



Instructions for Form CT-245
Maintenance Fee and Activities Return
For a Foreign Corporation Disclaiming Tax Liability
Tax Law — Article 9, Section 181.2

CT-245-I

Who must file

- Any business incorporated outside New York State that is authorized to do business in New York State and wishes to disclaim tax liability.
- A Qualified Subchapter S Subsidiary (QSSS) incorporated outside New York State and authorized to do business in New York State that is included in the parent corporation's return.
- Any business incorporated outside New York State having an employee (including any officer) in this state and disclaiming tax liability.
- Foreign banking corporations described in section 1452(a)(9) of Article 32.

Foreign banking corporations described in sections 1452(a)(2) through 1452(a)(8) of Article 32, insurance corporations, and limited liability companies, limited liability partnerships, and publicly traded partnerships taxed as corporations under the Internal Revenue Code that are authorized to do business in New York State are not required to file Form CT-245.

Annual maintenance fee

Foreign corporations, except those listed in the last paragraph of the above section, that are authorized to do business in New York State must pay an annual maintenance fee of \$300.

Make your payment in United States funds. A foreign check or foreign money order will only be accepted if payable through a United States bank or if marked Payable in U.S. funds.

Failure to pay the annual maintenance fee may result in the annulment of the corporation's authority to do business in New York State (Article 9, section 203-b).

Form CT-245 should not be filed by a foreign corporation that files a New York State franchise tax return under Article 9, 9-A, or 32. The maintenance fee is allowed as a credit against the tax due on the franchise tax return.

Short periods — reduced maintenance fee

The Tax Law allows a reduction of the maintenance fee for periods of 9 months or less:

Table with 2 columns: Period and Maintenance Fee Due. Rows include 6 months or less (\$150), More than 6 months, but not more than 9 months (\$225), and Full amount of the maintenance fee is due for periods of more than 9 months (\$300).

When to file

File this return within 2 1/2 months after the end of your annual reporting period. New York State Tax Law does not provide for an extension of time to file Form CT-245.

Where to file

Mail returns to: NYS Corporation Tax, Processing Unit, PO Box 22038, Albany NY 12201-2038. If you use a delivery service other than the U.S. Postal Service, see Private delivery services below.

Private delivery services

If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to file your return and pay tax. However, if, at a later date, you need to establish the date you filed your return or paid your tax, you cannot use the date recorded by a private delivery service unless you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated

delivery services are listed in Publication 55, Designated Private Delivery Services. See Need help? on the back page of these instructions for information on ordering forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your return, contact that private delivery service for instructions on how to obtain written proof of the date your return was given to the delivery service for delivery. If you use any private delivery service, whether it is a designated service or not, address your return to: State Processing Center, 431C Broadway, Albany NY 12204-4836.

Reporting period

Your tax year for New York State must be the same as your federal tax year. Use this tax return for both calendar and fiscal tax years beginning in 2004, and for short periods beginning in 2005 and ending before December 31, 2005. Complete the beginning and ending tax period boxes in the upper right corner on the front of the form.

NAICS business code number

Enter the six digit NAICS business activity code number from your federal return.

Interest

If you do not pay the maintenance fee on or before the due date of the return, you must pay interest on the amount of the underpayment from the due date to the date paid. For the current rate, call 1 800 972-1233. See Need help? on back for calling hours.

Late filing and late payment — additional charges

Corporations required to pay the maintenance fee will be subject to the penalties for late filing and late payment imposed under section 1085 of Article 27.

Additional charges for late filing and late payment are computed on the amount of the maintenance fee less any payment made on or before the due date.

- A. If you do not file a return when due, add 5% (.05) per month to the maintenance fee, up to a maximum of 25% (.25) (section 1085(a)(1)(A)).
B. If you do not file a return within 60 days of the due date, the addition to the maintenance fee in item A above cannot be less than the smaller of \$100 or 100% of the amount required to be shown as the maintenance fee (section 1085(a)(1)(B)).
C. If you fail to pay the maintenance fee shown on the return, add 1/2% (.005) per month to the maintenance fee, up to a maximum of 25% (.25) (section 1085(a)(2)).
D. The total of the additional charges in items A and C above may not exceed 5% (.05) in any one month, except as provided for in item B above (section 1085(a)).

If you think you are not liable for these additional charges, attach a statement to your return explaining the delay in filing, payment, or both (section 1085).

Note: You may compute your penalty and interest by accessing our Web site at www.nystax.gov and clicking on Electronic Services, or you may call 1 800 972-1233, and we will compute the interest and penalty for you.

Foreign corporations subject to tax under Article 9 or 9-A and not required to file the maintenance fee return

A business incorporated outside New York State is subject to franchise tax if it:

- does business in New York State;
- employs capital in New York State;

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- owns or leases property in New York State; or
- maintains an office in New York State.

The term *doing business* includes all activities that occupy the time or labor of people for profit. Regardless of the nature of its activities, a corporation organized for profit and carrying out any activities for that purpose is deemed to be *doing business* and subject to the tax. It is immaterial whether its activities result in a profit or loss.

The term *employing capital* includes any use of assets in maintaining or aiding the corporate enterprise or activity in New York State.

Foreign banking corporations subject to tax under Article 32 and not required to file the maintenance fee return (except section 1452(a)(9) corporations)

A foreign banking corporation or association described in sections 1452(a)(2)-(8) of Article 32 that is doing business in New York State in a corporate or organized capacity, and is organized under the laws of the United States or the laws of any other state or country, is subject to a franchise tax under Article 32, but not the maintenance fee under section 181.

Only foreign banking corporations described in section 1452(a)(9) of Article 32 are subject to the maintenance fee and activities return (Form CT-245).

Activities deemed insufficient to subject a foreign corporation to tax under Article 9, 9-A, or 32 (section 209.2(f))

A corporation is not considered to be doing business, employing capital, owning or leasing property, or maintaining an office in New York State because of one or more of the following activities:

- the maintenance of cash balances with banks or trust companies in New York State;
- the ownership of shares of stock or securities kept in New York State in a rented safe deposit box, safe, or vault, if pledged as collateral security, or deposited in safekeeping or custody accounts with banks, trust companies, or brokers who are members of a recognized security exchange;
- any action by a bank, trust company, or broker that is incidental to the rendering of safekeeping or custodial service to the corporation;
- the maintenance of an office in this state by one or more officers or directors of the corporation who are not corporation employees;
- the keeping of a corporation's books or records in New York State by someone other than an employee of the corporation; or
- the use of a non-affiliated fulfillment service or the ownership of property stored on the premises of such fulfillment service (see TSB-M-98(7)C, *1998 Summary of Corporation Tax Legislative Changes*).

Final return

Mark an **X** in the *Final return* box on the front of the return, under the form number, only if filing a final tax return for one of the following reasons:

- surrender of authority by a foreign corporation (New York Business Corporation Law section 1310);
- merger or consolidation (New York Business Corporation Law section 907); or
- termination of existence - foreign corporation (New York Business Corporation Law section 1311).

See Publication 110, *Information and Instructions for Termination of Business Corporations*, for the proper procedures to follow when terminating your business. To request this publication, see *Need help?*

In the case of a merger or consolidation, the *Final return* check box would only be used by the nonsurviving foreign corporation.

The return will be treated as a final return if your business is terminated with the Department of State, and the return covers the tax period from the last return filed to the date of the termination.

Do not mark the box if you are only changing the type of return that you file (for example, CT-245 to CT-3; CT-245 to CT-4).

Surrender of authority and liability for taxes and fees

In order to surrender the authority of a foreign corporation that is authorized to do business in this state, the Tax Law requires the consent of the Commissioner of Taxation and Finance. This consent will be given only if the commissioner ascertains that all fees, franchise taxes, and other taxes (such as sales tax) imposed under the Tax Law that have accrued against the corporation have been paid. The procedure for obtaining a consent and the forms that are required to be filed with this department are set forth in Publication 110.

Changes in business information

You must report any changes in your business name, ID number, mailing address, physical address, telephone number, or owner/officer information on Form DTF-95, *Business Tax Account Update*. If only your address has changed, you may use Form DTF-96, *Report of Address Change for Business Tax Accounts*, to correct your address for this and all other tax types. You can get these forms from our Web site, by phone, or by fax. See *Need help?* below for the phone numbers and Web address.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100
Business Tax Information Center: 1 800 972-1233
From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8:00 A.M. to 5:00 P.M. eastern time).



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.