



**CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 11-604(3)(a)(10)(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 General 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
General Corporation Tax (19 RCNY Chapter 11)**

Section 1. The first unnumbered subparagraph of paragraph (2) of subdivision (c) of section 11-63 of the Rules Relating to the General Corporation Tax (19 RCNY Chapter 11) is numbered (i), and new subparagraphs (ii), (iii) and (iv) are added to such paragraph, to read as follows:

(2) (i) The business allocation percentage is computed by adding together the percentages of the taxpayer's real and tangible personal property, business receipts and payrolls within New York City during the period covered by the report, and dividing the total of such percentages by three. However, if one of the factors (property, receipts or payrolls) is missing, the other two percentages are added and the sum is divided by two, and if two of the factors are missing, the remaining percentage is the business allocation percentage. (A factor is not missing merely because its numerator is zero, but it is missing if both its numerator and its denominator are zero.)

Example: A taxpayer owns no real or tangible personal property and rents no real property either within or without the City. The property factor being missing, the business allocation percentage may be computed by adding the percentages derived from the allocation of its receipts and payrolls, and dividing the total by two.

(ii) In the event that any of the percentages to be determined under subparagraphs (i), (iii) or (iii) of paragraph (1) of this subdivision cannot be determined because the taxpayer has either no property, no payroll or no business receipts within or without the City, then the computation to be made under subparagraph 10 of paragraph (a) of subdivision (3) of section 11-604 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 subparagraph (10) 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 subparagraph (10). 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.)

(iii) Weight factor defined. For purposes of subparagraph (ii) of this paragraph, "weight factor" is the percentage used in the allocation computation in subparagraph 10 of paragraph (a) of subdivision (3) of section 11-604 of the Administrative Code, by which the percentage derived from paragraph (1) of this subdivision is multiplied in such allocation computation. For example, in subclause (i) of clause (A) of subparagraph (10) of paragraph (a) of subdivision (3) of section 11-604 of the Administrative Code, the weight factor is 30%; in subclause (i) of clause (I) of subparagraph (10) of paragraph (a) of subdivision (3) of section 11-604 of the Administrative Code, the weight factor is 3 ½%.

(iv) Example: For the tax year 2009, a taxpayer has no employees either within or without the City. The property factor percentage determined under (c)(1)(i) of this section is 10%, and the business receipts factor percentage determined under (c)(1)(ii) of this section is 25%. As the payroll factor is missing, the allocation percentage may be computed by taking the sum of

(A) the product of 30% and 10%, and

(B) the product of 40% and 25%,

which is $.03 + .1 = .13$,

then dividing that sum by the sum of the weight factors for property and business receipts, which are .30 and .40, respectively:

$\frac{.13}{.30 + .40} = \frac{.13}{.70} = .18571$, rounded to four decimal places = $.1857$

$\frac{.13}{.30 + .40} = \frac{.13}{.70}$

BASIS AND PURPOSE OF AMENDMENT

Chapter 201 of the Laws of 2009 amended provisions of chapter 5 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 (tangible personal property, payroll and business receipts) and provides for the use of a single sales factor, phased in over a ten year period. As required by Administrative Code §11-604(3)(a)(10)(K), as enacted by Chapter 201 of the Laws of 2009, this amendment adds a provision to the Rules Relating to the General Corporation Tax to provide 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.