

This report must be filed by any corporation that has an officer, employee, agent, or representative in the City and claims not to be subject to the New York City General Corporation Tax or Business Corporation Tax. For taxable years beginning in 1996 and thereafter, entities taxable as corporations for federal income tax purposes under IRC §7701(a)(3) and §7704 are considered corporations for purposes of the General Corporation Tax. **A corporation subject to General Corporation Tax or Business Corporation Tax cannot use this form;** it must file a General Corporation Tax return, Form NYC-4S, NYC-4S-EZ or NYC-3L or a Business Corporation Tax return, Form NYC-2 or NYC-2S. See "Corporations Subject to Tax" below. **The filing of this form does not constitute the filing of a return by the corporation sufficient to start the running of the limitations period for assessments of tax. To obtain the protection of the limitations period, a General Corporation Tax return or Business Corporation Tax return must be properly filed.** A corporation that has ceased doing business in the City during the taxable year cannot use this form. Such a corporation must file a final return or request an extension of time to file a final return **on or before the 15th day after the date that the corporation ceases to be subject to the General Corporation Tax or Business Corporation Tax.** See Form NYC-EXT and instructions for further information.

A corporation is not required to file this report if it falls under one of the following:

- 1) the corporation is exempt from the General Corporation Tax under Section 11-603.4 or the Business Corporation Tax under Section 11-653(4) of the Administrative Code;
- 2) the corporation has received a letter from the Department of Finance exempting it from tax as a nonstock, nonprofit corporation (*see instructions for line 5b below*), provided there has been no change in its character, activities or federal tax status since the date of that letter;
- 3) the corporation's only tie with New York City is that one or more of the corporation's officers, employees, agents or representatives reside in the City or come into the City infrequently in connection with isolated transactions of the corporation;

- 4) the corporation is a Real Estate Mortgage Investment Conduit (REMIC); or
- 5) the corporation is exempt from Federal income tax under IRC section 501(c)(2) or (25).

WHEN TO FILE

Any S corporation required to file this report must do so annually, on or before March 15th if it reports on a calendar year basis for federal income tax purposes, or on or before the 15th day of the 3rd month following the close of its fiscal year if it reports on a fiscal year basis.

Any C corporation required to file this report must do so annually, on or before April 15th if it reports on a calendar year basis for federal income tax purposes, or on or before the 15th day of the 4th month following the close of its fiscal year if it reports on a fiscal year basis.

LINE 5b

Every corporation claiming exemption from General Corporation Tax or Business Corporation Tax as a nonstock, nonprofit corporation (except for corporations exempt from federal income tax under IRC Section 501(c)(2) and (25)) **must** apply for an exemption from the Department of Finance by submitting an application for exemption containing an affidavit setting forth the following information about the corporation:

- 1) the type of organization;
- 2) the purposes for which it is organized;
- 3) a description of its actual activities;
- 4) the source and disposition of its income;
- 5) whether any of its income is credited to surplus or may inure to any private stockholder or individual; and
- 6) such other facts that may affect its right to exemption.

The affidavit must be supplemented by: a copy of the articles of incorporation or articles of association, a copy of the bylaws, copies of statements showing the corporation's assets and liabilities and receipts and disbursements for the most recent year, a photostatic copy of a letter from the United States Treasury Department granting the cor-

poration an exemption from federal income taxation and photocopies of federal, state and local tax returns filed by the organization for the three most recent preceding years.

All of the above information should be sent to:

**NYC Department of Finance
Exemption Processing Unit
59 Maiden Lane, 20th Floor
New York, NY 10038**

There is no prescribed application form and no application fee.

LINE 6

If you answer "yes" to any question other than 6h, the corporation may be subject to General Corporation Tax or Business Corporation Tax. See "Corporations Subject to Tax" for more information. Corporations subject to tax cannot use this form.

LINE 6g

If the answer to question 6g is "yes," state on a rider what activities take place elsewhere in New York State that do not also take place in New York City, or other reasons for filing a State Franchise Tax Report.

LINE 6i

If the answer is "yes," see section 11-04(b)(11) of Title 19 of the Rules of the City of New York for information regarding the application of P.L. 86-272 to activities in New York City.

CORPORATIONS SUBJECT TO TAX

A corporation subject to General Corporation Tax or Business Corporation Tax cannot use this form; it must file either Form NYC-4S, NYC-4S-EZ or NYC-3L (GCT) or Form NYC-2 or Form NYC-2S (Business Corporation Tax). Sections 11-603.1 and 11-653(1) of the Administrative Code provide that a corporation is subject to tax if it is:

- 1) doing business in New York City;
- 2) employing capital in New York City;
- 3) owning or leasing property in New York City, in a corporate or organized capacity;
or
- 4) maintaining an office in New York City.

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 purpose of the tax. In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or a loss.

Under the Business Corporation Tax applicable to federal C Corporations for tax years beginning on or after January 1, 2015, a corporation is doing business in the city if:

- (1) it has issued credit cards to one thousand or more customers who have a mailing address within the city as of the last day of its taxable year;
- (2) it has merchant customer contracts with merchants and the total number of locations covered by those contracts equals one thousand or more locations in the city to whom the corporation remitted payments for credit card transactions during the taxable year; or
- (3) the sum of the number of customers described in item #1 plus the number of locations covered by its contracts described in item #2 equals one thousand or more.

For purpose of these provisions, the term “credit card” includes bank, credit, travel and entertainment cards. See Administrative Code Section 11-653(1)(c).

The term “employing capital” includes any of a large variety of uses, which may overlap other categories and give rise to taxable status. In general, the use of assets instrumental in maintaining or aiding the corporate enterprise or activity in the City will create liability. Employing capital includes activities such as:

- a) maintaining stockpiles of raw materials or inventories; and
- b) maintaining securities in the City for trading purposes.

Under Sections 11-603.2 and 11-653(2) of the Administrative Code, a corporation is not considered to be doing business, employing capital, owning or leasing property, or main-

taining an office in New York City by reason of:

- a) the maintenance of cash balances with banks or trust companies or brokers in the City;
- b) the ownership of shares of stock or securities kept in the City, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts;
- c) the taking of any action by any such bank or trust company or broker which is incidental to the rendering of safekeeping or custodial service to the corporation;
- d) the maintenance of an office in the City by one or more officers or directors of the corporation who are not employees of the corporation as long as the corporation is not otherwise doing business or employing capital in the City and does not own or lease property in the City;
- e) the keeping of books or records of a corporation in the City if the books or records are not kept by employees of the corporation and the corporation is not otherwise doing business or employing capital in the City and does not own or lease property in the City; or
- f) any combination of the foregoing activities.

In addition, a corporation will not be subject to the General Corporation Tax or Business Corporation Tax if its sole connection with New York City is:

- (i) the maintenance of a statutory office at the address of its registered agent or the maintenance of a mailing address; or
- (ii) the mere ownership of shares of stock of corporations doing business in the City.

Under Administrative Code Section 11-653(2-a), an alien corporation is not considered to be doing business, etc. in the City if its activities in the City are limited solely to investing or trading in stocks, securities or

commodities for its own account within the meaning of the Internal Revenue Code §864(b)(2)(A) or §864(b)(2)(B).

For purposes of the Business Corporation Tax, an alien corporation that under any provision of the Internal Revenue Code is not treated as a “domestic corporation” as defined in IRC §7701 and has no effectively connected income for the taxable year pursuant to clause (iii) of the opening paragraph of Administrative Code §11-652(8) is not subject to the Business Corporation Tax for that taxable year. For purposes of the Business Corporation Tax, an alien corporation is defined as 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. See Administrative Code Section 11-653(2-a).

NOTE: For additional guidance concerning what activities constitute "doing business," "employing capital," "owning or leasing property," and "maintaining an office" in New York City, see Sections 11-03 and 11-06 of Title 19 of the Rules of the City of New York. For additional information concerning corporations not subject to tax, see Section 11-04 of those rules and Administrative Code Sections 11-603 and 11-653.

REFUNDS: If a corporation has previously paid tax or made estimated tax payments for the taxable year and is filing this form disclaiming liability for those taxes, the corporation should file a refund claim and attach this form to that claim.