

**New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau**

TSB-M-97(8)C
Corporation Tax
December 22, 1997

**Railroad and Trucking Corporations
Subject to Tax under Article 9, 9-A or 32 of the Tax Law**

General

Effective for taxable years beginning on or after January 1, 1998, railroad and trucking corporations will no longer be subject to tax under sections 183 and 184 of Article 9 of the Tax Law unless the corporations **elect by March 15, 1998** to be subject to these taxes.¹ (The election should be made on Form CT-187, *Election by Railroad and Trucking Corporations to Be Taxable Under Article 9*.) Without making the election, railroad and trucking corporations will be subject to tax under Article 9-A of the Tax Law, Franchise Tax on Business Corporations, for taxable years beginning on or after January 1, 1998. (In some unusual cases, a railroad or trucking corporation that is a subsidiary of a banking corporation will be subject to Article 32 of the Tax Law, Franchise Tax On Banking Corporations, rather than Article 9-A. All of the provisions in this TSB-M apply to these banking subsidiaries, except for the economic development zone employment incentive credit and the employment incentive credit provisions described in item 4 of the Transition Provisions section.)

Railroad and trucking corporations include corporations, joint-stock companies and associations formed for or principally engaged in the conduct of a railroad, palace car, sleeping car or trucking business, or formed for or principally engaged in the conduct of two or more of such businesses.

Corporations that do not elect to remain taxable under Article 9 must file a final CT-184 franchise tax return and, if subject to the MTA surcharge, a final CT-183-M and CT-184-M MTA surcharge returns on March 15, 1998, covering the year 1997. However, since the tax under section 183 is paid in advance, these corporations need **not** file a CT-183 franchise tax return on March 15, 1998.

The first installment of estimated tax for the next taxable year need not be paid with the final CT-184 franchise tax return and the final CT-184-M MTA surcharge return. However, the proper amount of estimated tax under Article 9-A for the next taxable year must still be paid. For additional information regarding declarations and payments of estimated tax, see Subparts 7-2 and 7-3 of the Business Corporation Franchise Tax regulations.

Election to be Subject to Tax under Sections 183 and 184 of Article 9 of the Tax Law

A valid one-time election to be subject to Article 9 should be made by filing Form CT-187, *Election by Railroad and Trucking Corporations to Be Taxable Under Article 9*, on or before the date it is due. A railroad or trucking corporation subject to sections 183 and 184 of Article 9 for the year 1997 **must file its election by March 15, 1998**. A corporation that is not subject to sections 183 and 184 of Article 9 for the year 1997 (for example, a railroad or trucking corporation that commences business in New York State after 1997) must file its election no later than the due date (without regard to extensions) of the first return that would be due under sections 183, 183-a, 184 or 184-a of Article 9 or under Article 9-A.

Example 1: *A railroad corporation is subject to tax under Article 9 and has been filing New York State Corporation Franchise Tax Returns CT-183/CT-184 since its incorporation in New York on January 1, 1980. The corporation decides to submit an election to remain taxable under Article 9. It completes Form CT-187 and files it on March 15, 1998. The corporation therefore remains taxable under Article 9.*

Example 2: *A trucking corporation is incorporated in New York State on March 8, 1999. The corporation's taxable year for federal income tax purposes is the fiscal year ending on June 30. The corporation wishes to submit a one-time election to be subject to tax under Article 9. The election must be filed no later than the first day the corporation is required to file a return under Article 9 or 9-A. Under Article 9, the taxes imposed by sections 183 and 184 and the surcharges imposed by sections 183-a and 184-a are computed based on a calendar year. The section 183 tax is payable in advance and the return for the year 1999 would be due by March 15, 1999. Under sections 183-a, 184 and 184-a, the returns for the year 1999 would be due by March 15, 2000. Under Article 9-A, the return for the short period March 8, 1999 through June 30, 1999 would be due by September 15, 1999. Accordingly, the election must be filed by March 15, 1999, the earliest of the return due dates listed.*

Revoking the Election

Once made, an election continues in effect until revoked. If a corporation revokes an election, it will be subject to tax under Article 9-A. It may not elect at a later date to be, once again, subject to tax under Article 9.

A revocation of the election to be taxable under Article 9 should be made by filing Form CT-187, *Election by Railroad and Trucking Corporations to Be Taxable Under Article 9*. This form must be filed by March 15 of the first year the corporation is not to be subject to Article 9. The revocation will be effective as of January 1 of that year. A revocation filed after March 15 in a given year will take effect the following January 1.

A corporation that revokes its election to be taxable under Article 9 must file a final CT-184 franchise tax return and, if subject to the MTA surcharge, a final CT-183-M and CT-184-M MTA surcharge returns on March 15 of the year for which the revocation is effective. Since the tax under section 183 is paid in advance, no CT-183 franchise tax return is due in the year for which the revocation is effective.

Example: *On March 15, 1999, a trucking corporation revokes its election by filing Form CT-187. The revocation is effective for 1999. Because of the revocation, the corporation need not file a CT-183 franchise tax return on March 15, 1999, for the year 1999. The corporation is also subject to the MTA surcharge. It will be required to file a CT-184, a CT-183-M and a CT-184-M on March 15, 1999, for the year 1998. The corporation will become subject to tax under Article 9-A beginning on January 1, 1999. If the corporation's taxable year for federal income tax purposes is a calendar year, its first franchise tax return will be due under Article 9-A on March 15, 2000. If the corporation's taxable year is a fiscal year, its first franchise tax return under Article 9-A will be*

due 2½ months after the close of its taxable year ending in 1999. Having revoked its Article 9 election, the corporation may not at a later date elect to, once again, be taxable under Article 9.

Franchise Tax Reporting Requirements under Article 9 or 9-A of the Tax Law

Under Article 9, the taxes imposed by sections 183 and 184 are computed based on a calendar year. Taxpayers subject to tax under sections 183 and 184 of Article 9 must file Form CT-183, *Transportation and Transmission Corporation Franchise Tax Return on Capital Stock*, and Form CT-184, *Transportation and Transmission Corporation Franchise Tax Return on Gross Earnings*. Form packet CT-183-P/CT-184-P contains frequently used forms and instructions for transportation and transmission corporations. For section 183, the tax is computed based on the preceding year, and is payable in advance. The return is due on March 15 of the corporation's current calendar year. That is, a corporation files its return for the year 1998 by March 15, 1998, with the tax computed based on 1997 information. If a corporation does not become subject to tax under section 183 until after March 15 of a calendar year, its first return is not due until March 15 of the following calendar year. For section 184, the return is due on March 15 following the close of the calendar year.

Example 1: *A trucking corporation is incorporated in New York State on March 15, 1999. Its CT-183 franchise tax return is due on March 15, 1999, for the year 1999. Its CT-184 franchise tax return is due on March 15, 2000, for the year 1999.*

Example 2: *A trucking corporation is incorporated in New York State on March 16, 1999. No CT-183 franchise tax return is due for the year 1999. Its first CT-183 return is due on March 15, 2000, for the year 2000. Its CT-184 franchise tax return is due on March 15, 2000, for the year 1999.*

Beginning January 1, 1998, railroad and trucking corporations that do not elect to be subject to tax under Article 9 of the Tax Law will be subject to tax under Article 9-A for a tax year beginning January 1, 1998. Under Article 9-A, taxpayers must file Form CT-3 or CT-4, *Business Corporation Franchise Tax Return* (or Form CT-3-S or CT-4-S, *New York S Corporation Franchise Tax Return*, for electing New York S corporations). Form packet CT-3-P/CT-4-P contains frequently used forms and instructions for general business corporations. Form packet CT-3-S-P/CT-4-S-P contains frequently used forms and instructions for New York S corporations. (Note: New York S corporations are not subject to the MTA surcharge.)

Example 3: *A trucking corporation is subject to tax under Article 9 and has been filing New York State Corporation Franchise Tax Returns CT-183/CT-184 since its incorporation in New York on March 29, 1985. The corporation is also subject to the MTA surcharge. The corporation does not elect to remain taxable under Article 9. The corporation will become subject to tax under Article 9-A beginning on January 1, 1998. No CT-183 is due on March 15, 1998, for the year 1998. It will be required to file a final CT-184, CT-183-M and CT-184-M on March 15, 1998, for the year 1997. The corporation's taxable year for federal income tax purposes is a calendar year. Its first franchise tax return will be due under Article 9-A on March 15, 1999, for the year 1998.*

Under Articles 9-A, certain related general business corporations may be permitted or required to file combined reports or returns if certain requirements are met. For information concerning these requirements, refer to Subpart 6-2 of the Business Corporation Franchise Tax Regulations.

Combined Article 9-A corporations must file Form CT-3-A, *General Business Corporation Combined Franchise Tax Return*, or Form CT-3-S-A, *New York S Corporation Combined Franchise Tax Return*. Form packet CT-3-A-P contains frequently used forms and instructions for general business corporations filing a combined franchise tax return. Form packet CT-3-S-A-P contains frequently used forms and instructions for New York S corporations filing a combined franchise tax return. (Note: New York S corporations are not subject to the MTA surcharge.)

Under Article 9-A, corporations principally engaged in the conduct of a railroad or trucking business must allocate business income and capital based on mileage within and without New York State. This allocation method is used instead of the generally applicable three-factor formula based on payroll, property and receipts. (The mileage allocation method is the same as that used for trucking corporations under section 184 but is different than that used by railroad corporations under section 184.) Railroad and trucking corporations required to use the mileage allocation method will not be permitted to file a combined report that includes a taxpayer or other corporation that is not also required to use the mileage allocation method.

Due Dates for Returns Under Article 9-A of the Tax Law

If railroad and trucking corporations subject to sections 183 and 184 for 1997 do not make the one-time election to be taxable under Article 9, the first franchise tax returns under Article 9-A for corporations whose taxable year for federal income tax purposes is a calendar year are due on March 15, 1999. A corporation whose taxable year for federal income tax purposes is a fiscal year will have a short taxable year beginning on January 1, 1998 and ending on the same date its fiscal year ends in 1998. The first franchise tax returns under Article 9-A for these short periods are due 2½ months after the close of the taxable year (the last day of its fiscal year). Such a corporation will not be required to file a CT-183 franchise tax return for 1998 on March 15, 1998. Further, on its CT-184 franchise tax return for the year 1997 (due March 15, 1998), it will not be required to compute and pay a first installment of estimated tax for the year 1998.

***Example:** A foreign railroad corporation has been subject to tax under Article 9 since it began doing business in New York State on July 1, 1941. The corporation's taxable year for federal income tax purposes is the fiscal year ending on June 30. For the 1998 tax year, the corporation does not elect to remain taxable under Article 9. Accordingly, the corporation is subject to tax under Article 9-A for the tax year beginning on January 1, 1998 and ending on June 30, 1998. The Article 9-A return is due September 15, 1998, which is 2½ months after the close of its short taxable year.*

New York S Election under Article 9-A of the Tax Law

A corporation that is a federal S corporation (or plans to be a federal S corporation) may elect to be a New York S corporation. A New York S election is available to corporations taxable under Article 9-A. It is not available to corporations taxable under Article 9. To make a New York State S election, a corporation must be a federal S corporation. If a federal S election is pending, a New York S election may be filed indicating that a federal S election is pending. A New York S election must be made by filing Form CT-6, *Election by a Federal S Corporation To be Treated as a New York S Corporation*. To be effective for a taxable year, the election must be made at any time during the preceding taxable year, or on or before the fifteenth day of the third month of the taxable year to which the election will apply. (If the taxable year to which the election will apply is a short period of less than 2½ months, the corporation will nevertheless have 2½ months following the date it became subject to tax under Article 9-A to make the election.)

Example: A trucking corporation was an Article 9 taxpayer for the year 1997, and does not elect to remain under Article 9 for 1998. Its taxable year for federal income tax purposes is the fiscal year ending on January 31. The corporation makes a New York S election for its first filing period under Article 9-A. The corporation's first Article 9-A franchise tax return is due on April 15, 1998, for the short period January 1, 1998 through January 31, 1998. For the New York S election to be effective for the short period, the corporation must file Form CT-6 any time during the year 1997, or on or before March 15, 1998. In addition, the corporation must be a federal S corporation, or a federal S election must be pending when Form CT-6 is filed.

For additional information about New York S elections, refer to Form CT-6, *Election by a Federal S Corporation To be Treated as a New York S Corporation*; Form CT-6-I, *Instructions for Form CT-6*; and Publication 35, *New York Tax Treatment of S Corporations and their Shareholders*.

Transition Provisions

For railroad and trucking corporations subject to tax under sections 183 and 184 of Article 9 of the Tax Law for taxable years ending on December 31, 1997, that are subject to tax under Article 9-A of the Tax Law for taxable years beginning on or after January 1, 1998, the following transitional provisions apply:

1. For estimated tax purposes and for purposes of obtaining an automatic extension to file a return under Article 9-A, the amount of tax for a taxpayer's previous taxable year is the sum of the taxes shown on such taxpayer's returns under sections 183 and 184 for the taxable year ending on December 31, 1997. For section 183, this is the tax shown on the CT-183 franchise tax return due on March 15, 1997. For section 184, this is the tax shown on the CT-184 franchise tax return due on March 15, 1998. Also, the amount of MTA tax surcharge for a taxpayer's previous taxable year is the sum of the surcharges shown on such taxpayer's returns under sections 183-a and 184-a for the taxable year ending on December 31, 1997, that are due on March 15, 1998.

2. Any amount of overpayment of tax or a tax surcharge claimed on a taxpayer's return under sections 183, 183-a, 184 or 184-a of the Tax Law for the taxable year ending on December 31, 1997 is treated as if it were an overpayment under Article 9-A of the Tax Law for purposes of application against a tax liability or estimated tax. For section 183, this is the amount of overpayment of tax claimed on the CT-183 return due on March 15, 1997. For sections 183-a, 184 or 184-a, this is the amount of overpayment of tax or tax surcharge claimed on the CT-183-M, CT-184 or CT-184-M return due on March 15, 1998.
3. Any portion of a credit allowed for the special additional mortgage recording tax under section 187 of Article 9 of the Tax Law that is not applied against the tax due under Article 9 for any taxable year ending on or before December 31, 1997, may be claimed as a special additional mortgage recording tax credit under Article 9-A of the Tax Law.
4. For any Article 9-A taxpayer that claims an economic development zone employment incentive credit or employment incentive credit for a taxable year beginning on January 1, 1998, for purposes of the employment level comparison required under these credits, the phrase "the taxable year immediately preceding the taxable year for which" the economic development zone investment tax credit or the investment tax credit is allowed means the taxpayer's taxable year under sections 183 and 184 of the Tax Law ending on December 31, 1997. For section 183, the return for the taxable year ending on December 31, 1997 is the CT-183 franchise tax return due on March 15, 1997. For section 184, the return for the taxable year ending on December 31, 1997 is the CT-184 franchise tax return due on March 15, 1998.

The provisions described in items 1 through 4 of this section, with appropriate adjustments of dates, also apply to railroad and trucking corporations that first become subject to tax in New York State after December 31, 1997, initially elect to be subject to tax under Article 9 of the Tax Law, but then revoke such election.

¹ In addition, the rate of tax under section 184 of Article 9, for railroad and trucking corporations, was reduced from 0.75% to 0.6% of gross earnings from all sources within New York State, effective January 1, 1997 through June 30, 2000. The tax rate declines further to 0.375 % on July 1, 2000 and thereafter. (Due to the July 1, 2000 rate decrease, the blended rate for the taxable year 2000 will be 0.4875 %.) For taxable years beginning in 2000 and thereafter, the MTA surcharge under section 184-a for railroad and trucking corporations will continue to be calculated as if the tax rate under section 184 had remained 0.6%.