

Income/Franchise:

New York: Updated Draft Proposed Article 9-A Rules Revise “Investment Capital” Definition and Contain New Example

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. (8/22). 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. The latest updates revise the definition of “investment capital,” specifically “constitutionally protected investment capital,” to state that the United States Constitution prohibits the State from apportioning income or gain from intangible assets when such income or gain lacks “a sufficient connection to activities or presence in the state by the corporation” and replace language indicating that the requisite connection is to “a unitary business being carried on in the state by the corporation.” The updated draft proposed amendment further states, “[f]or example, the income or gain from an intangible asset (*i.e.*, a debt obligation or other security) is apportionable where the underlying activities of the recipient of the intangible income and the source of the income constitute a unitary business; or where the intangible asset or the income from the intangible asset serves an operational function in the taxpayer’s business.” The update includes a new “Example 16” in draft proposed regulation section 3-6, illustrating these latest edits with regard to a sale of a partnership interest. Comments on the updated draft proposal are due to the Department by August 26, 2022. Please contact us with any questions.

URL: <https://www.tax.ny.gov/pdf/bus/ct/Parts%201%20through%203%20August%202022.pdf>

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