



# Instructions for Form CT-33-M

## Insurance Corporation MTA Surcharge Return

Tax Law — Article 33, Section 1505-a

# CT-33-M-1

### 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
  - Dates
  - Negative amounts
  - Percentages
  - Whole dollar amounts
- Third-party designee
- Paid preparer identification numbers
- Is your return in processible form?
- Use of reproduced and computerized forms
- Electronic filing and electronic payment mandate
- Web File
- Form CT-200-V
- Collection of debts from your refund or overpayment
- Fee for payments returned by banks
- Reporting requirements for tax shelters
- Tax shelter penalties
- Voluntary Disclosure and Compliance Program
- Your rights under the Tax Law
- Need help?
- Privacy notification

### General information

#### Who must file

If you do business, employ capital, own or lease property, or maintain an office in the Metropolitan Commuter Transportation District (MCTD), you must pay a metropolitan transportation business tax surcharge on business done in the Metropolitan Transportation Authority region (MTA surcharge). The MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

If you file Form CT-33-NL, *Non-Life Insurance Corporation Franchise Tax Return*, Form CT-33, *Life Insurance Corporation Franchise Tax Return*, or Form CT-33-A, *Life Insurance Corporation Combined Franchise Tax Return*, use Form CT-33-M to report and pay the MTA surcharge.

Life insurance corporations filing on a combined basis are required to file only one return for the combined group. Use combined figures, as shown on your Form CT-33-A, to complete this form.

#### MTA surcharge for non-life insurance corporations

The MTA tax surcharge for non-life insurance corporations is equal to 17% of the franchise tax based solely on premiums under Tax Law, Article 33, section 1502-a, after the deduction of any tax credits allowed under Article 33, and as allocated to the MCTD as described in *MCTD allocation percentage for non-life insurance corporations*.

#### MCTD allocation percentage for non-life insurance corporations

The MCTD allocation percentage for non-life insurance corporations is calculated by dividing the direct premiums described as taxable premiums under Article 33 section 1510 that are written on risks located or resident in the MCTD by the direct

premiums described as taxable premiums under section 1510 that are written on risks located or resident in New York State.

#### MTA surcharge for life insurance corporations

The MTA surcharge for life insurance corporations is computed using the franchise tax rates in effect immediately prior to tax years beginning on or after July 1, 2000. Therefore it may be necessary to recompute your franchise tax for purposes of computing the MTA surcharge. The MTA surcharge rate is 17% and is applied to the franchise tax after the deduction of any tax credits allowed under Article 33, and as allocated to the MCTD as described in *MCTD allocation percentage for life insurance corporations*.

#### MCTD allocation percentage for life insurance corporations

The MCTD allocation percentage for life insurance corporations is calculated by adding the percentages of the taxpayer's premiums allocated to the MCTD (multiplied by nine) and payroll allocated to the MCTD and dividing the sum by ten.

#### Installment payments

A taxpayer whose franchise tax is more than \$1,000 must file a declaration of estimated MTA surcharge and make quarterly installment payments on Form CT-400, *Estimated Tax for Corporations*.

#### When and where to file

File your return within 2½ months after the end of your reporting period. If you are reporting for the calendar year, file your return on or before March 15. If your filing date falls on a Saturday, Sunday, or legal holiday, file your return on or before the next business day.

File with, but do not attach to, Form CT-33-NL, Form CT-33, or Form CT-33-A.

Mail your return to: **NYS CORPORATION TAX PROCESSING UNIT  
PO BOX 22038  
ALBANY NY 12201-2038**

Also mail a copy to: **NYS INSURANCE DEPARTMENT  
ONE COMMERCE PLAZA  
ALBANY NY 12257**

#### 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. You must also mail a copy to the NYS Insurance Department at the address listed above.

#### Extension of time for filing MTA surcharge return

You may request additional time to file Form CT-33-M. To do this, file Form CT-5, *Request for Six-Month Extension to File (for franchise/business taxes, MTA surcharge, or both)*, or Form CT-5.3, *Request for Six-Month Extension to File (for combined franchise tax return, or combined MTA surcharge return, or both)*, on or

before the due date of the return for which you are requesting the extension, and pay the MTA surcharge you estimate to be due.

## Specific instructions

### Amended return

If you are filing an amended return, mark an **X** in the *Amended return* box on the top of Form CT-33-M.

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 any of the taxable income amounts listed here have 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 federal determination. For a definition of final determination, see NYS Regulation section 6-1.3(b).

- Life insurance company taxable income (which includes, in the case of a stock life insurance company that has an existing policyholders surplus account, the amount of direct and indirect distributions during the tax year to shareholders from such account)
- Taxable income of a partnership
- Taxable income or alternative minimum taxable income of any taxpayer

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

If you filed as part of a consolidated group for federal tax purposes but on a separate basis for New York State tax purposes, you must submit a statement indicating the changes that would have been made if you had filed on a separate basis for federal tax purposes.

**For credits or refunds based upon carryback of a net operating loss (NOL) or operations loss** — To claim a credit or refund resulting from the carryback of an NOL, an operations loss, or alternative net operating loss (ANOL) to a prior year, file an amended return within 90 days (120 days if filing an amended combined return) from the date of the document indicating approval of the federal refund or credit.

You must attach the following to your amended return:

- federal claim Form 1139, *Corporation Application for Tentative Refund*, amended federal Form 1120-L, *U.S. Life Insurance Company Income Tax Return*, or amended federal Form 1120-PC, *U.S. Property and Casualty Insurance Company Income Tax Return*;
- a copy of the New York State return for the loss year; and
- proof of federal refund approval, *Statement of Adjustment to Your Account*.

**For credits or refunds of corporation tax paid** — To claim any refund type that requires an amended return, other than an NOL or operations loss carryback (see above), 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 IRS (usually amended Form 1120-L or 1120-PC) and proof of federal refund approval, *Statement of Adjustment to Your Account*.

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.

**Erroneously paid or illegally or unconstitutionally imposed retaliatory taxes or other charges** — If after exhaustion of all further judicial review, there is a final determination by competent authority that a refund or credit is due for retaliatory taxes or

other charges imposed or assessed by another state, and a credit against New York State tax was allowed under Tax Law, Article 33, section 1511(c) for such taxes or charges, then the final determination, along with the amount to be refunded or credited, must be reported within 90 days of its issuance.

### 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.

### Important identifying information

For us to process your corporation tax forms, it is important that we have the necessary identifying information. Enter your employer identification number and file number. If you use a paid preparer or accounting firm, make sure they use your complete and accurate identifying information when completing all forms.

### Line instructions

**Line A** — Make your check or money order payable 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**.

### Computation of MCTD allocation percentage

#### Non-life insurance corporations MCTD allocation percentage

Life insurance corporations skip lines 1a through 2.

**Lines 1a through 2** — If all your direct premiums described as taxable premiums under section 1510 are written on risks located or resident in the 12 counties of the MCTD, skip lines 1a and 1b and enter **100** on line 2. Otherwise, compute your MCTD allocation percentage by completing lines 1a, 1b, and 2.

**Line 1b** — Enter your direct premiums described as taxable premiums under section 1510 that are written on risks located or resident in the MCTD. Also, include premiums written, procured, or received in the MCTD on business that cannot be specifically assigned as located or resident in an area outside the MCTD, or in another state(s). However, in the case of special risk premiums, include only those premiums written, procured, or received in the MCTD on property or risks located or resident in the MCTD.

#### Life insurance corporations MCTD allocation percentage

Non-life insurance corporations skip lines 3a through 9.

**Lines 3a through 9** — If all of your New York State business is within the 12 counties of the MCTD, skip lines 3a through 8 and enter **100** on line 9. Otherwise, compute your MCTD allocation percentage by completing lines 3a through 9.

Life insurance corporations taxable under Article 33 that are filing on a combined basis must use a combined MCTD allocation percentage.

**Line 3b** — Determine MCTD premiums included on line 3a using the same principles set out in Tax Law, Article 33, sections 1504(a) and (b) to determine New York State premiums.

**Line 6b** — Determine MCTD wages included on line 6a using the same principles set out in Tax Law section 1504(a) to determine New York State wages, salaries, commissions, and other compensation.

**Line 9** — If the MCTD premium factor is missing from line 4, the MCTD allocation percentage is the MCTD wage factor percentage on line 7. If the MCTD wage factor is missing from line 7, the MCTD allocation percentage is the MCTD premiums factor percentage on line 4. A factor is missing if both its numerator and denominator are zero. If the numerator is zero and the denominator has a positive figure, the factor has an allocation value of 0% and this percentage is included in the computation of the MCTD allocation percentage.

**Computation of MTA surcharge**

**Line 10** — Enter the amount from Form CT-33, line 13, or Form CT-33-A, line 17 **unless** you meet **all** of the following criteria:

- the tax on Form CT-33, line 11, or Form CT-33-A, line 15, is equal to the tax on Form CT-33, line 9c or Form CT-33-A, line 13; **and**
- the tax on Form CT-33 or CT-33-A, line 1 is larger than each of the taxes on line 2, line 3, and line 4 of that form; **and**
- the tax from Form CT-33, line 7, or CT-33-A, line 8, is larger than the floor limitation on tax on Form CT-33, line 8 or Form CT-33-A, line 9.

If you meet the criteria, complete *Worksheet*.

**Worksheet**

**Recomputation of tax for insurance companies when franchise tax base is on entire net income and not the section 1505(b) floor limitation or the section 1505(a)(2) limitation on tax**

A. Allocated entire net income (enter amount from Form CT-33, line 82, or CT-33-A, line 86) .....	A. _____
B. "As if" entire net income tax rate (9%) .....	B. <u>          .09</u>
C. Recomputed tax on entire net income (multiply line A by line B) .....	C. _____
D. Allocated subsidiary capital tax (enter amount from line 5 of Form CT-33 or CT-33-A) ....	D. _____
E. Total tax on premiums (enter amount from Form CT-33, line 6, or CT-33-A, line 7) .....	E. _____
F. Tax before empire zone (EZ) and zone equivalent area (ZEA) tax credits (add lines C through E) ....	F. _____
G. EZ and ZEA tax credits claimed (enter amount from Form CT-33, line 9b, or CT-33-A, line 11a) .....	G. _____
H. Tax after EZ and ZEA tax credits (subtract line G from line F) .....	H. _____
I. Combined minimum tax for subsidiaries (Form CT-33 filers enter 0; Form CT-33-A filers enter the amount from line 12 of that form) .....	I. _____
J. Total tax after EZ and ZEA tax credits (add lines H and I) .....	J. _____
K. Section 1505(a)(2) limitation on tax (enter amount from Form CT-33, line 10, or CT-33-A, line 14) .....	K. _____
L. Recomputed New York State franchise tax (life insurance corporations enter amount from line J or K, whichever is less; unauthorized non-life insurance corporations enter amount from line J) ...	L. _____
M. Tax credits (enter amount from Form CT-33, line 12, or CT-33-A, line 16) .....	M. _____
N. Net recomputed New York State franchise tax (subtract line M from line L; enter here and on Form CT-33-M, line 10) .....	N. _____

**Line 13** — Insurance corporations organized or domiciled in New York State may claim a credit on this line for 90% (.9) of retaliatory taxes paid to other states for the privilege of doing business in those states, resulting from the imposition of the MTA surcharge for the current tax year. Enter the smaller of 90% of retaliatory taxes paid during the current tax year attributable to the current tax year's MTA surcharge or the amount of MTA surcharge

shown on line 12. Attach computation. Enter 0 if you are not claiming a retaliatory tax credit. To claim a refund for retaliatory taxes paid during the current tax year as a result of the imposition of the MTA surcharge for previous periods, see lines 29 through 38.

**Line 15b** — If you did not file Form CT-5 or Form CT-5.3, and your franchise tax on line 7 of Form CT-33-NL, line 13 of Form CT-33, or line 17 of Form CT-33-A exceeds \$1,000, then you must pay a mandatory first installment on line 15b.

**Life insurance corporations:** Enter 40% (.4) of the MTA surcharge shown on line 14 of Form CT-33-M.

**Non-life insurance corporations:** If your franchise tax on line 7 of Form CT-33-NL exceeds \$1,000, but does not exceed \$100,000, enter 25% (.25) of the MTA surcharge shown on line 14 of Form CT-33-M. If your franchise tax on line 7 of Form CT-33-NL exceeds \$100,000, enter 40% (.4) of the MTA surcharge shown on line 14 of Form CT-33-M.

**Unauthorized non-life insurance corporations:** If line 13 of Form CT-33 is more than \$1,000, but less than or equal to \$100,000, enter 25% (.25) of the tax shown on line 14. If line 13 of Form CT-33 is more than \$100,000, enter 40% (.4) of the tax shown on line 14.

**Line 19** — 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 20** — If you do not pay the MTA surcharge on or before the original due date (**without** regard to any extension of time), 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 15a or 15b, first installment of estimated tax for next period.

**Line 21** — Compute additional charges for late filing and late payment on the amount of MTA surcharge required to be shown on the return after deduction of any payment made on or before the due date (**with** regard to any extension of time for filing). Exclude from the penalty computation any amount shown on line 15a or 15b, first installment of estimated tax for next period.

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

**Lines 23 through 26** — You may apply all or part of your overpayment to your New York State franchise tax, next year's MTA surcharge, or request a refund. Indicate the amount to be credited to New York State franchise tax on line 24, the amount to be credited to next year's MTA surcharge on line 25, and the amount to be refunded on line 26.

**Claim for refund of MTA surcharge retaliatory tax credit**

Insurance corporations organized or domiciled in New York State must use lines 29 through 38 to claim a refund for retaliatory taxes

paid to other states as a result of the imposition of the metropolitan transportation business tax (MTA surcharge). The surcharge credit available for a given year may not exceed the MTA surcharge payable for that year as computed under Tax Law, Article 33, section 1505-a. The credit is claimed in the year paid, but is attributed to the year in which the retaliatory taxes were imposed or assessed.

Attach a separate sheet to the refund claim, identifying the recipients of the retaliatory tax and the amount paid to each recipient, broken down to reflect the year to which the taxes are attributable.

For tax years beginning on or after January 1, 2003, the \$4 million limitation on the total amount of the surcharge retaliatory tax credit claimed in any surcharge tax year has been repealed. Also, there is no longer a limitation date for the surcharge retaliatory tax credit, and this credit may now be claimed for taxes paid to other states regardless of the limitation date for a surcharge tax year.

**Line 29** — Enter MTA surcharge payable for each year for which you are claiming a credit.

**Line 30** — Enter retaliatory tax credits allowed in prior years that are attributable to the MTA surcharge. Include all credits claimed on Form CT-33-M.

**Lines 32 through 36** — Do not include on these lines any amounts attributable to retaliatory taxes that were previously claimed on Form CT-33-M for any year.

**Line 37** — Enter in the appropriate column, for the correct year, the total MTA surcharge retaliatory tax credits allowed to date. Include any credits previously allowed on Form CT-33-M as well as amounts claimed in Columns A through E on lines 32 through 36.

**Lines 39 through 45 — Composition of prepayments claimed on line 17**

If you need more space, write **see attached** in this section and attach a separate sheet showing all relevant prepayment information. Transfer the total shown on the attached sheet to line 17.

## 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.

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