



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

Form CT-1, Supplement to Corporation Tax
Instructions

See Form CT-1 for the following topics:

- Changes for the current tax year (general and by Tax Law Article)
• Business information (how to enter and update)
• Entry formats
- Dates
- Negative amounts
- Percentages
- Whole dollar amounts
• Third-party designee
• Paid preparer identification numbers
• Is your return in processible form?
• Use of reproduced and computerized forms
• Electronic filing and electronic payment mandate
• Web File
• Form CT-200-V
• Collection of debts from your refund or overpayment
• Fee for payments returned by banks
• Reporting requirements for tax shelters
• Tax shelter penalties
• Voluntary Disclosure and Compliance Program
• Your rights under the Tax Law
• Need help?
• Privacy notification

General information

A foreign corporation that is authorized to do business in New York must pay an annual maintenance fee. The following entities are exempt from this fee:

- banking corporations as defined in Article 32 section 1452(a), paragraphs 1 through 8;
• insurance corporations;
• limited liability companies (LLCs);
• limited liability partnerships (LLPs); and
• publicly traded partnerships taxed as corporations under the Internal Revenue Code (IRC).

The maintenance fee is \$300. However if the foreign authorized corporation filed a short period return, the maintenance fee may be less than \$300. See Short periods - reduced maintenance fee.

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).

If the foreign authorized corporation is disclaiming tax liability, it does not file a tax return under Article 9, 9-A, or 32. However, it must file and pay the \$300 maintenance fee on Form CT-245.

If the foreign authorized corporation files a tax return under Article 9, 9-A, or 32, the payment of corporation tax of at least \$300 on that tax return satisfies the maintenance fee requirement and Form CT-245 should not be filed.

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, Maintenance fee due. Row: 6 months or less \$150

Table with 2 columns: Period, Amount. Row 1: More than 6 months, but not more than 9 months \$225. Row 2: More than 9 months \$300

Who must file Form CT-245

- 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. (Employees are considered to be working in this state if they come into New York State on corporate business.)
- Foreign banking corporations described in Article 32 section 1452(a)(9) that are authorized to do business in New York State and wish to disclaim tax liability.

Foreign banking corporations described in Article 32 section 1452(a)(2) through 1452(a)(8), insurance corporations, LLCs, LLPs, and publicly traded partnerships taxed as corporations under the IRC that are authorized to do business in New York State are not required to file Form CT-245.

Foreign corporations subject to tax under Article 9 or 9-A and not required to file Form CT-245

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;
- 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 Form CT-245 (except section 1452(a)(9) corporations)

A foreign banking corporation or association described in Article 32 section 1452(a)(2)-(8) 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 Article 9 section 181.

Activities deemed insufficient to subject a foreign corporation to tax under Article 9, 9-A, or 32

A foreign 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, or 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; or
- the keeping of a corporation's books or records in New York State by someone other than an employee of the corporation.

In addition, a foreign corporation is not considered to be doing business, employing capital, owning or leasing property, or maintaining an office in New York State under Article 9-A because of one or more of the following activities:

- 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*); or
- the participation in trade shows in New York State for 14 days or less during its tax year for federal income tax purposes. This is regardless of whether the corporation has employees or other staff present at the trade shows, providing that:
 - the corporation's trade show activity is limited to displaying goods or promoting services;
 - no sales are made at the trade show; and
 - any orders received are sent outside New York State for acceptance or rejection and are filled from outside the state.

When to file

File this return within 2½ 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*.

Private delivery services

If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to mail in your form and tax payment. However, if, at a later date, you need to establish the date you filed 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?* for information on obtaining forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your form, contact that private delivery service for instructions on how to obtain written proof of the date your form was given to the delivery service for delivery. If you use **any** private delivery service, whether it is a designated service or not, send the forms covered by these instructions to: State Processing Center, 431C Broadway, Albany NY 12204-4836.

Reporting period

Use this tax return for calendar year 2011 and fiscal years that begin in 2011 and end in 2012.

You can also use the 2011 return if:

- you have a tax year of less than 12 months that begins and ends in 2012, **and**
- the 2012 return is not yet available at the time you are required to file the return.

In this case you must show your 2012 tax year on the 2011 return and take into account any tax law changes that are effective for tax years beginning after December 31, 2011.

All filers must complete the beginning and ending tax year boxes in the upper right corner on page 1 of the form.

Line A

Make your check or money order payable in United States funds. We will accept a foreign check or foreign money order only if payable through a United States bank or if marked **Payable in U.S. funds**.

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 (see **Note**).

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 Article 27 section 1085.

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.

- 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)).
- 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)).
- If you fail to pay the maintenance fee shown on the return, add ½% (.005) per month to the maintenance fee, up to a maximum of 25% (.25) (section 1085(a)(2)).
- 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, or you may call and we will compute the interest and penalty for you (see *Need help?*).

Amended return

If you are filing an amended return, mark an **X** in the *Amended return* box.

When filing an amended return for a credit or refund, the amended return must be filed within three years of the date the original return was filed or within two years of the date the tax was paid, whichever is later. If you did not file an original return, you must make the request within two years of the date the tax was paid. For additional limitations on credits or refunds, see Tax Law, Article 27, section 1087.

Final return

Mark an **X** in the *Final return* box on page 1 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).

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, *General Business Corporation Franchise Tax Return*; CT-245 to CT-4, *General Business Corporation Franchise Tax Return Short Form*).

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.

For information on voluntary dissolution and surrender of authority, see Forms TR-125, *Instructions for Voluntary Dissolution of New York State Business Corporation*, and TR-199, *Surrender of Authority-Foreign Corporation*, on our Web site (*see Need help?*).

Signature

The return must be certified by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the taxpayer corporation.

The return of an association, publicly traded partnership, or business conducted by a trustee or trustees must be signed by a person authorized to act for the association, publicly traded partnership, or business.

If an outside individual or firm prepared the return, all applicable entries in the paid preparer section must be completed, including identification numbers (see *Paid preparer identification numbers* in Form CT-1). Failure to sign the return will delay the processing of any refunds and may result in penalties.
