office outside New York State for acceptance and the merchandise is shipped by common carrier from the factory direct to the purchasers. Such corporation is not exempt from tax under this section.
- Example 2: A foreign 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 State. Salespeople call at the office to solicit orders. The merchandise is shipped by the sellers directly to the offices of the corporation outside New York State. Such corporation is not exempt from tax under this section.
- Example 3: A foreign corporation sends salespeople into New York State to solicit orders. The orders must be accepted at the home office of such corporation located in another state. The corporation displays goods in New York City at a space leased occasionally and for short terms. Such corporation is not exempt from tax under this section.
- Example 4: A foreign corporation has \$950,000 of receipts from activities in New York State that consist solely of the solicitation of orders by employees in New York City for sale of tangible personal property; all the orders are sent outside New York State for approval or rejection and, if approved, are filled by shipment from a point outside New York State. Such corporation also has \$100,000 of New York City receipts from the sale of services. Such corporation is subject to tax under this Chapter. Such corporation is not exempt from tax under this section, since its activities in New York State are not limited to those described in this section.
- Example 5: Seven foreign corporations each have \$200,000 of receipts from activity in New York City and are part of the same unitary group that meets the ownership test under section 11-654.3 of the Administrative Code and Part 6-2 of this Chapter. Therefore, the seven corporations together exceed the \$1 million receipts threshold. Three members of such group have activities in New York State that consist solely of the solicitation of orders by employees in New York City for sales of tangible personal property, which orders are sent outside New York State for approval or rejection and, if approved, are filled by shipment from a point outside New York State. These three corporations are exempt from tax in New York City because their activities are limited to those described in this section; the other four corporations are subject to tax under this Chapter because they are deriving receipts from activity in New York City and their activities are not limited to those described in this section. The seven corporations are required to file in a combined report, which

will include the receipts, net income, net gains, net losses, and net deductions of all the corporations, together with their proportionate share of the unitary group's assets and liabilities.

Example 6: A foreign corporation solicits sales of tangible personal property on its website and provides assistance to customers by posting a list of static frequently asked questions ("FAQs") and answers on such corporation's website. Since this activity is de minimis under this section, such corporation is exempt from tax under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code.

Example 7: A foreign corporation regularly provides assistance to its customers after its products have been delivered, either by email or electronic "chat" that customers initiate by clicking on an icon on the corporation's website. For example, such corporation regularly advises customers on how to use products after the products have been delivered. Since this activity does not constitute, and is not entirely ancillary to, the solicitation of orders for sales of tangible personal property, such corporation is not exempt from tax under this section.

Example 8: A foreign corporation solicits and receives online applications for its branded credit card via the corporation's website. The issued cards will generate interest income and fees for such corporation. Since this activity does not constitute, and is not entirely ancillary to, the solicitation of orders for sales of tangible personal property, such corporation is not exempt from tax under this section.

Example 9: A foreign corporation's website invites viewers in New York City to apply for non-sales positions with the corporation. The website enables viewers to fill out and submit an electronic application, as well as to upload a cover letter and résumé. Since this activity does not constitute, and is not entirely ancillary to, the solicitation of orders for sales of tangible personal property, such corporation is not exempt from tax under this section.

Example 10: A foreign corporation places Internet "cookies" onto the computers or other electronic devices of its customers. These cookies gather customer search information that will be used to adjust production schedules and inventory amounts, develop new products, or identify new items to offer for sale. Since this activity does not constitute, and is not entirely ancillary to, the solicitation of orders for sales of tangible personal property, such corporation is not exempt from tax under this section.

Example 11: The same facts as Example 10 except that the cookies gather customer information that is used only for purposes entirely ancillary to the solicitation of orders for tangible personal property, such as: to remember items that customers have placed in their shopping cart during a current web session, to store personal information

customers have provided to avoid the need for the customers to re-input the information when they return to such corporation's website, and to remind customers what products they have considered during previous sessions. The cookies perform no other function, and these are the only types of cookies delivered by the corporation to the computers or other devices of its customers. Since this activity is entirely ancillary to the solicitation of orders for sales of tangible personal property, such corporation, under the facts of this example, is exempt from tax under this section.

Example 12: A foreign corporation remotely fixes or upgrades products previously purchased by its customers, including customers in New York City, by transmitting code or other electronic instructions to those products via the Internet. Since this does not constitute, and is not entirely ancillary to, the solicitation of orders for sales of tangible personal property, such corporation is not exempt from tax under this section.

Example 13: A foreign corporation offers and sells extended warranty plans through its website to New York City customers who purchase the corporation's products. Since this activity involves selling, or offering to sell, a service that is not entirely ancillary to the solicitation of orders for sales of tangible personal property, such corporation is not exempt from tax under this section.

Example 14: A foreign corporation contracts with a marketplace provider that facilitates the sale of the corporation's products on the provider's online marketplace. The marketplace provider maintains inventory, including some of the corporation's products, at fulfillment centers in New York City. Since this activity involves the maintenance of such corporation's products in New York City, such corporation is not exempt from tax under this section.

Example 15: A foreign corporation that sells tangible personal property via the Internet also contracts with New York City customers to stream videos and music to electronic devices for a fee. Since this activity involves streaming, which does not constitute the sale of tangible personal property, such corporation is not exempt from tax under this section.

Example 16: A foreign corporation offers for sale only items of tangible personal property on its website. The website enables customers to search for items, read product descriptions, select items for purchase, choose among delivery options, and pay for the items. Such corporation does not engage in any activities in New York State that are not described in this example. Since such corporation engages exclusively in activities in New York State that either constitute solicitation of orders for sales of tangible personal property or are entirely ancillary to solicitation, such corporation is exempt from tax under this section.

§11A-12. Corporations not subject to tax. (Administrative Code §§11-122, 11-653(4), (9) and Tax Law §13)

(a) A corporation that is subject to any of the following taxes is not subject to tax under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code:

(1) the general corporation tax as provided in section 11-602.1 of the Administrative Code;

(2) the banking corporation tax as provided under section 11-639(a)(2) of the Administrative Code; and

(3) the taxes on corporations described in subdivision (c) of this section, to the extent provided in such subdivision (c).

(b) The following corporations are exempt from taxation under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code:

(1) limited-profit housing companies organized pursuant to article 2 of the Private Housing Finance Law;

(2) any trust company organized under a law of New York State, all of the stock of which is owned by not less than 20 savings banks organized under a law of New York State;

(3) the Urban Development Corporation and subsidiary corporations of the Urban Development Corporation. A corporation is deemed a subsidiary of the Urban Development Corporation whenever and so long as:

(i) more than one half of any voting shares of the subsidiary are owned or held by the Urban Development Corporation; or

(ii) a majority of the subsidiary's directors, trustees or members are designees of the Urban Development Corporation;

(4) a corporation principally engaged in the operation of marine vessels whose activities in New York City are limited exclusively to the use of property in interstate or foreign commerce, provided, however, such a corporation will not be subject to the tax imposed under Subchapter 3-A solely because it maintains an office in the City, or employs capital in the City in connection with such use of property;

(5) corporations organized other than for profit that do not have stock, or shares or certificates for stock or for shares, and that are operated on a nonprofit basis, no part of the net earnings of which inures to the benefit of any officer, director, or member, including not-for-profit corporations and religious corporations.

(i) A corporation organized other than for profit, as described in this paragraph, that is exempt from Federal income taxation pursuant to IRC section 501(a), will be presumed to be exempt from tax under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code. If a corporation organized other than for profit is denied exemption from taxation under the IRC, such corporation will be presumed to be subject to tax under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code.

(ii) The determination of the Internal Revenue Service, denying or revoking exemption from Federal taxation under the IRC, will ordinarily be followed;

(6) trusts that are not conducting a business (passive trusts). Where the functions of a trustee are only to hold property and to collect and distribute income, the trust is not subject to tax under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code. The power to sell, invest and reinvest must be clearly and expressly limited. For example, a power to sell stock and reinvest the proceeds if the bid price of the stock drops below a certain level will not make the trust taxable;

(7) an industrial development agency created pursuant to article 18-A of the General Municipal Law;

(8) housing development fund companies organized pursuant to the provisions of article 11 of the Private Housing Finance Law;

(9) an entity that is treated for Federal income tax purposes as a real estate mortgage investment conduit (REMIC);

(10) an organization described in paragraph (2) or (25) of subsection (c) of IRC section 501; and

(11) a qualified settlement fund under IRC section 468B, or an entity that is treated as such for Federal purposes, or a grantor trust, either of which is used for Nazi reparations.

(c) Utility corporations and corporations conducting an insurance business.

(1) A corporation subject to the utility tax, other than a corporation that is subject to the utility tax as vendor of utility services as defined in section 11-1101(7) of the Administrative Code, is subject to the tax on capital as provided in section 11-654(1)(e)(1)(ii)(C) of the Administrative Code and is not otherwise subject to tax under this Chapter.

(2)(i) Corporations conducting an insurance business and subject to the franchise taxes on insurance corporations imposed under article 33 of the Tax Law are not subject to tax under this Chapter except that such corporations are subject to the tax on capital as provided in section 11-654(1)(e)(1)(ii)(C) of the Administrative Code.

(ii) For purposes of this subdivision, a corporation that is a health maintenance organization required to obtain a certificate of authority under article 44 of the Public Health Law is not a corporation conducting an insurance business.

§11A-13. Change of classification. (Administrative Code §11-653(1))

(a) A corporation subject to tax under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code may, by reason of a change in the nature of its activities, cease to be subject to such tax and become taxable under some other chapter or subchapter of Title 11 of the Administrative Code. Conversely, a corporation subject to tax under some other chapter or subchapter of Title 11 of the Administrative Code may, for the same reasons, cease to be taxable thereunder and become subject to tax under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code. The date on which any such change of classification becomes effective will be determined by the facts of each case.

(b) A corporation that becomes subject to tax under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code during one of its fiscal or calendar years by reason of a change in classification is treated in the same manner as a corporation which began to do business during such year.

(c) A corporation that ceases to be subject to the tax imposed by Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code during one of its fiscal or calendar years by reason of a change of classification is treated, insofar as such Subchapter 3-A is concerned, in the same manner as a corporation which ceases to do business in New York City during such year.

§11A-14. Examples.

The following are examples of corporations that either are subject to tax under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code because they are doing business, or employing capital, or owning or leasing property in a corporate or organized capacity, or maintaining an office or deriving receipts from activity in New York City, or are not subject to such tax. Each of these examples is intended for illustration purposes only and to be applicable only to the specific activity as identified in each example.

Example 1: A foreign corporation in another state operates or is organized for the purposes of buying and selling securities. It does not maintain a physical office anywhere, other than a statutory office in the state of its incorporation. Regular and continuous purchases of securities are directed by its officers or agents located in New York City. Such corporation is subject to tax under this Chapter.

Example 2: A corporation participates in a joint venture that carries on business in this City, but such corporation is not otherwise

engaged in any activities in New York City. Such corporation is subject to tax under this Chapter.

Example 3: A holding corporation coordinates and supervises in New York City activities of a subsidiary that is taxable in New York City. Such holding corporation also makes loans to such subsidiary and guarantees loans obtained by such subsidiary from sources other than the parent. Such corporation is subject to tax under this Chapter.

Example 4: A manufacturing corporation has its factories and offices located outside New York City. Its sole activity in New York City consists of holding or storing goods in a warehouse owned by an unrelated party. Such corporation is subject to tax under this Chapter.

Example 5: A corporation that has no office or other place of business in New York City leases automobiles to customers in New York City, with receipts from this activity equaling less than \$1 million. Such corporation is subject to tax under this Chapter.

Example 6: A corporation formerly engaged in manufacturing in another state discontinues such business and transfers its office to New York City, where its activities consist solely of the acquisition of bonds and the receipt of interest on such bonds and the holding of directors' meetings. Such corporation is subject to tax under this Chapter.

Example 7: A corporation issues credit cards to 500 customers with a mailing address in New York City as of the last day of its taxable year and has contracts with merchants covering 500 locations in New York City to which it remits payments during the taxable year. Since such corporation issues credit cards to customers with a mailing address in New York City and has merchant customer contracts that cover locations in New York City to which it remits payments for credit card transactions, and the sum of the number of customers and the number of locations is 1,000, such corporation is subject to tax under this Chapter.

Example 8: Three corporations are part of the same unitary group that meets the ownership test under section 11-654.3 of the Administrative Code and Part 6-2 of this Chapter, all of the members of which each have at least \$10,000 of receipts from activity in New York City. They are a bank, a broker-dealer, and an insurance company subject to tax under article 33 of the Tax Law. The bank and the broker-dealer together have \$900,000 of receipts from activity in New York City. The insurance company has \$300,000 of receipts from activity in New York City. Since such insurance company is a corporation that cannot be included in a combined report under section 11-654.3(2)(c) of the Administrative Code and section 11A-169 of this Chapter, such insurance company's New York City receipts will not be included for purposes of determining whether such unitary group is deriving receipts

from activity in New York City. Therefore, such bank and such broker-dealer are not subject to tax in New York City.

Example 9: A corporation organized as a bank in another state has interest income from Federal funds, but no other New York City receipts. Since such corporation's only New York City receipts are from interest income from Federal funds, such corporation is not subject to tax.

§ 2. Effective date. This rule shall take effect on the same date as the date on which all subchapters of chapter 11A of title 19 of the rules of the city of New York, such chapter 11A as added by section 1 of this proposed rule, take effect, such date as provided in a future notice of adoption to be published by the Department of Finance in the City Record.

NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028

CERTIFICATION PURSUANT TO
CHARTER §1043(d)

RULE TITLE: Business Corporation Tax Implementation Rules

REFERENCE NUMBER: 2024 RG 053

RULEMAKING AGENCY: Department of Finance

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Senior Counsel

Date: October 16, 2025

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Business Corporation Tax Implementation Rules

REFERENCE NUMBER: DOF-76

RULEMAKING AGENCY: Department of Finance

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

October 16, 2025
Date