

8170

I N S E N A T E

July 29, 2016

Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and
when printed to be committed to the Committee on Rules

AN ACT to amend the tax law, in relation to the use of fulfillment
services of certain persons

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 208 of the tax law is amended by adding a new
2 subdivision 13 to read as follows:

3 13. THE TERM "FULFILLMENT SERVICES" SHALL MEAN ANY OF THE FOLLOWING
4 SERVICES PERFORMED BY AN ENTITY ON ITS PREMISES ON BEHALF OF A PURCHAS-
5 ER:

6 (A) THE ACCEPTANCE OF ORDERS ELECTRONICALLY OR BY MAIL, TELEPHONE,
7 TELEFAX OR INTERNET;

8 (B) RESPONSES TO CONSUMER CORRESPONDENCE OR INQUIRES ELECTRONICALLY OR
9 BY MAIL, TELEPHONE, TELEFAX OR INTERNET;

10 (C) BILLING AND COLLECTION ACTIVITIES; OR

11 (D) THE SHIPMENT OF ORDERS FROM AN INVENTORY OF PRODUCTS OFFERED FOR
12 SALE BY THE PURCHASER.

13 S 2. Subdivision 2 of section 209 of the tax law, as amended by
14 section 5 of part A of chapter 59 of the laws of 2014, is amended to
15 read as follows:

16 2. A foreign corporation shall not be deemed to be doing business,
17 employing capital, owning or leasing property, or maintaining an office
18 in this state, or deriving receipts from activity in this state, for the
19 purposes of this article, by reason of (a) the maintenance of cash
20 balances with banks or trust companies in this state, or (b) the owner-
21 ship of shares of stock or securities kept in this state, if kept in a
22 safe deposit box, safe, vault or other receptacle rented for the
23 purpose, or if pledged as collateral security, or if deposited with one
24 or more banks or trust companies, or brokers who are members of a recog-
25 nized security exchange, in safekeeping or custody accounts, or (c) the
26 taking of any action by any such bank or trust company or broker, which
27 is incidental to the rendering of safekeeping or custodian service to
28 such corporation, or (d) the maintenance of an office in this state by

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD15932-01-6

1 one or more officers or directors of the corporation who are not employ-
2 ees of the corporation if the corporation otherwise is not doing busi-
3 ness in this state, and does not employ capital or own or lease property
4 in this state, or (e) the keeping of books or records of a corporation
5 in this state if such books or records are not kept by employees of such
6 corporation and such corporation does not otherwise do business, employ
7 capital, own or lease property or maintain an office in this state, or
8 (f) THE USE OF FULFILLMENT SERVICES OF A PERSON OTHER THAN AN AFFILIATED
9 PERSON AND THE OWNERSHIP OF PROPERTY STORED ON THE PREMISES OF SUCH
10 PERSON IN CONJUNCTION WITH SUCH SERVICES, OR (G) any combination of the
11 foregoing activities. FOR PURPOSES OF THIS SUBDIVISION, PERSONS ARE
12 AFFILIATED PERSONS WITH RESPECT TO EACH OTHER WHERE ONE OF SUCH PERSONS
13 HAS AN OWNERSHIP INTEREST OF MORE THAN FIVE PERCENT, WHETHER DIRECT OR
14 INDIRECT, IN THE OTHER, OR WHERE AN OWNERSHIP INTEREST OF MORE THAN FIVE
15 PERCENT, WHETHER DIRECT OR INDIRECT, IN THE OTHER, OR WHERE AN OWNERSHIP
16 INTEREST OF MORE THAN FIVE PERCENT, WHETHER DIRECT OR INDIRECT, IS HELD
17 IN EACH OF SUCH PERSONS BY ANOTHER PERSON OR BY A GROUP OF OTHER PERSONS
18 WHICH ARE AFFILIATED PERSONS WITH RESPECT TO EACH OTHER. THE TERM
19 "PERSON" IN THE PRECEDING SENTENCE AND IN PARAGRAPH (F) OF THIS SUBDIVI-
20 SION SHALL HAVE THE MEANING ASCRIBED THERETO BY SUBDIVISION (A) OF
21 SECTION ELEVEN HUNDRED ONE OF THIS CHAPTER.

22 S 3. This act shall take effect January 1, 2017 and shall apply to
23 taxable years commencing on or after such date.