



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

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 11-642(b)(1-a)(K) and 11-687(1) of the New York City Administrative Code, and sections 389(b) and 1043 of the New York City Charter, I hereby promulgate the within Amendment to Rules Relating to the Banking Corporation Tax. This amendment was published in proposed form on January 26, 2010. A hearing for public comment was held on February 26, 2010.

S/S
David M. Frankel
Commissioner of Finance

Note: New matter underscored; old matter in brackets [] to be deleted.

**Amendment to Rules Relating to the
Banking Corporation Tax (19 RCNY Chapter 3)**

Section 1. Subdivision (b) of section 3-04 of the Rules Relating to the Banking Corporation Tax (19 RCNY Chapter 3) is amended to add a new paragraph (2-a) to read as follows:

(2-a) Income allocation percentage where an allocation factor is missing for taxable years beginning in 2009 and thereafter but before 2018. (i) In the event that any of the percentages to be determined under paragraphs (1), (2) or (3) of subdivision (a) of section 11-642 of the Administrative Code cannot be determined because the taxpayer has either no payroll, or no receipts, or no deposits within or without the City, then the computation to be made under paragraph (1-a) of subdivision (b) of section 11-642 of the Administrative Code (applicable to taxable years beginning in 2009 and thereafter but before 2018) shall be made by taking the sum of the products that are determined under such paragraph (1-a) for the factors that are present, and dividing that sum by the sum of the weight factors that apply to each of the present factors in the calculation made under such paragraph (1-a). This amount is then rounded to four decimal places. (An allocation factor is not missing merely because its numerator is zero, but it is missing if both its numerator and its denominator are zero.)

(ii) Weight factor defined. For purposes of this paragraph, “weight factor” is the percentage used in the allocation computation in paragraph (1-a) of subdivision (b) of section 11-642 of the Administrative Code, by which the percentage derived from subdivision (a) of section 11-642 of the Administrative Code is multiplied in such allocation computation. For example, in clause (i) of subparagraph (A) of paragraph (1-a) of subdivision (b) of section 11-642 of the Administrative Code, the weight factor is 18%; in clause (i) of subparagraph (I) of paragraph (1-a) of subdivision (b) of section 11-642 of the Administrative Code, the weight factor is 2%.

(iii) Example: For the tax year 2009, a taxpayer has no employees either within or without the City. The receipts factor percentage determined under paragraph (2) of subdivision (a) of section 11-642 of the Administrative Code is 10%, and the deposit factor percentage determined under paragraph (3) of subdivision (a) of section 11-642 of the Administrative Code is 25%. As the payroll factor is missing, the allocation percentage may be computed by taking the sum of

(A) the product of 46% and 10%, and

(B) the product of 36% and 25%,

which is $.046 + .09 = .136$,

then dividing that sum by the sum of the weight factors for receipts and deposits, which are .46 and .36, respectively:

$\frac{.136}{.46 + .36} = \frac{.136}{.82} = .16585$, rounded to four decimal places = $.1659$

$\frac{.136}{.46 + .36} = \frac{.136}{.82}$

BASIS AND PURPOSE OF AMENDMENT

With respect to banking corporations that substantially provide management, administrative or distributive services to investment companies, Chapter 201 of the Laws of 2009 amended provisions of chapter 6 of title 11 of the New York City Administrative Code relating to the allocation of income to New York City. The amendment phases out the use of a formula based on three factors (deposits, payroll and receipts) and provides for the use of a single receipts factor, phased in over a ten year period. As required by Administrative Code §11-642(b)(1-a)(K) as enacted by Chapter 201 of the Laws of 2009, this amendment includes a provision with guidelines as to how income is to be allocated if any of the three allocation factors cannot be determined.

In the near future, the Department will propose additional amendments to these rules to further conform the rules to the changes made to the Administrative Code by Chapter 201 of the Laws of 2009.