New York State Department of Taxation and Finance

# Instructions for Forms CT-32-A and CT-32-A/B

## Banking Corporation Combined Franchise Tax Return And Combined Group Detail Spreadsheet

**Tax Law — Article 32**

**CT-32-A-I**

## Form CT-1, *Supplement to Corporation Tax Instructions*

See Form CT-1 for the following topics:

- Changes for the current tax year (general and by Tax Law Article)
- Business information (how to enter and update)
- Entry formats
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  - Negative amounts
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- Is your return in processible form?
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- Electronic filing and electronic payment mandate
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## General information

Each banking corporation or bank holding company is generally a separate taxable entity and must file its own tax return. However, a group of banking corporations and bank holding companies may be permitted or required to file a combined return to properly reflect the tax liability of these corporations under Tax Law Article 32.

If a banking corporation or bank holding company has been required or permitted to file a combined return, the corporation must continue to file a combined return until the facts affecting its combined reporting status materially change.

### General filing instructions

For the combined franchise tax return, one member of the combined group is designated the parent, whether or not it is the actual parent corporation, and must file Form CT-32-A. Each member of the combined group, except the parent, must file its individual certification on Form CT-32-A/C, *Report By a Banking Corporation Included in a Combined Franchise Tax Return.*

The combined group is also required to file Form CT-32-A/B, *Combined Group Detail Spreadsheet,* which is a breakdown schedule of all the individual member information. See *Other forms required*.

The parent corporation and each corporation in the combined group are jointly responsible for the completion and filing of Forms CT-32-A, CT-32-A/B, and CT-32-A/C, and any other federal or state attachments that may be required.

Compute the combined tax on Form CT-32-A. If the combined group includes more than two corporations, report the ENI, alternative ENI, taxable assets, and allocation percentages of the additional members of the group on Form CT-32-A/B. Use additional CT-32-A/B forms as required.

Use column D of Schedules B, C, D, and E of Form CT-32-A to compute intercorporate eliminations. See *Computation of tax* for more information about intercorporate transactions.

Do not complete the shaded areas on Forms CT-32-A and CT-32-A/B.

### Other forms required

**Form CT-32-A/B** is a breakdown form for all the individual member information. The lines on this form are identical to the lines on Form CT-32-A. Therefore, separate line instructions are not needed; see *Line instructions for Forms CT-32-A and CT-32-A/B.*

**Form CT-32-A/C** is an individual form that must be filed by each member of the New York State combined group, except the parent corporation and any non-taxpayer included in the group.

Attach Forms CT-32-A/B and CT-32-A/C to the parent corporation's Form CT-32-A.

**Form CT-32-M, *Banking Corporation MTA Surcharge Return.*** Only the parent must file Form CT-32-M if any corporation in the combined group does business, employs capital, owns or leases property, or maintains an office in the Metropolitan Commuter Transportation District (MCTD). See *Metropolitan transportation business tax (MTA surcharge)* for further information.

#### Combined filer statement

If you are filing Form CT-32-A for the first time and are part of a newly formed New York State combined group, follow the instructions on Form CT-51, *Combined Filer Statement for Newly Formed Groups Only*.

For existing groups, Form CT-50, *Combined Filer Statement for Existing Groups,* will be sent to you for verification. Follow the instructions on Form CT-50.

#### Definition of doing business within New York State

The phrase *doing business* includes all activities that occupy the time and labor of people for profit. In determining whether or not a corporation is doing business in New York State, consideration is given to such factors as: the nature, continuity, frequency, and regularity of the activities of a corporation in New York State; the location of the corporation's offices and other places of business; the employment in New York State of agents, officers, and employees of the corporation; and other relevant factors. Activities that constitute doing business in New York State include: operating a branch, loan production office, representative office, or a bona fide office in New York State. A banking corporation that meets any of the tests under *Credit card banks* is also doing business in New York State. Activities that do not constitute doing business in New York State include the mere acquisition of one or more security interests in real or personal property located in New York State, or the mere acquisition of title to property located in New York State through the foreclosure of a security interest.

In addition, a corporation organized under the laws of another country will not be deemed to be doing business, employing capital, owning property, or maintaining an office in New York State, if its activities are limited solely to investing or trading in stocks and securities for its own account, under Internal Revenue Code (IRC) section 864(b)(2)(A)(ii), or investing or trading in commodities for its own account, under IRC section 864(b)(2)(B)(ii), or any combination of these activities.

#### Definition of banking business

The phrase *banking business* means the business a corporation may be created to do under Article 3 (Banks and Trust Companies), 3-B (Subsidiary Trust Companies), 5 (Foreign Banking Corporations and National Banks), 5-A (New York Business Development Corporation), 5-C (Interstate Branching), 6 (Savings Banks), or 10 (Savings and Loan Associations) of the New York State Banking Law, or the business a corporation is authorized to do by such articles. With respect to a national banking association, federal savings bank, federal savings and loan association, or production credit association, the phrase *banking business* means the business a national banking association, federal savings bank, federal savings and loan association, or production credit association may be created to do or is authorized to do under the laws of the United States or the laws of New York State. The phrase *banking business* also means such business as any corporation organized under the authority of the United States has authority to do that is substantially similar to the business that a corporation may be created to do under Article 3, 3-B, 5, 5-A, 5-C, 6, or 10 of the New York State Banking Law, or any business that a corporation is authorized to do by such articles.

**Definition of bank holding company**

The following are bank holding companies:

- A corporation or association subject to Article 3-A of the New York State Banking Law.
- A corporation or association registered under the Federal Bank Holding Company Act of 1956, as amended.
- A corporation or association registered as a savings and loan holding company (excluding a diversified savings and loan holding company) under the Federal National Housing Act as amended.

## Who must file

Tax Law Article 32 imposes a franchise tax on banking corporations for the privilege of exercising their corporation franchise or doing business in New York State in a corporate or organized capacity for all or any part of their tax year. It also imposes the tax on bank holding companies, captive real estate investment trusts (REITs), captive regulated investment companies (RICs), and overcapitalized captive insurance companies when included in a combined return. Except for corporations described in Tax Law, Article 32, section 1453(l), corporations liable to tax under Article 33 are not subject to tax under Article 32.

**Banking corporations**

Banking corporations include the following:

**A. New York State banking corporations —** Any corporation organized under the laws of New York State that is authorized to do or is doing a banking business is a banking corporation. Such corporations include, but are not limited to, commercial banks, trust companies, limited purpose trust companies, subsidiary trust companies, savings banks, savings and loan associations, agreement corporations, and the New York Business Development Corporation. Also included as a banking corporation is the New York State Mortgage Facilities Corporation.

**B. Banking corporations organized under the laws of another state or country —** Any corporation organized under the laws of another state or country that is doing a banking business is a banking corporation. Such corporations include, but are not limited to, commercial banks, trust companies, savings banks, savings and loan associations, and agreement corporations.

**C. Banking corporations organized under the laws of the United States** Any national banking association, federal savings bank, federal savings and loan association, and any other corporation organized under the authority of the United States (including an Edge Act corporation) that is doing a banking business, is a banking corporation. Also, every production credit association organized under the Federal Farm Credit Act of 1933 that is doing a banking business and all of whose stock held by the Federal Production Credit Corporation has been retired is a banking corporation.

**D. Corporations owned by a bank or a bank holding company** Any corporation principally engaged in a business that:

- might lawfully be conducted by a corporation subject to Article 3 of the New York State Banking Law or by a national banking association, or
- is so closely related to banking or managing or controlling banks as to be a proper incident thereto as defined in section 4(c)(8) or section 4(k)(4)(F) of the Federal Bank Holding Company Act of 1956, as amended, or
- holds and manages investment assets, including but not limited to bonds, notes, debentures, and other obligations for the payment of money, stocks, partnership interests or other equity interests, and other investment securities,

is a banking corporation if its voting stock is 65% or more owned or controlled directly or indirectly by a banking corporation described above, or by a bank holding company.

However, a corporation that is 65% or more owned and is principally engaged in a business described in Tax Law, Article 9, section 183, 184, or 186 (as it was in effect on December 31, 1999), such as a telegraph, telephone, trucking, railroad, gas, or electric business, is not subject to Tax Law Article 32 if any of its business receipts from that business are from outside the corporation that controls it.

A corporation that is 65% or more owned and that was subject to tax under Article 9-A for its tax year ending in 1984 was allowed in 1985 to make a one-time *grandfather election* to continue to be taxable under Article 9-A. This election remains in effect until revoked by the taxpayer. In no event can the revocation of the election be for part of the tax year. The revocation is made by the filing of a tax return under Tax Law Article 32. However, if any conditions set forth below exist or occur in a tax year beginning on or after January 1, 2007, with respect to the electing corporation, the election will be deemed revoked as of the first day of the tax year in which the condition applied.

If any of the conditions set forth below exist or occur in a tax year beginning on or after January 1, 2007, with respect to a corporation required to be taxable under Article 9-A pursuant to the Gramm-Leach-Bliley (GLB) provisions of Tax Law, Article 32, section 1452, then such corporation, if it otherwise meets the requirements of items A, B, C, or D above, will be taxable under Article 32 as of the first day of the tax year in which the condition applied.

If any of the conditions set forth below exist or occur in a tax year beginning on or after January 1, 2007, with respect to a corporation that has made the election to be taxable under Article 9-A pursuant to the GLB provisions of Tax Law section 1452, then the electing corporation will be deemed to have revoked the election as of the first day of the tax year in which the condition applied.

**Conditions**

- The corporation ceases to be a taxpayer under Article 9-A.
- The corporation has no wages or receipts allocable to New York State pursuant to Tax Law, Article 9-A, section 210.3, or is otherwise inactive. However, this condition does not apply to a corporation that is engaged in the active conduct of a trade or business, or substantially all of the assets of which are stock and securities of corporations which are directly or indirectly controlled by it and are engaged in the active conduct of a trade or business.
- 65% or more of the voting stock of the corporation becomes owned or controlled directly by a corporation that acquired the stock in a transaction (or series of related transactions) that qualifies as a purchase within the meaning of Internal Revenue Code (IRC) section 338(h)(3) unless both corporations, immediately prior to the purchase, were members of the same affiliated group (as such term is defined in IRC section 1504 without regard to the exclusions provided for in 1504(b)). However, any acquisition that was completed on or before January 3, 2007, shall be treated as an acquisition made before January 1, 2007.
- The corporation, in a transaction or series of related transactions, acquires assets, whether by contribution, purchase, or otherwise, having an average value as determined in accordance with Tax Law section 210.2 (or, if greater, a total tax basis) in excess of 40% of the average value (or, if greater, the total tax basis) of all assets of the corporation immediately prior to the acquisition and, as a result of the acquisition, the corporation is principally engaged in a business that is different from the business immediately prior to the acquisition (provided that such different business is described in item D above).

**Transitional provisions for the GLB Act —** Under the federal GLB Act, an entity was created called a *financial holding company* (FHC) that can own banks, insurance companies, and securities firms. As a result of the GLB Act, the Tax Law was amended in 2000 to allow certain corporations that were taxed under Article 9-A or Article-32 in 1999 to retain their tax status in 2000. These transitional provisions expire for tax years beginning on or after January 1, 2013. The GLB provisions do not preclude taxpayers that made the one-time election to remain taxable under Article 9-A, pursuant to section 1452(d)(the grandfather election), from revoking that election.

GLB transitional provisions of Tax Law section 1452(m) do not apply to a captive REIT, captive RIC, (as defined in *Definition of a captive REIT or captive RIC*), or an overcapitalized captive insurance company (as defined in *Definition of an overcapitalized captive insurance company*).

**Credit card banks**

A banking corporation that meets one or more of the following tests is subject to tax under Article 32:

- it has issued credit cards to 1,000 or more customers with mailing addresses in New York State as of the last day of its tax year;
- there are 1,000 or more locations in New York State covered by contracts with merchant customers to whom the banking corporation remitted payments for credit card transactions during the tax year;
- it has receipts of $1 million or more during the tax year from customers who have been issued credit cards by the banking corporation and have mailing addresses in New York State;
- it has receipts of $1 million or more from merchant customer contracts with merchants relating to locations in New York State; or
- it has either a) a total number of cardholders and merchant locations in New York State that equals or exceeds 1,000 or b) total receipts from cardholders and merchant locations in New York State that equal or exceed $1 million.

Receipts from processing credit card transactions for merchants include merchant discount fees received by the banking corporation.

A credit card includes bank, credit, travel, and entertainment cards.

**Definition of a captive REIT or captive RIC**

A *captive REIT* or *captive RIC* is a REIT or RIC that is not regularly traded on an established securities market, and more than 50% of its voting stock is owned or controlled, directly or indirectly, by a single corporation or, in the instance of REIT only, a single entity treated as an association taxable as a corporation under the IRC that is not exempt from federal income tax and is not a REIT. None of the following are considered an association taxable as a corporation for this purpose:

- Any listed *Australian property trust* (meaning an Australian unit trust registered as a *Managed Investment Scheme* under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market), or an entity organized as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, 75% or more of the voting power or value of the beneficial interests or shares of such trust; or
- Any *qualified foreign entity,* meaning a corporation, trust, association or partnership organized outside the laws of the United States and which satisfies the following criteria:
  - at least 75% of the entity's total asset value at the close of its tax year is represented by real estate assets (as defined in IRC section 856(c)(5)(B), thereby including shares or certificates of beneficial interest in any real estate investment trust), cash and cash equivalents, and United States government securities;
  - the entity is not subject to tax on amounts distributed to its beneficial owners, or is exempt from entity-level taxation;
  - the entity distributes at least 85% of its taxable income (as computed in the jurisdiction in which it is organized) to the holders of its shares or certificates of beneficial interest on an annual basis;
  - not more than 10% of the voting power or value in such entity is held directly or indirectly or constructively by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and
  - the entity is organized in a country which has a tax treaty with the United States.

**Definition of an overcapitalized captive insurance company**

An entity that is treated as an association taxable as a corporation under the IRC:

- with more than 50% of its voting stock owned or controlled, directly or indirectly, by a single entity that is treated as an association taxable as a corporation under the IRC and not exempt from federal income tax;
- that is licensed as a captive insurance company under the laws of this state or another jurisdiction;
- whose business includes providing, directly and indirectly, insurance or reinsurance covering the risks of its parent and/or members of its affiliated group; and
- for which 50% or less of its gross receipts for the tax year consist of premiums.

Read more about the definition of an overcapitalized captive insurance company, including information on defining gross receipts and premiums in TSB-M-09(9)C, *Tax Treatment of Overcapitalized Captive Insurance Companies.*

**Bank S corporations**

A banking corporation that has elected to be a New York S corporation by filing Form CT-6, *Election by a Federal S Corporation to be Treated As a New York S Corporation*, must file Form CT-32-S, *New York Bank S Corporation Franchise Tax Return.*

**Qualified subchapter S subsidiary (QSSS)**

The filing requirements for a QSSS that is owned by a New York C corporation or a nontaxpayer corporation are outlined below. Where New York State follows federal QSSS treatment, the parent and QSSS must file a single franchise tax return. The QSSS is ignored as a separate taxable entity, and the assets, liabilities, income, and deductions of the QSSS are included on the parent's franchise tax return. However, for other taxes, such as sales and excise taxes, and the license and maintenance fees imposed under Article 9, the QSSS will continue to be recognized as a separate corporation. As a result, a foreign authorized QSSS included in the parent's return (disregarded as a separate taxable entity for franchise tax purposes) that is filing under Article 32 by reason of *Who must file*, item D, must file Form CT-245, *Maintenance Fee and Activity Return for a Foreign Corporation Disclaiming Tax Liability.* For more information on the maintenance fee, see *License and maintenance fees*.

a. **Parent is a New York C corporation —** New York State follows the federal QSSS treatment if (1) the QSSS is a New York State taxpayer, or (2) the QSSS is not a New York State taxpayer, but the parent makes a QSSS inclusion election. In both cases, the parent and QSSS are taxed as a single New York C corporation. If the parent does not make a QSSS inclusion election, it must file as a New York C corporation on a stand-alone basis.

b. **Nontaxpayer parent —** New York State follows the federal QSSS treatment where the QSSS is a New York State taxpayer but the parent is not, if the parent elects to be taxed as a New York S corporation by filing Form CT-6. The parent and QSSS are taxed as a single New York S corporation and file Form CT-32-S on a joint basis. If the parent does not elect to be a New York S corporation, the QSSS must file as a New York C corporation on a stand-alone basis.

c. **Exception: excluded corporation —** Notwithstanding the above rules, QSSS treatment is not allowed unless both the parent and the QSSS are banking corporations. That is, the corporations must file on a stand-alone basis if one is an Article 32 taxpayer but the other is an Article 9, 9-A, or 33 taxpayer, or is a corporation that would be subject to such taxes if taxable in New York.

Where New York State follows federal QSSS treatment, the QSSS is not considered a subsidiary of the parent corporation.

**To notify the department that a QSSS is included in your return,** mark an ***X*** in the box for item F on page 3a of Form CT-32-A and attach Form CT-60-QSSS, *Qualified Subchapter S Subsidiary Information Schedule.*

## Who may file Form CT-32-A

**Corporations that may be permitted or required to file, or to be included in, a combined return**

A banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity may be permitted or required to file, or to be included in, a combined return with the following:

- Any banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity that owns or controls, directly or indirectly, 65% or more of its voting stock.
- Any banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity in which it owns or controls, directly or indirectly, 65% or more of the voting stock.

A banking corporation or bank holding company **not** exercising its corporate franchise or doing business in New York State in a corporate or organized capacity may be permitted or required to file, or be included in, a combined return with the following:

- Any banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity that owns or controls, directly or indirectly, 65% or more of its voting stock.
- Any banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity in which it owns or controls, directly or indirectly, 65% or more of the voting stock.

The Commissioner of Taxation and Finance may permit or require the filing of a combined return by banking corporations or bank holding companies when 65% or more of the voting stock of each is owned or controlled, directly or indirectly, by the same interest, and at least one of the corporations is exercising its corporate franchise or doing business in New York State in a corporate or organized capacity.

A banking corporation or bank holding company that meets the 65% or more stock ownership requirements may be permitted or required to file, or to be included in, a combined return only if the Commissioner of Taxation and Finance determines that such filing is necessary to properly reflect the tax liability of such corporation or other corporations. In making the determination whether a combined return is necessary to properly reflect the tax liability of any one or more of the corporations, the Commissioner of Taxation and Finance will first determine whether the group of corporations under consideration is engaged in a unitary business. A corporation engaged in a unitary business with one or more of the corporations in the group may be permitted or required to file a combined return if the Commissioner of Taxation and Finance determines that:

- the corporation has intercorporate transactions with one or more of the corporations in the group that cause the improper reflection of the

activity, business, income, or assets within New York State of one or more of the corporations, or

- the corporation has an agreement, understanding, arrangement, or transactions with one or more of the corporations in the group that cause the improper reflection of the activity, business, income, or assets within New York State of one or more of the corporations.

A banking corporation or bank holding company satisfying these requirements for inclusion in a combined return does not need to request prior permission to file on a combined basis with one or more banking corporations or bank holding companies. To file on a combined basis, the banking corporation or bank holding company must be included in a completed combined return. The first year that entity files on a combined basis, and each year after that in which the composition of the group changes, certain information must be submitted to the Tax Department, either on the return or attached to it. The information that must be submitted is described in regulation section 21-2.5(b). The filing of a combined return or the inclusion of a corporation in the combined return is subject to revision or disallowance on audit.

**Corporations required to file, or to be included in, a combined return**

A banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity **must** file, or be included in, a combined return with the following:

- Any banking corporation or bank holding company, exercising its corporate franchise or doing business in New York State in a corporate or organized capacity, that owns or controls, directly or indirectly, 80% or more of its voting stock.
- Any banking corporation or bank holding company that is exercising its corporate franchise or doing business in New York State in a corporate or organized capacity in which it owns or controls, directly or indirectly, 80% or more of the voting stock.

However, a banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity that meets the 80% or more stock ownership requirement may be excluded from a combined return, if the corporation or the Commissioner of Taxation and Finance shows that the inclusion of such a corporation in the combined return fails to properly reflect the tax liability of such corporation.

Tax liability may be deemed to be improperly reflected because of intercorporate transactions or some agreement, understanding, arrangement, or transaction whereby the activity, business, income, or assets of the corporation within New York State is improperly or inaccurately reflected.

A banking corporation or bank holding company meeting the requirements for exclusion from a combined return does not need to request prior permission to be excluded from the combined return. To be excluded from the combined return, that entity must file a completed separate return. The first year that entity is excluded from the combined return, it must include certain information on the return or attached to it. The information that must be submitted is described in regulation section 21-2.5(b). The exclusion of a corporation from the combined return is subject to revision or disallowance on audit.

A banking corporation required to file a New York State tax return solely due to meeting a credit card operations test under *Credit card banks* will not be required to be included in a combined return with another Article 32 taxpayer unless it is necessary to properly reflect the tax liability of any of the taxpayers involved. A banking corporation that meets any of the tests that was included in a combined return under Article 32 for its most recent filing before January 1, 2008, may continue to be included in a combined return for future years. However, once included in a combined return for a tax year beginning on or after January 1, 2008, such banking corporation must continue to file in a combined return until consent to file on a separate basis is received from the Commissioner of Taxation and Finance.

A banking corporation required to file a New York State tax return solely due to the credit card operations tests is required to be included in a combined return with:

1. any banking corporation not subject to tax under Article 32 whose voting stock is 65% or more owned or controlled, directly or indirectly, by the banking corporation required to file, or
2. any banking corporation or bank holding company not subject to tax under Article 32 that owns or controls, directly or indirectly, 65% or more of the voting stock of the banking corporation required to file, or
3. any banking corporation not subject to tax under Article 32 whose voting stock is 65% or more owned or controlled, directly or indirectly, by the same corporation or corporations that own or control, directly or indirectly, 65% or more of the voting stock of the banking corporation required to file,

if the corporation or corporations in 1, 2, or 3 provide services for, or support to, the operations of the banking corporation required to file unless it is shown that the inclusion of the corporation or corporations in 1, 2, or 3 fails to properly reflect the tax liability of the corporation required to file.

Services for, or support to, include such activities as billing, credit investigation and reporting, marketing, research, advertising, mailing, customer service, information technology, lending and financing services, and communications services, but not accounting, legal, or personal services.

A captive REIT, captive RIC, or overcapitalized captive insurance company must be included in a combined return with the banking corporation or bank holding company that directly owns or controls over 50% of the voting stock of the captive REIT, captive RIC, or overcapitalized captive insurance company if that banking corporation or bank holding company is subject to tax or required to be included in a combined return under Article 32.

If over 50% of the voting stock of a captive REIT, captive RIC, or overcapitalized captive insurance company is not directly owned or controlled by a banking corporation or bank holding company that is subject to tax or required to be in a combined return under Article 32, then the captive REIT, captive RIC, or overcapitalized captive insurance company must be included in a combined return with the corporation that is the closest controlling stockholder of the captive REIT, captive RIC, or overcapitalized captive insurance company. If the closest controlling stockholder of the captive REIT, captive RIC, or overcapitalized captive insurance company is a banking corporation or bank holding company that is subject to tax or otherwise required to be included in a combined return under Article 32, then the captive REIT, captive RIC, or overcapitalized captive insurance company must be included in a combined return under Article 32.

*Closest controlling stockholder* means the corporation that indirectly owns or controls over 50% of the voting stock of a captive REIT or captive RIC, is subject to tax under Article 32, 9-A, or 33, or otherwise required to be included in a combined return under one of these articles, and is the fewest tiers of corporations away in the ownership structure from the captive REIT or captive RIC. The same definition without regard to any reference to Article 33, applies to overcapitalized captive insurance companies.

When the corporation that directly owns or controls the voting stock of the captive REIT, captive RIC, or overcapitalized captive insurance company is described as a corporation not permitted to make a combined return because the corporation's net worth ratio is less than 5% and whose mortgages are comprised of 33% or more of their total assets or it is an alien corporation, then the immediately preceding paragraph must be applied to determine the corporation in whose combined return the captive REIT, captive RIC, or overcapitalized captive insurance company should be included. If the closest controlling stockholder of the captive REIT, captive RIC, or overcapitalized captive insurance company is a corporation whose net worth ratio is less than 5% and whose mortgages are comprised of 33% or more of their total assets or it is an alien corporation, then that corporation is deemed to not be in the ownership structure of the captive REIT, captive RIC, or overcapitalized captive insurance company and the closest controlling stockholder is determined without regard to that corporation.

If the captive REIT, captive RIC, or overcapitalized captive insurance company is required to be in a combined return with a corporation that is required to be included in a combined return with another corporation, then the captive REIT, captive RIC, or overcapitalized captive insurance company must be included in that combined return with those corporations. If a captive REIT owns the stock of a qualified REIT subsidiary (as defined in IRC section 856(i)(2)), then the qualified REIT subsidiary must be included in any combined return required to be made by the captive REIT.

**Corporations that cannot be included in a combined return:**

- A banking corporation that elected under Tax Law section 1452(d) to be taxed under Tax Law Article 9-A for those years such election is in effect.
- A banking corporation whose greatest tax, computed on a separate basis, is on taxable assets and whose net worth ratio, computed on a separate basis, is less than five percent and whose total assets are comprised of 33% or more of mortgages.
- A banking corporation or bank holding company whose accounting period differs from the accounting period adopted by the combined group.
- A banking corporation or bank holding company that does not meet the 65% or more stock ownership requirement.

- A captive REIT or captive RIC, if the banking corporation or bank holding company that directly or indirectly owns or controls over 50% of the voting stock of the captive, and is the closest controlling stockholder of the captive, is: 1) part of an affiliated group that does not include a corporation doing a business a subsidiary of a bank holding company would not be permitted to do unless such business is de minimis, and 2) whose members own assets whose combined average value does not exceed $8 billion. The term affiliated group is defined in IRC section 1504 but without regard to the exceptions provided for in 1504(b).

**Rules for alien corporations**

A banking corporation or bank holding company organized under the laws of a country other than the U.S. may not file a combined return with a banking corporation or bank holding company organized under the laws of the United States, New York State, or any other state.

An alien corporation can be included in a combined return only with other alien corporations.

**Rule for corporations using single factor allocation**

A corporation that qualifies to use the single factor allocation in determining its allocation percentage (see schedule E instructions) can file a combined report only with other corporations subject to tax under Article 32 that qualify to use the same method.

**Unitary business**

In deciding whether a corporation is part of a unitary business, the Commissioner of Taxation and Finance will consider whether the activities in which the corporation engages are related to the activities of other corporations in the group, or whether the corporation is engaged in the same or related lines of business as other corporations in the group. It is presumed that corporations that are eligible to be included in a combined return meet the unitary business requirement.

**Intercorporate transactions**

In deciding whether there are intercorporate transactions that cause the improper reflection of the activity, business, income, or assets of a corporation within New York State, the Commissioner of Taxation and Finance will consider transactions directly connected with the business conducted by the corporations, such as:

- Performing services for other corporations in the group.
- Providing funds to other corporations in the group.
- Performing related customer services using common facilities and employees.

Service functions will not be considered when they are incidental to the business of the corporation providing such services. Service functions include, but are not limited to, accounting, legal, and personnel services. It is not necessary that there be intercorporate transactions between any one member with every other member of the group. For purposes of the intercorporate transactions test, it is essential that each corporation have intercorporate transactions with one other combinable corporation or with a combined or combinable group of corporations.

## When and where to file

File Form CT-32-A within 2½ months after the end of the tax year. If the due date falls on a Saturday, Sunday, or legal holiday, the return is due on the next business day.

### Request for extension of time to file

Use Form CT-5.3, *Request for Six-Month Extension to File (for combined franchise tax return,* or *combined MTA surcharge return, or both),* to request a six-month extension of time to file Form CT-32-A and Form CT-32-M. This form requires detailed information about the group, including names, identification numbers, and the amounts and kinds of payments made by the members of the group. Form CT-5.3 **does not** extend the time for payment of the franchise tax, MTA surcharge, or mandatory first installments.

When filing Form CT-5.3 to request an extension of time to file a combined tax return, you must include any MTA surcharge due in the amount of estimated tax you pay.

Mail returns to:

**NYS CORPORATION TAX**
**PROCESSING UNIT**
**PO BOX 22038**
**ALBANY NY 12201-2038**

**Private delivery services**

If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to mail in your form and tax payment. However, if, at a later date, you need to establish the date you filed or paid your tax, you cannot use the date recorded by a private delivery service **unless** you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services.* See *Need help?* for information on obtaining forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your form, contact that private delivery service for instructions on how to obtain written proof of the date your form was given to the delivery service for delivery. If you use **any** private delivery service, whether it is a designated service or not, send the forms covered by these instructions to: State Processing Center, 431C Broadway, Albany NY 12204-4836.

**International banking facility (IBF) election**

See Schedule F instructions for information on the IBF modification and IBF formula allocation methods.

**Copy of federal return**

Attach a copy of federal Form 1120 or 1120F, complete with attachments, and any other returns or information requested in this return.

**Metropolitan transportation business tax (MTA surcharge)**

Any corporation taxable under Article 32 that does business in the MCTD must file Form CT-32-M, or have its MCTD activities reflected in the Form CT-32-M being filed by its combined group, and pay a metropolitan transportation business tax (MTA surcharge) on business done in the Metropolitan Transportation Authority region. The MCTD includes the counties of New York, Bronx, Kings, Queens, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

The parent corporation must answer, for itself only, the MTA surcharge question on page 1 of Form CT-32-A. All other members of the combined group must answer the MTA surcharge question on page 1 of Form CT-32-A/C.

Corporations filing on a combined basis are required to file only one Form CT-32-M that reflects the MCTD activities of all members of the combined group. Combined figures, as shown on Forms CT-32-A and CT-32-A/B, should be used to complete the surcharge form.

**License and maintenance fees**

Every foreign corporation, except banking corporations (as defined in *Who must file*, items A, B, and C), fire, marine, casualty, and life insurance companies, co-operative fraternal insurance companies, and building and loan associations must pay a license fee for the privilege of exercising their corporate franchise or carrying on business in New York State, whether or not the corporation is authorized. Payment of the corporation franchise tax does not satisfy the license fee obligation, which is payable with Form CT-240, *Foreign Corporation License Fee Return*.

Such a corporation, if authorized to do business in New York, must also pay an annual maintenance fee of $300 until it surrenders its authority to do business to the Department of State, whether or not it does business in the state. The fee may be reduced by 25% if the period for which the fee is imposed is more than six months but not more than nine months, and by 50% if the period for which the fee is imposed is not more than six months. Payment of corporation franchise tax of at least $300 satisfies the maintenance fee requirement. If the corporation has tax plus MTA surcharge due of less than $300, the corporation must adjust its payment accordingly to satisfy the maintenance fee requirement. The license fee is not considered corporation tax and cannot be considered as a payment toward the maintenance fee. If the corporation is disclaiming tax liability, it must pay the $300 maintenance fee by filing Form CT-245.

**Independently procured insurance tax**

If you purchase or renew a taxable insurance contract directly from an insurer not authorized to transact business in New York State under a *Certificate of Authority* from the Superintendent of Financial Services, you may be liable for a tax of 3.6% (.036) of the premium. For more information, see Forms CT-33-D (4/11), *Tax on Premiums Paid or Payable To an Unauthorized Insurer For Taxable Insurance Contracts with an Effective date before July 21, 2011;* and CT-33-D (7/11)*, Tax on Premiums Paid or Payable To an Unauthorized Insurer For Taxable Insurance Contracts with an Effective Date on or after July 21, 2011.*

## Completing your return

### Amended return

If you are filing an amended return, mark an ***X*** in the amended return box on page 1 of Form CT-32-A.

If you file an amended federal return, you must file an amended New York State return within 90 days (120 days if filing an amended combined return) thereafter.

**For amended returns based on changes by the Internal Revenue Service (IRS) —** If your federal taxable income (FTI) has been changed or corrected by a final determination of the Commissioner of Internal Revenue, you must file an amended return reflecting the federal changes within 90 days (120 days if filing an amended combined return) of the final determination. For a definition of final determination, see NYS Regulation section 21-1.3(b).

You must attach a copy of federal form 4549, *Income Tax Examination Changes* to your amended return.

**For credits or refunds of corporation tax paid —** To claim any refund type that requires an amended return, file an amended New York State return for the year being amended and, if applicable, attach a copy of the claim form filed with the Internal Revenue Service (IRS) (usually Form 1120X) and proof of federal refund approval, *Statement of Adjustment to Your Account*.

If you are a federal S corporation, file an amended New York State return for the year being amended. If applicable, attach a copy of the amended federal Form 1120S.

The amended return must be filed within three years of the date the original return was filed or within two years of the date the tax was paid, whichever is later. If you did not file an original return, you must make the request within two years of the date the tax was paid. However, a claim for credit or refund based on a federal change must be filed within two years from the time the amended return reporting the change or correction was required to be filed (see above). For additional limitations on credits or refunds, see Tax Law, Article 27, section 1087.

### Reporting period

Use this tax return for calendar year 2011 and fiscal years that begin in 2011 and end in 2012.

You can also use the 2011 return if:

- you have a tax year of less than 12 months that begins and ends in 2012, **and**
- the 2012 return is not yet available at the time you are required to file the return.

In this case you must show your 2012 tax year on the 2011 return and take into account any tax law changes that are effective for tax years beginning after December 31, 2011.

All filers must complete the beginning and ending tax year boxes in the upper right corner on page 1 of the form.

A taxpayer who reports on the basis of a 52-53 week accounting period for federal income tax purposes must report on the same basis for Article 32 purposes. If a 52-53 week accounting period begins within 7 days from the first day of any calendar month, the tax year is deemed to begin on the first day of that calendar month. If a 52-53 week accounting period ends within 7 days from the last day of any calendar month, the tax year is deemed to end on the last day of that calendar month. The requirement that all members of a combined group must have the same accounting period is met if the 52-53 week filer's accounting period begins and ends within 7 days of the beginning and ending dates of the other members of the combined group.

### Employer identification number, file number, and other identifying information

We must have the necessary identifying information to process your corporation tax forms. If you use a paid preparer or accounting firm, make sure they use your complete and accurate identifying information when completing all forms. Keep a record of that information and include it on each corporation tax form mailed.

### Definition of headquarters

*Headquarters* is the location where the majority of executive officers reside for purposes of work.

### Location of headquarters

If your headquarters are located in the United States, enter the five-digit ZIP code of the location of your headquarters in the appropriate box. If your headquarters are located outside the United States, enter the name of the country where your headquarters are located.

### County code

If your headquarters are located in New York State, enter the appropriate county code of the headquarters location from *Table 1*. If your headquarters are in another state, enter code **65.** If your headquarters are outside the United States, enter code **67.**

**Table 1**
**New York State county codes**

| County | Code | County | Code | County | Code |
|---|---|---|---|---|---|
| Albany | 01 | Jefferson | 22 | Schoharie | 43 |
| Allegany | 02 | Lewis | 23 | Schuyler | 44 |
| Broome | 03 | Livingston | 24 | Seneca | 45 |
| Cattaraugus | 04 | Madison | 25 | Steuben | 46 |
| Cayuga | 05 | Monroe | 26 | Suffolk | 47 |
| Chautauqua | 06 | Montgomery | 27 | Sullivan | 48 |
| Chemung | 07 | Nassau | 28 | Tioga | 49 |
| Chenango | 08 | Niagara | 29 | Tompkins | 50 |
| Clinton | 09 | Oneida | 30 | Ulster | 51 |
| Columbia | 10 | Onondaga | 31 | Warren | 52 |
| Cortland | 11 | Ontario | 32 | Washington | 53 |
| Delaware | 12 | Orange | 33 | Wayne | 54 |
| Dutchess | 13 | Orleans | 34 | Westchester | 55 |
| Erie | 14 | Oswego | 35 | Wyoming | 56 |
| Essex | 15 | Otsego | 36 | Yates | 57 |
| Franklin | 16 | Putnam | 37 | Bronx | 60 |
| Fulton | 17 | Rensselaer | 38 | Kings | 60 |
| Genesee | 18 | Rockland | 39 | New York | 60 |
| Greene | 19 | St. Lawrence | 40 | Queens | 60 |
| Hamilton | 20 | Saratoga | 41 | Richmond | 60 |
| Herkimer | 21 | Schenectady | 42 | | |

### Computation of tax

In the case of a combined return, the tax shall be measured by the combined ENI, combined alternative ENI, or combined assets of all the corporations included in the return, including any captive REIT, captive RIC, or overcapitalized captive insurance company. The allocation percentage shall be computed based on the combined factors with respect to all the corporations included in the combined return. In computing combined ENI and combined alternative ENI, intercorporate dividends and all other intercorporate transactions shall be eliminated; and in computing combined assets, intercorporate stockholdings and intercorporate bills, notes, and accounts receivables and payable and other intercorporate indebtedness shall be eliminated.

Each corporation included in a combined return must compute its ENI as if it had filed its federal income tax return on a separate basis.

The parent corporation and each member corporation included in the combined return must enter in Column D all intercorporate transactions between all corporations included in the combined return.

When computing combined ENI in Schedule B, eliminate all intercorporate dividends and intercorporate transactions between the corporations in the combined return. Defer intercorporate profits, offset capital losses against capital gains, and deduct contributions as if the corporations in the group had filed a consolidated federal income tax return.

When computing combined taxable assets in Schedule D, eliminate all intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable, and other intercorporate indebtedness between corporations in the combined return.

When computing the combined ENI allocation percentage, combined alternative ENI allocation percentage, and combined taxable assets allocation percentage in Schedule E, eliminate all intercorporate dividends and all other intercorporate transactions, including intercorporate receipts between corporations in the combined return.

**Intercorporate transactions** include intercorporate:

- gross receipts, cost of goods sold, dividend income, interest income, commissions, rent income, management fees, capital gains, capital losses, other miscellaneous income or loss items;
- compensation of officers, salaries and wages expense, rent expense, interest expense, depreciation expense, advertising, employee benefits, other miscellaneous expense items;

- trade notes receivable and accounts receivable, inventories, loans to corporate stockholders, mortgages and real estate loans, investments, building and other depreciable assets, intangibles, other miscellaneous assets;
- accounts payable, mortgages payable, notes payable, bonds payable, loans from stockholders, other miscellaneous liabilities; and
- capital stock, paid-in surplus, capital surplus, retained earnings, or other miscellaneous stockholder transactions.

An item of income or expense of a corporation organized under the laws of a country other than the United States may not be included in a combined return, unless it is includable in ENI or alternative ENI.

An asset of a corporation organized under the laws of a country other than the United States may not be included in a combined return, unless it is included in taxable assets.

Attach a list of intercorporate transactions for each corporation in the combined return.

**Signature**

The return must be certified by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the taxpayer corporation.

The return of an association, publicly traded partnership, or business conducted by a trustee or trustees must be signed by a person authorized to act for the association, publicly traded partnership, or business.

If an outside individual or firm prepared the return, all applicable entries in the paid preparer section must be completed, including identification numbers (see *Paid preparer identification numbers* in Form CT-1). Failure to sign the return will delay the processing of any refunds and may result in penalties.

## Line instructions for Forms CT-32-A and CT-32-A/B

**Line A —** Make your payment in United States funds. We will accept a foreign check or foreign money order only if payable through a United States bank or if marked ***Payable in U.S. funds.***

### Schedule A

**Line 1 —** Enter allocated combined taxable ENI computed on line 59, and multiply by the tax rate of 7.1% (.071).

**Line 2 —** Enter allocated combined taxable alternative ENI computed on line 68, and multiply by the tax rate of 3% (.03).

**Line 3 —** Enter allocated combined taxable assets computed on line 72, and multiply by the tax rate of .01% (.0001).

**Line 6**

**Temporary deferral of certain tax credits —** For tax years beginning on or after January 1, 2010, and before January 1, 2013, if the total amount of certain credits that you may use to reduce your tax or have refunded to you is greater than $2 million, the excess over $2 million must be deferred to, and used or refunded in, tax years beginning on or after January 1, 2013. For more information about the credit deferral, see Form CT-500, *Corporation Tax Credit Deferral.*

If you are subject to the credit deferral, you must complete all credit forms without regard to the deferral. However, the credit amount that is transferred to your tax return to be applied against your tax due or to be refunded to you may be reduced. Follow the instructions for Form CT-500 to determine the amounts to enter on your tax return.

Complete the summary of tax credits section of Form CT-32-A, and enter on this line the total amount of the credits that you are applying against this year's tax. When completing the summary of tax credits section, enter in the *Other credits* box the total amount of any credit(s) being claimed for which no specific box is provided.

If you are required to recapture a tax credit that was allowed in a previous reporting period, and the result is a negative credit amount on your credit claim form, enter this negative amount as such in the applicable box using a minus (-) sign.

Do not include on line 6 any amount of credit which you are having refunded or carried over. Credits for which you are requesting a refund are reported on line 22b. When claiming more than one credit, you must apply them against your tax in the following order:

1. Noncarryover credits that are not refundable.
2. Empire zone (EZ) and zone equivalent area (ZEA) wage tax credits.
3. Carryover credits that are of limited duration.
4. Carryover credits that are of unlimited duration.
5. Refundable credits.

The credit for servicing mortgages may reduce your tax to zero. However, it is not eligible for refund or carryforward. For the attributes of any other credits you may be claiming, see the applicable credit claim form and/or instructions.

**Line 8 —** Each taxpayer included in the combined return, other than the deemed parent corporation, must pay the fixed minimum tax of $250. A corporation that would not otherwise be taxable in New York State except for its inclusion in a combined return is not required to pay the minimum tax of $250.

For each member that is an authorized foreign bank holding company, or an authorized foreign corporation that is 65% or more owned by a bank holding company (as defined under *Who must file,* item D), you must increase your payment so that the tax of each such member equals the maintenance fee amount of $300. While the amount of the difference between the fixed dollar minimum tax of each such member and the maintenance fee must be included on line A, it should not be included in your total combined franchise tax on line 9. The maintenance fee may be prorated if the period for which the fee is imposed is not more than nine months. Refer to *License and maintenance fees*.

**Line 10b —** If the net franchise tax on line 7 exceeds $1,000 and you did not file Form CT-5.3, you must pay a mandatory first installment for the period following the one that is covered by this return. If the net franchise tax on line 7 exceeds $1,000, but does not exceed $100,000, enter 25% (.25) of the net franchise tax shown on line 7. If the amount on line 7 exceeds $100,000, multiply line 7 by 40% (.40) and enter here.

**Line 14 —** Form CT-222, *Underpayment of Estimated Tax by a Corporation*, is filed by a corporation to inform the Tax Department that the corporation meets one of the exceptions to reduce or eliminate the underpayment of estimated tax penalty pursuant to Tax Law, Article 27, section 1085(d).

**Line 15 —** If you do not pay the franchise tax due on or before the original due date (**without** regard to any extension of time to file), you must pay interest on the amount of the underpayment from the original due date to the date paid. Exclude from the interest computation any amount shown on line 10a or 10b, first installment of estimated tax for the next period. Interest is compounded daily.

**Line 16 —** Additional charges for late filing and late payment are computed on the amount of tax less any payment made on or before the due date (**with** regard to any extension of time to file). Exclude from the penalty computation any amount shown on line 10a or 10b, the first installment of estimated tax for the next period.

A. If you do not file a return when due or if the request for extension is invalid, add to the tax 5% per month up to 25% (section 1085(a)(1)(A)).
B. If you do not file a return within 60 days of the due date, the addition to tax in item A above cannot be less than the smaller of $100 or 100% of the amount required to be shown as tax (section 1085(a)(1)(B)).
C. If you do not pay the tax shown on a return, add to the tax ½% per month up to 25% (section 1085(a)(2)).
D. The total of the additional charges in items A and C may not exceed 5% for any one month except as provided for in item B (section 1085 (a)).

If you think you are not liable for these additional charges, attach a statement to your return explaining the delay in filing, payment, or both (section 1085).

**Note:** You may compute your penalty and interest by accessing our Web site, or you may call and we will compute the penalty and interest for you (see *Need help?*).

**Line 22b —** If you claim a refund of unused tax credits, enter the total amount to be refunded and attach the appropriate tax credit form(s). Do not include this amount in the total credits claimed on lines 6 and 211.

**Line 22c —** If you request unused tax credits to be credited as an overpayment to next year's return, enter the total amount to be credited and attach the appropriate tax credit form(s). Do not include this amount in the total credits claimed on line 6 or line 211.

### Schedule B

**Line 24 —** Enter the amount of federal taxable income (FTI) computed before net operating loss (NOL) and special deductions that would have been reported as if you filed a separate federal income tax return on one of the following:

- If you file Form 1120, enter the amount from line 28; or

- If you file Form 1120-F, enter the amount from line 29 of section II; or
- If you are a savings bank that conducts a life insurance business through a life insurance department under the authority of Article 6-A of the New York State Banking Law, enter the FTI that such bank is required to report to the United States Department of the Treasury under IRC section 594(a)(1) as amended; or
- If you are a corporation that is exempt from federal income tax (other than the tax on unrelated business income imposed under IRC section 511), but subject to Tax Law Article 32, enter the amount you would have had to report as federal income before NOL and special deductions were you not exempt.
- If you are a captive REIT enter REIT taxable income as defined in IRC section 857(b)(2), as modified by IRC section 858, plus the amount under IRC section 857(b)(3). Also include 100% of the disallowed deduction for dividends paid to any member of the affiliated group that includes the corporation that directly or indirectly owns over 50% of the voting stock of the captive REIT. The term affiliated group is defined in IRC section 1504 without regard to the exceptions of 1504(b).
- If you are a captive RIC enter investment company taxable income as defined in IRC section 852(b)(2), as modified by IRC section 855, plus the amount taxable under IRC section 852(b)(3). Also include 100% of the disallowed deduction for dividends paid to any member of the affiliated group that includes the corporation that directly or indirectly owns over 50% of the voting stock of the captive RIC. The term affiliated group is defined in IRC section 1504 without regard to the exceptions of 1504(b).

Enter in the first entry box the total amount of all captive REIT and captive RIC disallowed dividends paid deductions for the combined group that are being included on this line.

If you have an amount of excess inclusion as a result of having a residual interest in a real estate mortgage investment conduit (REMIC), you must properly reflect this income in FTI.

**Line 25 —** Corporations organized under the laws of a country other than the U.S. enter dividends (including the IRC section 78 gross-up on dividends to the extent not already included in FTI) and interest on any kind of stock, securities, or indebtedness that are effectively connected with the conduct of a trade or business in the U.S. under IRC section 864, and are excluded from FTI.

**Line 26 —** Corporations organized under the laws of a country other than the U.S. enter any income effectively connected with the conduct of a trade or business in the U.S. under IRC section 864 that is exempt from FTI under any treaty obligation of the U.S., and any income that would be treated as effectively connected with the conduct of a trade or business in the U.S. under IRC section 864, were it not excluded from gross income under IRC section 103(a).

**Line 27 —** Corporations organized under the laws of the U.S. or any of its states enter dividends (including the IRC section 78 gross-up on dividends to the extent not already included in FTI) and interest on any kind of stock, securities, or indebtedness that were excluded from FTI. Include all interest on state and municipal bonds and obligations of the U.S. and its instrumentalities.

**Line 28 —** Enter any taxes on or measured by income or profit paid or accrued to the United States, any of its possessions, or any foreign country, that you deducted in computing FTI on line 24.

**Line 29 —** Enter all New York State franchise taxes imposed under Article 9 sections 183, 184, and 186, and Articles 9-A and 32 that you deducted in computing FTI. Include the MTA surcharge and Article 23 MCTMT.

**Line 30 —** Use this line if:

— the corporation claims the federal ACRS/MACRS deduction for property placed in service **either** inside or outside New York State after 1980 in tax periods beginning before 1985; or

— the corporation claims the federal ACRS/MACRS deduction for property placed in service **outside** New York State in tax periods beginning after 1984 and before tax periods beginning in 1994, and the corporation made the election to continue using the IRC section 167 depreciation deduction for the property; or

— the corporation claims a 30%/50%/100% federal special depreciation deduction under IRC section 168(k) for qualified property (excluding qualified resurgence zone property described in Tax Law, Article 9-A, section 208.9(q) or qualified New York liberty zone property described in IRC section 1400L(b)(2)) placed in service on or after June 1, 2003, in tax years beginning after December 31, 2002; or

— the corporation disposes this year of either ACRS/MACRS property, or property for which you claimed a 30%/50%/100% federal special depreciation deduction, and the New York State depreciation modifications applied in any prior years; or

— Form CT-32-A, Schedule G applies.

If this line applies, complete Form CT-399, *Depreciation Adjustment Schedule* and Form CT-32-A, Schedule G, on a separate basis. To report the amount of ACRS or MACRS deduction to be added back to federal taxable income, enter the amount from Form CT-399, line 3, column E. Also, if the parent or member corporation disposed of property this year, include the amount from Form CT-399, line 10, column A. In addition, if Form CT-32-A, Schedule G applies, include the combined totals of lines 186 and 188.

**Line 32 —** If you are claiming the special additional mortgage recording tax credit, you must adjust ENI by adding back the special additional mortgage recording tax claimed as a credit and used as a deduction in the computation of FTI. The gain on the sale of real property on which you claimed the special additional mortgage recording tax credit must be increased when you used all or any portion of the credit in the basis for computing the federal gain.

**Lines 34 and 35 —**These lines do not apply to the current tax year and have therefore been shaded.

**Line 36 Other additions to FTI**

**IRC section 199 deduction —** Enter in the first entry box the amount of the deduction for domestic production activities from your federal return that is required to be added back under Tax Law section 1453(b)(14).

If you have any of the following other additions to FTI, add the amount from the first entry box to the total amount of the additions and enter the result.

**A-1** If you computed ENI using the IBF modification method on line 49, you must add any income the IBF received from foreign branches that is included on line 166, and that is not included in FTI.

**A-2** If your corporation has a safe harbor lease you must include:

- Any amount you claimed as a deduction in computing FTI solely as a result of an election made under IRC section 168(f)(8) (safe harbor lease as it was in effect for agreements entered into prior to January 1, 1984).
- Any amount that you would have been required to include in the computation of FTI had you not made the election under IRC section 168(f)(8) (safe harbor lease as it was in effect for agreements entered into prior to January 1, 1984).

**A-3 Qualified emerging technology investments (QETI) –** If you elect to defer the gain from the sale of QETI, then you must add to FTI the amount previously deferred when the reinvestment in the New York qualified emerging technology company that qualified you for that deferral is sold. See subtraction S-3.

**A-4** Add back royalty payments made to related members as required by Tax Law section 1453(r), except where you are included in a combined return with the related member.

**A-5** If you are claiming an environmental remediation insurance credit, you must include on this line the amount of premiums paid for environmental remediation insurance and deducted in determining FTI, to the extent of the amount of the credit allowed under Tax Law, Article 1, section 23 and Article 32, section 1456(s).

**Line 38 —** Enter expenses not deducted on your federal return that are applicable to income from dividends or interest that is exempt from federal tax, shown on lines 25, 26, and 27.

**Line 39 —** Use this line if:

— the corporation claims the federal ACRS/MACRS deduction for property placed in service **either** inside or outside New York State after 1980 in tax periods beginning before 1985; or

— the corporation claims the federal ACRS/MACRS deduction for property placed in service **outside** New York State in tax periods beginning after 1984 and before tax periods beginning in 1994, and the corporation made the election to continue using the IRC section 167 depreciation deduction for the property; or

— the corporation claims a 30%/50%/100% federal special depreciation deduction under IRC section 168(k) for qualified property (excluding qualified resurgence zone property described in Tax Law section 208.9(q) or qualified New York liberty zone property described in IRC section 1400L(b)(2)) placed in service on or after June 1, 2003, in tax years beginning after December 31, 2002; or

— the corporation disposes this year of either ACRS/MACRS property, or property for which you claimed a 30%/50%/100% federal special

depreciation deduction, and the New York State depreciation modifications applied in any prior years; or

— Form CT-32-A, Schedule G applies.

If this line applies, enter the amount from Form CT-399, line 3, column I. Also, if you have disposed of property this year, include the amount from Form CT-399, line 10, column B. In addition, if Form CT-32-A, Schedule G applies, include the amount from line 189.

**Line 41 —** Enter any income or gain from installment sales included in FTI that was previously includable in computing tax under Article 9-B or 9-C.

**Line 43 —** Include the amount of wages disallowed under IRC section 280C in the computation of your FTI because you claimed a federal credit. Attach a copy of the appropriate federal credit form.

**Line 44 —** Enter any amount of money or other property (whether or not evidenced by a note or other instrument) received from the following: the Federal Deposit Insurance Corporation (FDIC) under section 13(c) of the Federal Deposit Insurance Act, as amended; the Federal Savings and Loan Insurance Corporation (FSLIC) under section 406(f)(1), (2), (3), or (4) of the Federal National Housing Act, as amended; or the Resolution Trust Corporation (RTC) under section 1823(c)(1), (2), or (3) of Title 12 of the United States Code.

**Line 45 —** Every corporation included in the combined return is allowed to deduct 17% of interest income received from subsidiary corporations. To the extent deducted on this line, interest income received from subsidiary corporations that are included in the combined return must be eliminated in column D. Attach a list showing the names of the subsidiaries and the amount of interest income received from each (see TSB-M-87(11)C, *Article* 32 *Franchise Tax on Banking Corporations*).

A *subsidiary* is a corporation that is controlled by the taxpayer because the taxpayer owns more than 50% of the total number of the shares of the corporation's voting capital stock. The test of ownership is actual beneficial ownership, rather than mere record title as shown by the stock books of the issuing corporation. Actual beneficial ownership of stock does not mean indirect ownership or control of a corporation through a corporate structure consisting of several tiers, chains, or both. For additional information see 20 NYCRR 16-2.22.

*Subsidiary capital* is the taxpayer's total investment in shares of stock in its subsidiaries, and the amount of indebtedness owed to the taxpayer by its subsidiaries (whether or not evidenced by written instruments) on which interest is not claimed and deducted by the subsidiary against any tax imposed by Tax Law Article 9-A, 32, or 33.

*Subsidiary capital* does not include accounts receivable acquired in the ordinary course of trade or business either for services rendered or for sales of property held primarily for sale to customers.

**Line 46 —** Every corporation included in the combined return is allowed to deduct 60% of dividend income received from subsidiary corporations. To the extent deducted on this line, dividend income received from subsidiary corporations that are included in the combined return must be eliminated in column D. Attach a list showing the names of each subsidiary and the amount of dividend income received from each subsidiary to the extent included in FTI on line 24 and/or line 26 (see TSB-M-87(11)C). Deduct from subsidiary dividend income any section 78 dividends deducted on line 42 that are attributable to dividends from subsidiary capital.

**Line 47 —** Every corporation included in the combined return is allowed to deduct 60% of net gains from subsidiary capital. To the extent deducted on this line, net gains from subsidiary corporations that are included in the combined return must be eliminated in column D. Attach a list showing the names of each subsidiary and the amount of gains or losses received from each subsidiary to the extent included in FTI on line 24. Include any gain or loss from the sale of a subsidiary corporation, as a result of an IRC section 338 election, to the extent the gain or loss is included in FTI on line 24. Subsidiary gains must be offset by subsidiary losses. If subsidiary gains exceed subsidiary losses, multiply the net gain by 60% (.6). If subsidiary losses exceed subsidiary gains, enter ***0*** on line 47.

**Line 48 —** Attach a list showing the name and amount of interest income received from each obligation of New York State, political subdivisions of New York State, and the United States, on which a deduction is claimed. The term *obligation* refers to obligations incurred in the exercise of the borrowing power of New York State or any of its political subdivisions or of the United States. The term *obligation* does not include obligations held for resale in connection with regular trading activities or obligations that guarantee the debt of a third party. The following do not qualify under this provision: guaranteed student loans, industrial development bonds issued under Article 18-A of the New York State General Municipal Law, FNMA mortgage-backed securities, and GNMA mortgage-backed securities. This is not, however, a comprehensive list.

For additional information, see TSB-M-86(7.1)C, *Determinations-Obligations of the United States, New York State and Political Subdivisions of New York State*.

**Line 49 —** Enter the amount from line 185, if you elected to compute ENI using the IBF modification. Note: See lines 36 and 55 for adjustments to FTI that are attributable to transactions between the taxpayer's foreign branches and its IBF.

**Lines 50 through 53 —** These lines do not apply to the current tax year and have therefore been shaded.

**Line 54**

A New York State net operating loss deduction (NOLD) is allowed for NOLs sustained in tax years beginning on or after January 1, 2001 (Tax Law section 1453(k-1)).

Enter any New York State NOL carried forward from tax years beginning on or after January 1, 2001. Attach a separate sheet with full details of both federal and New York State NOLs claimed.

These rules apply:

(a) No deduction is allowed for an NOL incurred during any tax year beginning before January 1, 2001.

(b) No deduction is allowed for an NOL incurred during any tax year in which the corporation was not subject to tax under Article 32.

(c) IRC section 172 federal losses must be adjusted to reflect the inclusions and exclusions from ENI required by the provisions of Article 32, section 1453 (other than the NOL deduction provision).

(d) The New York State NOLD is computed as if the corporation elected under IRC section 172 to relinquish the carryback provisions.

(e) The New York State NOLD may not exceed the allowable deduction for the tax year under IRC section 172, as augmented by the excess of the amount allowed as a New York State bad debt deduction over the federal bad debt deduction in each loss year (except to the extent such excess was previously deducted in computing ENI). However, due to the elimination of the separate New York State bad debt deduction, for loss years beginning on or after January 1, 2010, there no longer is an excess amount with which to augment the deduction under IRC section 172. Amounts from such excess from loss years beginning before January 1, 2010, are not impacted.

(f) The NOL may be carried forward for 20 years.

These rules also apply to any corporation included in a consolidated group for federal purposes, but filing on a separate basis for New York State purposes. These corporations should compute their NOLs and NOLDs as if filing on a separate basis for federal income tax purposes.

**Line 55 Other subtractions from FTI (attach list)**

**S-1** If you computed ENI using the IBF modification method on line 49, you must subtract any expenses of the IBF that you paid to foreign branches of the taxpayer that are included on line 169, that are not included in FTI.

**S-2** If your corporation has a safe harbor lease, you must subtract:

- Any amount included in FTI solely as a result of an election made under IRC section 168(f)(8) (safe harbor lease as it was in effect for agreements entered into prior to January 1, 1984).
- Any amount you would have excluded from FTI had you not made the election under IRC section 168(f)(8) (safe harbor lease as it was in effect for agreements entered into prior to January 1, 1984). For additional information on safe harbor leases, see TSB-M-82(15)C, *1982 Legislation-Safe Harbor Leases*.

**S-3** You may defer the gain on the sale of qualified emerging technology investments (QETI) that are held for more than 36 months and rolled over into the purchase of a QETI within 365 days. Replacement QETI must be purchased within the 365-day period beginning on the date of sale. Gain is not deferred and must be recognized to the extent that the amount realized on the sale of the original QETI exceeds the cost of replacement QETI. The gain deferral applies to any QETI sold on or after March 12, 1998, that meets the holding-period criteria. Add back the deferred gain in the year the replacement QETI is sold.

If you elect the gain deferral, deduct from FTI the amount of the gain deferral (to the extent the gain is included in FTI). If purchase of the replacement QETI within the 365-day period occurs in the same tax year as the sale of the original QETI, or in the following tax year and before the date the corporation's franchise tax return is filed, take the deduction on that return. If purchase of the replacement QETI within the 365-day period

occurs in the following tax year and on or after the date the corporation's franchise tax return is filed, you must file an amended return to claim the deduction.

For more information, see TSB-M-98(7)C, *1998 Summary of Corporation Tax Legislation Changes,* pages 5 and 6.

**S-4** Victims or targets of Nazi persecution: Include the amount received (including accumulated interest) from an eligible settlement fund, or from an eligible grantor trust established for the benefit of these victims or targets, if included in your FTI. Do not include amounts received from assets acquired with such assets or with the proceeds from the sale of such assets (Tax Law, Article 1, section 13).

**S-5** Subtract royalty income from related members as described in Tax Law section 1453(r).

**S-6** Subtract 100% of dividend income from subsidiary capital received during the tax year if that dividend income is directly attributable to a dividend from a captive REIT or captive RIC for which that REIT or RIC claimed a federal dividends paid deduction and that REIT or RIC is included in a combined return under Article 9-A, 32, or 33. Enter in the first entry box the total amount of all such dividend income that is being included on this line.

**S-7** Subtract any amount of Articles 9-A, 23, or 32 tax refunded or credited for which no exclusion or deduction was allowed in determining ENI.

**S-8** Enter in the second entry box the amount of refund of the qualified empire zone enterprise (QEZE) credit for real property taxes that is included in your FTI and is being included on line 55.

**Line 58 —** If you claim a deduction for optional depreciation, enter the total of line 187 and line 192.

## Schedule C

**Line 60 —** ENI must be the same as that reported on line 57a. Whatever election you make concerning the IBF modification to ENI applies to the computation of alternative ENI. Eliminate intercorporate transactions between corporations included in the combined group.

## Schedule D

A taxpayer is not subject to the tax on taxable assets for that portion of the tax year in which it had outstanding net worth certificates issued to the following: the FSLIC in accordance with section 406(f)(5) of the Federal National Housing Act, as amended, (12 USC 1729(f)(5)); the FDIC in accordance with section 13(i) of the Federal Deposit Insurance Act, as amended, (12 USC 1823(i)); or the Resolution Trust Corporation (RTC) under section 1823(c)(1), (2), or (3) of Title 12 of the United States Code.

**Line 69 —** Compute the average value of total assets that includes money or other property received from the FSLIC, FDIC, or RTC and interbank placements. Average value of total assets is generally computed on a quarterly basis. However, you may use a more frequent basis, such as monthly, weekly, or daily. Total assets are those assets that are properly reflected on a balance sheet, the income or expenses of which are properly reflected (or would have been properly reflected if not depreciated or expensed fully or to a nominal amount) in the computation of the taxpayer's alternative ENI for the tax year and in the computation of the eligible net income of the taxpayer's IBF for the tax year. Tangible real and personal property, such as buildings, land, machinery, and equipment is valued at cost. Intangible property such as loans, investments, coin, and currency is valued at book value.

**Line 70 —** Include any amount of money or other property (whether or not evidenced by a note or other instrument) received from or attributable to amounts received from the following: the FDIC under section 13(c) of the Federal Deposit Insurance Act, as amended; the FSLIC under section 406(f)(1), (2), (3), or (4) of the Federal National Housing Act, as amended; or the RTC under section 1823(c)(1), (2), or (3) of Title 12 of the United States code.

**Line 73 —** The term *net worth ratio* means the percentage of net worth to assets on the last day of the tax year. The term *net worth* means the sum of preferred stock, common stock, surplus, capital reserves, undivided profits, mutual capital certificates, reserve for contingencies, reserve for loan losses, and reserve for security losses, minus assets classified loss. The term *assets* means the sum of mortgage loans, nonmortgage loans, repossessed assets, real estate held for development or investment or resale, cash, deposits, investment securities, fixed assets, and other assets (such as financial futures, goodwill, and other intangible assets), minus assets classified loss. Do not reduce assets by reserves for losses.

**Line 74 —** Determine the percentage of mortgages included in total assets by dividing the average of the four quarterly balances of mortgages ending within the tax year by the average of the four quarterly balances of all assets ending within the tax year. Compute quarterly balances in the same manner as the Report of Condition required for FDIC or FSLIC purposes whether or not such report is required. The term *mortgages* means loans secured by real property within or outside New York State, participations in and securities collateralized by pools of residential mortgages (whether or not issued or guaranteed by a United States government agency), and loans secured by stock in a cooperative housing corporation.

## Schedule E

Each corporation included in the combined return must compute the ENI allocation percentage, alternative ENI allocation percentage, and taxable assets allocation percentage on Forms CT-32-A and CT-32-A/B. When computing the combined allocation percentages on Form CT-32-A, compute the payroll, receipts, and deposits factors in each allocation percentage as though the corporations included in the combined return were one corporation.

Eliminate intercorporate dividends and all other intercorporate transactions, including intercorporate receipts and intercorporate deposits between the corporations included in the combined return. Attach a list of all intercorporate eliminations showing the amount of the intercorporate transactions and the corporations involved in each transaction.

A corporation that is doing business both within and outside New York State may allocate its ENI, alternative ENI, and taxable assets within and outside New York State. A corporation that is not doing business outside New York State must allocate its ENI, alternative ENI, and taxable assets 100% to New York State. However, a corporation that has an IBF located in New York State may elect, on an annual basis, to reflect the results of its IBF operations in its ENI allocation percentage, and in its alternative ENI allocation percentage. (See *Allocation percentage for taxpayers with an IBF located in New York State*.)

In determining whether a corporation is doing business outside New York State, consideration is given to the same factors used to determine if business is being carried on within New York State. See *Definition of doing business within New York State*. A corporation that claims to be doing business outside New York State must attach a statement describing the activities of the corporation within and outside New York State.

Each allocation percentage is determined by a formula consisting of a payroll factor, receipts factor, and deposits factor.

Corporations that are 65% or more owned subsidiaries of banks and bank holding companies that are subject to tax under Article 32 because of Tax Law section 1452(a)(9) and that substantially provide management, administrative, and/or distribution services to an investment company must use the receipts factor as the allocation percentage. Therefore, for these corporations the allocation percentage for ENI and alternative ENI is on line 103, column E, while the allocation percentage for taxable assets is on line 161, column E. A corporation that qualifies to use the allocation percentage described above can file a combined report only with other corporations subject to tax under Article 32 that qualify to use the same allocation percentage.

The receipts factor includes only receipts that are included in the computation of alternative ENI for the tax year. The deposits and payroll factors include only deposits and payroll, the expenses of which are included in the computation of alternative ENI for the tax year. Compute each factor on a cash or accrual basis according to the method of accounting used by the taxpayer for the tax year in computing its alternative ENI.

### Payroll factor

Determine the percentage of a corporation's payroll allocated to New York State by dividing 80% (100% when computing the alternative ENI allocation percentage) of the wages, salaries, and other personal service compensation of the corporation's employees (except general executive officers) within New York State during the period the corporation is entitled to allocate, by the total amount of wages, salaries, and other personal service compensation of the corporation's employees (except general executive officers), both within and outside New York State during the period the corporation is entitled to allocate.

If a corporation organized under the laws of a country other than the United States has employees that are regularly connected with or working out of an office of the corporation that is located outside of the United States, no amount of the wages, salaries, and other personal service compensation of these employees is included in either the numerator or the denominator of the payroll factor.

The term *employees* includes every individual, except general executive officers, where the relationship existing between the corporation and the

individual is that of employer and employee. The phrase *employees within New York State* includes all employees regularly connected with or working out of an office of the corporation within New York State, irrespective of where the services of such employees were performed.

The phrase *general executive officer* includes every officer of the corporation charged with and performing general executive duties of the corporation who is elected by the shareholders, elected or appointed by the board of directors, or, if initially appointed by another officer, such appointment must be ratified by the board of directors. A general executive officer must have company-wide authority with respect to assigned functions or duties, or must be responsible for an entire division of the company.

**Receipts factor**

Determine the percentage of the taxpayer's receipts allocated to New York State by dividing 100% of the taxpayer's receipts from loans (including the taxpayer's portion of a participation in a loan), financing leases, and all other business receipts earned within New York State during the period the taxpayer is entitled to allocate, by the total amount of the taxpayer's receipts from loans (including the taxpayer's portion of a participation in a loan), financing leases, and all other business receipts earned within and outside New York State during the period the taxpayer is entitled to allocate.

**Interest income from loans and financing leases**

Allocate to New York State interest income from loans and financing leases if such income is attributable to a loan or financing lease that is located in New York State. A loan or financing lease is located where the greater portion of income producing activity relating to the loan or financing lease occurred. Interest income from a loan or financing lease does not include repayments of principal.

Except for a taxpayer that is a production credit association or a corporation described under *Who must file,* item D, a loan or financing lease attributed by the taxpayer to a branch outside New York State is presumed to be properly so attributed, provided that such presumption may be rebutted if the Commissioner of Taxation and Finance demonstrates that the greater portion of income-producing activity related to the loan or financing lease did not occur at such branch. In the case of a loan or financing lease that is recorded on the books of a place outside New York State that is not a branch, it is presumed that the greater portion of income-producing activity related to such loan or financing lease occurred within New York State if the taxpayer had a branch within New York State at the time the loan or financing lease was made. The taxpayer may rebut such presumption by demonstrating that the greater portion of income-producing activity related to the loan or financing lease did not occur within New York State.

In the case of a taxpayer that is a production credit association or a corporation described under *Who must file,* item D, a loan or financing lease attributed by the taxpayer to a bona fide office outside New York State is presumed to be properly so attributed, provided that such presumption may be rebutted if the Commissioner of Taxation and Finance demonstrates that the greater portion of income-producing activity related to the loan or financing lease did not occur outside New York State.

*Income-producing activity* includes such activities as solicitation, investigation, negotiation, approval, and administration of the loan or financing lease. A loan or financing lease is made when such loan or financing lease is approved. The term *loan* means any loan, whether the transaction is represented by a promissory note, security, acknowledgment of advance, due bill, or any other form of credit transaction, if the related asset is properly recorded in the financial accounts of the taxpayer. Loans include the taxpayer's portion of a participation in a loan. The term *financing lease* means a lease where the taxpayer is not treated as the owner of the property for purposes of computing alternative ENI.

**Other income from loans and financing leases**

*Other income from loans and financing leases* includes, but is not limited to, arrangement fees, commitment fees, and management fees, but does not include repayments of principal. Other income from loans and financing leases is allocated to New York State when the greater portion of income-producing activity relating to such income is within New York State.

**Lease transactions and rents**

Receipts from real property and tangible personal property leased or rented from the corporation are allocated to New York State if such property is located in New York State. Receipts from rentals include all amounts received by the corporation for the use of or occupation of property, whether or not such property is owned by the taxpayer. Gross receipts received from real property and tangible personal property that is subleased must be included in the receipts factor.

**Interest from bank, credit, travel, entertainment, and other card receivables**

Interest, fees in the nature of interest, and penalties in the nature of interest from bank, credit, travel, entertainment, and other card receivables are allocated to New York State if the mailing address of the cardholder listed in the taxpayer's records is in New York State.

**Service charges and fees from bank, credit, travel, entertainment, and other cards**

Service charges and fees from bank, credit, travel, entertainment, and other cards are allocated to New York State if the mailing address of the cardholder listed in the taxpayer's records is in New York State.

**Receipts from merchant discounts**

Receipts from merchant discounts are allocated to New York State if the merchant is located within New York State. If a merchant has locations both within and outside New York State, only receipts from merchant discounts attributable to sales made from locations within New York State are allocated to New York State. It is presumed that the location of the merchant is the address of the merchant shown on the invoice submitted by the merchant.

**Income from trading activities and investment activities**

To determine the portion of total net gains and other income from trading activities and investment activities that is attributed within New York State, multiply such total net gains and other income by a fraction, the numerator of which is the average value of trading assets and investment assets attributable to New York State, and the denominator of which is the average value of all trading and investment assets. A trading asset or investment asset is attributable to New York State if the greater portion of income-producing activity related to the trading asset or investment asset occurred within New York State. Trading activities include, but are not limited to, foreign exchange transactions, the purchase and sale of options and financial futures, and, in appropriate cases, interbank fund transfers.

Interbank fund transfers include, but are not limited to, trading in negotiable certificates of deposit, currency swaps, interest rate swaps, Eurodollar transfers (purchases or sales), federal funds (sales, transfers, and purchases), and repurchase agreements representing transfer of funds.

**Fees or charges from letters of credit, traveler's checks, and money orders**

Fees or charges from the issuance of letters of credit, traveler's checks, and money orders are allocated to New York State if such letters of credit, traveler's checks, or money orders are issued within New York State.

**Performance of services**

Receipts for services performed by the taxpayer's employees regularly connected with or working out of a New York State office of the taxpayer are allocated to New York State if such services are performed within New York State.

When allocating receipts for services performed, it is immaterial where such receipts are payable or where they are actually received.

When allocating receipts for services to regulated investment companies, the amount of receipts received from an investment company (mutual fund) for management, administration, or distribution services, is allocated to New York State based on the domicile of the shareholders of the investment company (Tax Law, Article 32, section 1454(a)(2)(G)). For more information, see TSB-M-88(9)C, *Allocation of Receipts from services provided to a Regulated Investment Company (Mutual Fund) and Similar Investment Companies*.

If services are performed both within and outside New York State, determine the portion of the receipts attributable to services performed within New York State on the basis of the relative value of, or amount of time spent in performance of, such services within New York State, or by some other reasonable method. Submit full details with the return.

**Royalties**

Receipts of royalties from the use of patents, copyrights, and trademarks are allocated to New York State if the taxpayer's actual seat of management or control is located in New York State. Royalties include all amounts received by the taxpayer for the use of patents, copyrights, or trademarks, whether or not such patents, copyrights, or trademarks were issued to the taxpayer.

**All other business receipts**

Income from securities used to maintain reserves against deposits to meet federal and state reserve requirements are allocated to New York State based upon the ratio that total deposits in New York State bears to total deposits everywhere.

All other business receipts earned by the taxpayer in New York State are allocated to New York State.

A receipt from the sale of a capital asset is not a business receipt and may not be included in the receipts factor. For example, do not include in the receipts factor the receipt from the sale of a capital asset as scrap or at a gain.

**Deposits factor**

Determine the percentage of the taxpayer's deposits allocated to New York State by dividing the average value of deposits maintained at branches of the taxpayer within New York State during the period the taxpayer is entitled to allocate, by the average value of all deposits maintained at branches of the taxpayer both within and outside New York State during the period the taxpayer is entitled to allocate.

The term *deposit* means:

- The unpaid balance of money or its equivalent received or held by a bank in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or that is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the bank, or a letter of credit or a traveler's check on which the bank is primarily liable. However, without limiting the generality of the term *money or its equivalent,* any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note, upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank for collection.
- Trust funds received or held by such bank, whether held in the trust department or held or deposited in any other department of such bank.
- Money received or held by a bank, or the credit given for money or its equivalent received or held by a bank, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including (without being limited to) escrow funds, funds held as security for an obligation due to the bank or others (including funds held as dealers' reserves) or for securities loaned by the bank, funds deposited by a debtor to meet maturing obligations, funds deposited as advanced payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes. However, funds that are received by the bank for immediate application to the reduction of an indebtedness to the receiving bank, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness are not included.
- Outstanding drafts (including advice or authorization to charge a bank's balance in another bank), cashier's checks, money orders, or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends, or purchases or other costs or expenses of the bank itself.

A deposit is maintained at the branch of the taxpayer at which it is properly booked.

A deposit, the value of which at all times during the tax year was less than $100,000, that is booked by a taxpayer at a branch outside New York State is presumed to be properly booked, provided that such presumption may be rebutted if the Commissioner of Taxation and Finance demonstrates that the greater portion of contact relating to the deposit did not occur at such branch.

A deposit, the value of which at any time during the tax year was $100,000 or more, is considered to be properly booked at the branch with which it has a greater portion of contact.

In determining whether a deposit has a greater portion of contact with a particular branch, consideration is given to such activities as:

- Whether the deposit account was opened at or transferred to that branch by or at the direction of the depositor or by a broker of deposits, regardless of where subsequent deposits or withdrawals may be made.
- Whether employees regularly connected with that branch are primarily responsible for servicing the depositor's general banking and other financial needs.
- Whether the deposit was solicited by an employee regularly connected with that branch, regardless of where such deposit was actually solicited.
- Whether the terms governing the deposit were negotiated by employees regularly connected with that branch, regardless of where the negotiations were actually conducted.
- Whether essential records relating to the deposit are kept at that branch and whether the deposit is serviced at that branch.

The value of deposits maintained at branches of the taxpayer is the total of the amounts credited to depositors, including the amount of any interest so credited. The average value of deposits should be computed on a daily basis. However, if the taxpayer's usual accounting practices do not permit the computation of average value on a daily basis, a computation on a weekly basis will be permitted. The Commissioner of Taxation and Finance does not permit the computation of average value of deposits on a basis less frequent than weekly, unless the taxpayer demonstrates that requiring it to use a weekly computation would produce an undue hardship.

**Allocation percentage for taxpayers with an IBF located in New York State**

A corporation with an IBF located in New York State that uses the IBF modification method must, when computing its ENI allocation percentage and its alternative ENI allocation percentage:

- Exclude from the numerator and denominator of the payroll factor the wages, salaries, and other personal service compensation of employees, the expenses of which are attributable to the production of eligible gross income of the IBF.
- Exclude from the numerator and denominator of the receipts factor those receipts that are attributable to the production of eligible gross income of the IBF.
- Exclude from the numerator and denominator of the deposits factor those deposits the expenses of which are attributable to the production of eligible gross income of the IBF.

A corporation that has an IBF located in New York State and that has elected to use the IBF formula allocation method must, when computing its ENI allocation percentage and its alternative ENI allocation percentage, adjust such percentages to:

- Exclude from the numerator of the payroll factor the wages, salaries, and other personal service compensation of employees, the expenses of which are attributable to the production of eligible gross income of the IBF. Include in the denominator of the payroll factor the wages, salaries, and other personal service compensation of employees, (except general executive officers,) the expenses of which are attributable to the production of eligible gross income of the IBF.

  When attributing the IBF wage, salary, and other personal service compensation expenses to the production of eligible gross income of the IBF, only those IBF wages, salaries and other personal service compensation of IBF employees, the expenses of which are attributable to the production of eligible gross income under the IBF formula allocation method are considered. Eligible gross income under the IBF formula allocation method does not include gross income from transactions with branches of the taxpayer (see Regulation section 19-2.3(d)) or gross income that is not eligible gross income under the IBF modification method (including any not effectively connected income of an alien bank's IBF) (see Regulation sections 18-3.3(b) and 18-3.4).
- Exclude from the numerator, but include in the denominator of the receipts factor, those receipts that are attributable to the production of eligible gross income of the IBF.
- Exclude from the numerator, but include in the denominator of the deposits factor, deposits the expenses of which are attributable to the production of eligible gross income of the IBF.

  When an IBF has income not considered eligible gross income under the IBF formula allocation method (as discussed in the payroll factor above) then, due to the fungibility of money, the IBF deposits received from foreign persons serve to fund both eligible and ineligible gross income. As a result, to determine the IBF deposits, the expenses of which are attributable to the production of eligible gross income under the IBF formula allocation method, the taxpayer multiplies the IBF deposits from foreign persons by the following ratio:

$$\frac{\text{IBF eligible gross income under the IBF formula allocation method}}{\text{IBF gross income (includes both eligible and ineligible income)}}$$

  The product of this multiplication is the portion of the deposits received from foreign persons that may be excluded from the numerator of the deposits factor.

Every corporation that has an IBF located in New York State (whether or not it has elected to use the IBF formula allocation method) must compute its taxable assets allocation percentage as follows:

- Include in the numerator and denominator of the payroll factor wages, salaries, and personal service compensation of employees (except general executive officers), the expenses of which are attributable to the production of eligible gross income of the IBF.
- Include in the numerator and denominator of the receipts factor those receipts that are attributable to the production of eligible gross income of the IBF.
- Include in the numerator and denominator of the deposits factor those deposits and expenses that are attributable to the production of eligible gross income of the IBF.

A corporation that is not doing business outside New York State and that has elected to use the IBF formula allocation method must allocate taxable assets 100% to New York State.

**Line 103 —** Corporations entitled to allocate ENI and alternative ENI using a single receipts factor enter the result here and next to line 57b; next to line 66; on line 114; and on line 121.

All other corporations continue with line 104.

**Line 114, Line 121, Line 161 —** If a factor is missing, add the remaining factors and divide by the total number of factors present. A factor is missing only if both the numerator and the denominator are zero.

**Line 114 —** Divide line 113 by five, or by the number of percentages present (see previous instructions for when a factor is missing). Enter the result here, and next to line 57b.

**Line 121 —** Divide line 120 by three (for both columns A and E when completing Form CT-32-A), or by the number of percentages present (see previous instructions for when a factor is missing). Enter the result on line 121, columns A and E. Also, when completing Form CT-32-A, enter the column E result next to line 66. If completing Form CT-32-A/B, line 121, enter the result on that line, as well as on Form CT-32-A/C, Method 1 or Method 3 as applicable.

**Line 150 —** Corporations entitled to allocate taxable assets using a single receipts factor enter the result here and next to line 72, and on line 161.

All other corporations continue with line 151.

**Line 161 —** Divide line 160 by five, or by the number of percentages present (see previous instructions for when a factor is missing). Enter the result on line 161, and next to line 72.

## Schedule F

A corporation with an IBF located in New York State may do **one** of the following:

1. Use the IBF modification method, and deduct from ENI on line 49, the adjusted eligible net income of the IBF computed on line 185. The decision to use the IBF modification method for a tax year is made with the filing of the return for the tax year. Mark an **X** in the IBF modification boxes on Schedule E and Schedule F. The decision to use the IBF modification method may be changed with the filing of an amended return for the tax year. A corporation that uses the IBF modification method must complete lines 162 through 185.
2. Elect the IBF formula allocation method and do not modify ENI. The election to use the IBF formula allocation method for a tax year is made with the filing of the return for the tax year. Mark an **X** in the IBF formula allocation method boxes on Schedule E and Schedule F. The election to use the IBF formula allocation method may be changed with the filing of an amended return for the tax year. A corporation that elects to use the IBF formula allocation method must complete lines 162 through 166.

   If any corporation included in the combined return makes the IBF modification or formula allocation election, then **all** corporations included in the combined return with an IBF must use the same method in computing ENI and alternative ENI.

For the effect of the IBF modification method and the IBF formula allocation method on allocation percentages, see *Allocation percentage for taxpayers with an IBF located in New York State*.

## Schedule G

Each corporation included in the combined return, if applicable, must complete a separate Schedule G when the computation of New York depreciation on property differs from federal depreciation. However, do not include depreciation adjustments required on Form CT-399.

**Part 1**

The taxpayer may elect to deduct up to double the amount of federal depreciation on qualified tangible property (except personal property leased to others) in lieu of the amount of normal depreciation. The original use of such property must commence with the taxpayer and the property must be (1) depreciable tangible property as defined by IRC section 167, (2) constructed or acquired after December 31, 1963, and on or before December 31, 1967, and (3) be located in New York State. The total deduction of all years, including years covered by Article 9-B or 9-C for any unit of property, may not exceed the cost of such property. Any unused optional depreciation may be carried forward to succeeding years. Determine the amount of carryover by limiting allocated ENI (line 57b) to zero.

**Part 2**

Include property on which the method of depreciation under Article 9-B or 9-C was different from that used for federal purposes.

## Schedule H

Each corporation included in the combined return, if applicable, must complete a separate Schedule H when the computation of New York gain or loss on disposition of property differs from federal gain or loss (do not include disposition adjustments required to be included on Form CT-399).

In computing gain, enter the higher of cost or fair market price or value at applicable date. In computing loss, enter the lower of cost or fair market price or value at the applicable date.

Upon sale or disposition, compute the net gain or loss thereon by adjusting the federal basis of such property to reflect the total deductions allowed for all years, including years covered by Article 9-B or 9-C.

**Note:** If more than one corporation in the combined return must complete Schedule F, G, or H, photocopy the applicable schedule, include the name and employer identification number of the corporation, and attach the completed schedule to Form CT-32-A.

## Schedule I

**Computation of the issuer's allocation percentage**

The parent corporation must compute its issuer's allocation percentage on Form CT-32-A, Schedule I. Each member corporation computes its issuer's allocation percentage on Form CT-32-A/C. See Form CT-32-A/C-I, *Instructions for Form CT-32-A/C,* for details.

Compute the issuer's allocation percentage using one of the three following methods. Determine which one of the three methods applies and compute the issuer's allocation percentage on the appropriate form. Tax Law section 1085(o) provides for a penalty of $500 for failure to provide the information necessary to compute the issuer's allocation percentage.

**Method 1.** A banking corporation (excluding corporations described under *Who must file,* item D) organized under the laws of the United States, New York State, or any other state enters as its issuer's allocation percentage the alternative ENI allocation percentage from Form CT-32-A, line 121, column A.

**Method 2.** A banking corporation (excluding corporations described under *Who must file,* item D) organized under the laws of a country other than the United States enters as its issuer's allocation percentage the percentage determined by dividing gross income within New York State by worldwide gross income.

- Enter as gross income within New York State total receipts as shown in Form CT-32-A, line 90, column A.
- Enter as worldwide gross income total receipts as shown on Form CT-32-A, line 102, column A, plus all receipts as defined on lines 91 through 101, from sources outside the United States that were not taken into account in computing FTI.
- A corporation with an IBF located in New York State (whether or not it has made the IBF election) must include in the numerator and denominator of the issuer's allocation percentage receipts as defined on Form CT-32-A, Column A, lines 79 through 89 and lines 91 through 101, that are attributable to the production of eligible gross income of the IBF.
- When the receipts shown in the computation of the issuer's allocation percentage are different from the receipts shown on Form CT-32-A, Schedule E, Part 1, attach an explanation.

**Method 3.** A corporation that is filing under Article 32 solely as a result of item D, *Who must file,* and every bank holding company that is included in a combined return, enters as its issuer's allocation percentage the percentage determined by dividing business and subsidiary capital allocated to New York State by total worldwide capital.

**Method 3 — Computation of subsidiary capital allocated to New York State**

**Column A**

Enter the full name and federal EIN of each subsidiary. *Subsidiary corporation* is defined by Tax Law, Article 32, section 1450(d) and instructions for Form CT-32-A, line 45.

**Column C**

Enter the average value of each subsidiary. Compute the average value on a quarterly, monthly, weekly, or daily basis. Use the same basis of averaging subsidiary capital as was used to average total assets on Form CT-32-A, line 69. *Subsidiary capital* is defined by Tax Law section 1450(e) and instructions for Form CT-32-A, line 45.

**Column D**

Enter the average value of current liabilities attributable to each subsidiary. Compute the average value on a quarterly, monthly, weekly, or daily basis. Use the same basis of averaging current liabilities as was used to average subsidiary capital in column C.

**Column F**

Enter the issuer's allocation percentage for each subsidiary. The issuer's allocation percentage is obtained from the New York State corporation franchise tax return filed by the subsidiary corporation for the preceding year.

Issuer's allocation percentages are available on the Tax Department's Web site and from many online and printed tax services. You may also call to obtain up to three issuer's allocation percentages (see *Need help?*).

**Method 3 — Computation of business capital allocated to New York State**

**Line 196 —** Deduct the total average value of current liabilities that are properly reflected on a balance sheet. Compute the average value on a quarterly, monthly, weekly, or daily basis.

Use the same basis of averaging current liabilities as used to average total assets on Form CT-32-A, line 69. *Current liabilities* are any liabilities maturing in one year or less from the date originally incurred.

**Method 3 — Computation of the issuer's allocation percentage**

**Line 202 —** Enter as total worldwide capital the average value of total assets as computed on Form CT-32-A, line 69, plus the average value of all assets from sources outside the United States that were **not** taken into account in computing FTI.

When valuing assets from sources outside the United States, compute the average value of such assets in the same manner as the average value of total assets on Form CT-32-A, line 69.

Deduct from total assets the total average value of current liabilities maturing in one year or less from the date originally incurred. Compute the average value of such current liabilities in the same manner as the average value of total assets.

If the assets shown in the computation of the issuer's allocation percentage are different from the assets shown on Form CT-32-A, line 69, attach an explanation.

## Composition of prepayments

**Line 207 —** Include overpayments credited from prior years. You may also include from last year's return any amount of refundable tax credits you chose to be credited as an overpayment.

## Summary of tax credits claimed on line 6 against current year's franchise tax

**Line 212 —** Enter the total amount of credits that are **refund eligible** claimed on line 211 against your current year's franchise tax. Do not include any credit amounts actually requested as a refund on line 22b, or requested as an overpayment credited to next year's tax on line 22c.

The following are refund-eligible credits:

- Investment tax credit for the financial services industry (refundable to new businesses only) (Form CT-44)
- QEZE credit for real property taxes (Form CT-606)
- Excelsior jobs program tax credit (Form CT-607)
- Brownfield redevelopment tax credits (Forms CT-611 and CT-611.1)
- Remediated brownfield credit for real property taxes (Form CT-612)
- Environmental remediation insurance credit (Form CT-613)
- Security officer training tax credit (Form CT-631)