STATE OF NEW YORK

4624--A

2017-2018 Regular Sessions

IN SENATE

February 23, 2017

Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 Assembly, do enact as follows:

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

13. The term "fulfillment services" shall mean any of the following services performed by an entity on its premises on behalf of a purchaser:

(a) the acceptance of orders electronically or by mail, telephone, telefax or internet;

(b) responses to consumer correspondence or inquires electronically or by mail, telephone, telefax or internet;

(c) billing and collection activities; or

(d) the shipment of orders from an inventory of products offered for sale by the purchaser.

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

2. A foreign corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in this state, or deriving receipts from activity in this state, for the purposes of this article, by reason of (a) the maintenance of cash balances with banks or trust companies in this state, or (b) the ownership of shares of stock or securities kept in this state, if kept in a

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

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safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation, or (d) the maintenance of an office in this state by one or more officers or directors of the corporation who are not employees of the corporation if the corporation otherwise is not doing business in this state, and does not employ capital or own or lease property in this state, or (e) the keeping of books or records of a corporation in this state if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property or maintain an office in this state, or (f) **the use of fulfillment services, provided receipts, including receipts pursuant to such services, do not exceed the threshold set by paragraph (b) of subdivision one of this section, of a person other than an affiliated person and the ownership of property stored on the premises of such person in conjunction with such services, or (g)** any combination of the foregoing activities. **For purposes of this subdivision, persons are affiliated persons with respect to each other where one of such persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons which are affiliated persons with respect to each other. The term "person" in the preceding sentence and in paragraph (f) of this subdivision shall have the meaning ascribed thereto by subdivision (a) of section eleven hundred one of this chapter.**

§ 3. This act shall take effect January 1, 2019 and shall apply to taxable years commencing on or after such date.