

Income/Franchise:

New York: Draft Proposed Article 9-A Rules Include Provisions Modeled on MTC P.L. 86-272 Statement

Draft Proposed Amended New York State Article 9-A Business Corporation Franchise Tax Regulations, Part 1, Part 2, and Part 3, N.Y. Dept. of Tax. & Fin. (4/22); *Draft Proposed Amended New York State Article 9-A Business Corporation Franchise Tax Regulations, Part 5 (Tax Credits), Part 6 (Reports), Part 7 (Payment of Tax, Declaration and Payment of Estimated Tax, and Collection), Part 8 (Assessment, Revision, Refund and Review), Part 9 (MTA Surcharge), and New Part 10*, N.Y. Dept. of Tax. & Fin. (4/22). The New York State Department of Taxation and Finance (Department) released updates to previously posted draft proposed amendments to New York Article 9-A State Business Corporation Franchise Tax Regulations, Parts 1, 2 and 3 covering definitions, nexus, accounting periods, income and capital, capital losses, prior net operating loss conversion subtraction, and net operating losses. According to the Department, the updated nexus provisions are “largely modeled” after the Multistate Tax Commission (MTC) model statement addressing P.L. 86-272 and activities conducted via the internet. Similar to the MTC’s recently updated model statement addressing P.L. 86-272, the updated draft proposed Article 9-A regulations add several factual scenarios indicating, in each case, whether the business activity is or is not protected by P.L. 86-272.

[URL: https://www.tax.ny.gov/pdf/bus/ct/parts-1-through-3-spring-2022.pdf](https://www.tax.ny.gov/pdf/bus/ct/parts-1-through-3-spring-2022.pdf)

[URL: https://www.tax.ny.gov/pdf/bus/ct/parts-5-through-10-spring-2022.pdf](https://www.tax.ny.gov/pdf/bus/ct/parts-5-through-10-spring-2022.pdf)

The Department also released combined updates to previously posted draft proposed amendments to New York Article 9-A State Business Corporation Franchise Tax Regulations, Parts 5-10, covering tax credits, reports, payment of tax, assessments, the metropolitan transportation business tax surcharge (MTA surcharge)), as well as new Part 10 (involving special rules for qualified New York manufacturers, corporate partners, New York S corporations, real estate investment trusts (REITS), regulated investment companies (RICs), domestic international sales corporations (DISCs) and real estate mortgage investment conduits (REMICs). Comments on all these updated proposals are due to the Department by June 30, 2022. The Department notes that it intends to begin the formal regulation adoption process this year, and thus it strongly encourages prompt feedback.

See forthcoming Multistate Tax Alert for more details on these proposals, including some related taxpayer considerations, and please contact us with any questions in the meantime.

— Don Roveto (New York)
Partner
Deloitte Tax LLP
droveto@deloitte.com

Mary Jo Brady (Jericho)
Senior Manager
Deloitte Tax LLP
mabrady@deloitte.com

Jack Trachtenberg (New York)
Principal
Deloitte Tax LLP
jtrachtenberg@deloitte.com

Ken Jewell (Parsippany)
Managing Director
Deloitte Tax LLP
kjewell@deloitte.com

Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

Joshua Ridiker (New York)
Senior Manager
Deloitte Tax LLP
jridiker@deloitte.com

Michael Spencer (Washington, DC)
Manager
Deloitte Tax LLP
mispencer@deloitte.com

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