



Instructions for Form CT-3.1

Investment and Other Exempt Income and Investment Capital

All citations are to New York State Tax Law sections unless specifically noted otherwise.

Tax law and regulations

For current tax laws and the full text of the adopted corporation tax regulations, visit our website at www.tax.ny.gov. For the tax law (search: *law*) and for the regulations (search: *regulation*).

General information

Investment income and other exempt income are subtracted from entire net income (ENI) in the computation of business income. Investment capital is subtracted from total net assets in the computation of the capital base.

Form CT-3.1 provides detail for these amounts reported on certain lines of Form CT-3 or CT-3-A, Parts 3, 4, and 5.

For purposes of calculating investment income, other exempt income, the attribution of interest deductions, and the safe harbor reduction election, a combined group is treated as a single corporation and computes these amounts on a combined basis. All intercompany transactions and activity must be eliminated.

For purposes of these instructions, gross other exempt income, gross investment income, gross exempt cross-article dividends, gross exempt controlled foreign corporation (CFC) income, and gross exempt unitary corporation dividends is the amount of each of these types of income **before** the 40% safe harbor reduction amount or any subtraction for the attribution of interest deductions.

Definitions

Other exempt income [§ 208.6-a and 20 NYCRR 3-4.6]

Other exempt income means the sum of exempt CFC income and exempt unitary corporation dividends. It does **not** include any amount treated as dividends pursuant to Internal Revenue Code (IRC) § 78. If a stock that generates other exempt income is **itself** marked to market, and the 8% fixed percentage method election for apportionment is made, no income from such stock is includible in other exempt income for that tax year. For more information concerning the 8% fixed percentage method election for apportionment, see Form CT-3-I or Form CT-3-A-I, Part 6, line 8 instructions.

Exempt CFC income means the sum of the following types of income, less any interest deductions directly or indirectly attributable to the income or the safe harbor reduction amount if the election in Schedule A has been made:

- a) Subpart F (of the IRC) income and investment of earnings in U.S. property required to be included in the taxpayer's federal gross income per IRC § 951(a), received from a corporation that is conducting a unitary business with the taxpayer but is **not** included in a combined return with the taxpayer; **and**
- b) 95% of the global intangible low-taxed income (GILTI) required to be included in the taxpayer's federal gross income per IRC § 951(A)(a) without regard to the deduction under IRC § 250, that is received from a corporation that is **not** included in a combined return with the taxpayer.

Exempt CFC income amounts do **not** constitute exempt unitary corporation dividends or investment income.

Exempt unitary corporation dividends means those dividends from a corporation that is conducting a unitary business with the taxpayer but is **not** included in a combined return with the taxpayer, less any interest deductions directly or indirectly attributable to such income or the safe harbor reduction amount, if applicable.

Exempt cross-article dividends means dividend income received from unitary corporations that are taxable under a franchise tax imposed by Article 9 or Article 33, or that would be taxable under those articles if subject to tax, but are **not** included in a combined return with the taxpayer, less any interest deductions directly or indirectly attributable to such income (the 40% safe harbor does not apply). Exempt cross-article dividends are one type of exempt unitary corporation dividends.

Investment capital [§ 208.5 and 20 NYCRR 3-4.1]

Investment capital means investments in stocks of non-unitary corporations that satisfy the definition of a capital asset under IRC § 1221 at all times the taxpayer owned such stock during the tax year, are held by the taxpayer for investment for more than one year, and the dispositions of which are, or would be, treated by the taxpayer as generating long-term capital gains or losses under the IRC. Stocks acquired on or after January 1, 2015, must have **never** been held for sale to customers in the regular course of business after the close of the day on which they were acquired. Such stocks must be clearly identified in the taxpayer's records as stock held for investment in the same manner as required under IRC § 1236(a)(1) for the stock of a dealer in securities to be eligible for capital gain treatment (whether or not the taxpayer is a dealer of securities subject to § 1236). Generally, the identification must occur before the close of the day on which the stock was acquired, although floor specialists have seven business days to make the identification.

If a taxpayer acquires stock that is a capital asset under IRC § 1221 during the tax year, and owns that stock on the last day of the tax year, it will be **presumed**, solely for purposes of determining whether that stock should be classified as investment capital after it is acquired, that the taxpayer held that stock for more than one year. However, if the taxpayer can determine, at the time it files its original return for the tax year in which it acquired the stock, whether or not it actually held the stock for more than one year, then the presumption in the preceding sentence does **not** apply and the actual period of time during which the taxpayer owned the stock is used to determine whether the stock could be classified as investment capital.

Two situations in which the holding period presumption described above would **not** apply are:

- 1) you still own the stock on the date you file your return, but as of that date you have owned the stock for more than one year; and
- 2) you have sold the stock prior to the date you file your return.

In both cases, you would use your actual holding period to determine whether the stock could be classified as investment capital.

When the presumption applies, the statute also includes an addback requirement in the immediately succeeding tax year for both the **presumed** investment capital and the related income

if the holding period requirement is not met. See the specific addback instructions in Schedule F. Alternatively, a taxpayer may file an amended return for the year in which the presumption applied to reflect the fact that the stock is no longer considered investment capital.

When income or gain from a debt obligation or other security cannot be taxed by New York as a result of U.S. constitutional principles found in decisions of the U.S. Supreme Court, the debt obligation or other security will be included in investment capital; any such income or gain, less interest deductions directly or indirectly attributable to such income or capital or the safe harbor reduction amount, is included in investment income.

Note: This investment capital that generates income claimed not taxable by New York under the U.S. Constitution may only be claimed by entities domiciled outside New York State. In the case of a combined return, the determination of such investment capital is done on an entity-by-entity basis. Thus, while the designated agent may be domiciled in New York, the combined group may claim this type of investment capital for assets owned by other members of the combined group domiciled outside of New York.

Reverse repurchase agreements, securities borrowing agreements, and their underlying securities, are business capital and cannot be listed as investment capital.

Stock in a corporation that is conducting a unitary business with the taxpayer, stock in a corporation that is included in a combined return with the taxpayer pursuant to the commonly owned group election, and stock issued by the taxpayer does **not** constitute investment capital.

With respect to a domestic international sales corporation (DISC) or a former DISC, investments in the stock, bonds, or other securities of a DISC or any indebtedness from a DISC are **not** treated as investment capital.

If the taxpayer, or all the members of a combined group, owns or controls, directly or indirectly, less than 20% of the voting power of the stock of a corporation, that corporation will be presumed to be conducting a business that is **not** unitary with the business of the taxpayer for purposes of determining whether or not the stock constitutes investment capital.

Stock means an interest in a corporation that is treated as equity for federal income tax purposes. [§ 208.4 and 20 NYCRR 1-1.11]

Investment income [§§ 208.5, 208.6, and 20 NYCRR 3-4.5]

Investment income means income, including capital gains in excess of capital losses, from investment capital, to the extent included in computing ENI, less any interest deductions allowable in computing ENI which are directly or indirectly attributable to investment capital, gross investment income, or the safe harbor reduction amount, if applicable. It does **not** include any amounts treated as dividends pursuant to IRC § 78.

Limitations

Other exempt income, investment income, and gross investment income are subject to certain limitations outlined in *Table A: Summary of applicable limitations*.

Table A: Summary of applicable limitations			
Item	Description of limitation	New York State Tax Law §	20 NYCRR
Gross investment income	Limited to the greater of 8% of ENI or the amount of gross income that New York cannot constitutionally tax	208.6(a)(iii) and 208.5(e)	3-4.5(c)
Other exempt income*	Limited to ENI. If you attribute interest deductions to gross other exempt income and the amount attributed exceeds gross other exempt income, the excess must be added back to ENI.	208.6-a(d)	3-4.6(d)(2)
Investment income*	Limited to ENI minus other exempt income. If you attribute interest deductions to investment capital or to gross investment income, and the amount attributed exceeds gross investment income, the excess must be added back to ENI.	208.6(a)(i) and 208.8	3-4.5(a)(3)
Investment capital**	The net average fair market value (FMV) of any particular item of investment capital cannot be less than zero.	208.5(b)	3-4.1(d)(4)

* **after** the 40% safe harbor reduction or any subtraction for the attribution of interest deductions
 ** net of liabilities attributable

Specific instructions

When filing a combined return, enter the legal name and employer identification number of the group's designated agent.

Schedule A – 40% safe harbor reduction election [§§ 208.6(b), 208.6-a(b) and 20 NYCRR 3-4.8]

Instead of subtracting the actual amount of interest deductions directly or indirectly attributable to gross investment income, gross other exempt income and investment capital, taxpayers may make a revocable election to reduce such income by 40%. If made, the election applies to all these types of income and capital and all members of the group. To revoke this election, file an amended return using actual attribution.

The safe harbor reduction election does **not** apply to gross exempt cross-article dividends. Use Schedule B Part 2 for interest attribution for these dividends.

If you make this election, it applies to both gross investment income and gross exempt CFC income. If you do not make this election because you do not have gross investment income or gross exempt CFC income, you will **not** be precluded from making the election for the other type of income you do have.

Schedule B – Other exempt income

You must complete this schedule when you own any assets that could generate other exempt income, regardless of whether or not such other exempt income is actually earned in a particular year.

Note: If you made the safe harbor reduction election, complete Parts 1, 2, 6, and 7. If you did **not** make the safe harbor reduction election, complete Parts 1 through 5 and Part 7.

Part 1

Line 1a – Enter 95% of the GILTI received from a corporation that is **not** included in a combined return with the taxpayer.

Line 1b – Enter any Subpart F (of the IRC) income and investment of earnings in U.S. property received from a corporation that is conducting a unitary business with the taxpayer but is **not** included in a combined return with the taxpayer.

Line 2 – Enter your total amount of gross exempt unitary corporation dividends other than gross exempt cross-article dividends, which are reported separately on Part 2, line 6.

Parts 2, 3, and 4

Lines 10 and 11 – Complete these lines **only** if the safe harbor reduction election **is** made; otherwise, continue with Part 3.

Lines 12 and 13 – Complete these lines if **not** making the safe harbor reduction election; report interest deductions directly and indirectly attributable to the gross exempt CFC income reported in Schedule B, lines 1a and 1b.

Lines 15 through 17 – Do **not** include any interest deductions attributable to exempt cross-article dividends.

Schedule C – Investment income

You must complete this schedule if you own any assets that could generate investment income, regardless of whether or not such income is actually earned in a particular tax year.

Note: If you made the safe harbor reduction election, complete Parts 1, 2, 4, and 5. If you did **not** make the safe harbor reduction election, complete Part 1 and Parts 3, 4, and 5.

Part 1

Line 3 – Enter total income (including gains in excess of losses) generated from all investments identified in Schedule E, Part 1.

Lines 6 and 7 – Enter dividend and other income generated from investments identified in Schedule E, Part 2.

Line 11 – Enter dividend and other income generated from investments identified in Schedule E, Part 3.

Schedule E – Investment capital**Parts 1 through 4**

If more space is needed, attach additional sheets providing the information in the same format as in each part. Add together all such amounts, and include the sum in the *Total from additional sheet(s)* line. **Note:** Enter only **directly** owned investments in items A through G; the sum of the proportionate part of partnership items from Form IT-204-CP are included in the *Total from partnerships* line.

Complete Part 1 first, listing all **directly** owned assets that generated income being claimed as not taxable by New York under the U.S. Constitution. Any asset listed in Part 1 cannot also be listed in Part 2 or Part 3.

In Part 2, list all stocks **actually** held more than one year. In Part 3, list all stocks **presumed** held more than one year.

Column A – For Part 1, provide identifying information, such as stock name, committee on uniform security identification procedures (CUSIP) or CUSIP international numbering system (CINS) number and lot number; or issuer and maturity date of bond. For Parts 2 and 3, provide the name, CUSIP or CINS number, and lot number.

Columns B and C – For Parts 1, 2, and 3, provide the requested additional information in these columns.

Columns D and E – For Parts 1 and 2, provide the requested additional information in these columns. For Part 3, columns D and E are not applicable. To qualify as presumed investment capital, the stock must still be owned at the time the taxpayer files its original return for the tax year. Any stock that has been sold is **never** reported as presumed investment capital in Part 3.

Column F – Enter the total average FMV of each item listed in column A. On any date, the FMV of stocks, bonds, and other regularly traded securities is the mean between the highest and lowest selling prices. The average value is generally computed quarterly if your usual accounting practice permits, but you may use a monthly, weekly, or daily average. If your usual accounting practice does not permit a quarterly or more frequent computation of average FMV, you may use a semiannual or annual computation if no distortion of average FMV results. If the security is not marketable, value it using generally accepted accounting principles (GAAP).

Column G – Enter all liabilities, both long-term and short-term, directly and indirectly attributable to each item of investment capital listed in column A. Use the same method of averaging used to determine the average value of assets in column F. Enter for each item of investment capital listed in column A the sum of the liabilities directly and indirectly attributable to such capital. Liabilities directly attributable to an asset include those that were incurred in connection with the acquisition or holding of that asset.

Use *Column G worksheet – Computation of liabilities indirectly attributable to a particular item of investment capital*, to determine the amount of liabilities indirectly attributable to **each** particular item of investment capital.

For each item listed in column A, enter on the respective line in column G the sum of the line L amount from this worksheet (liabilities indirectly attributable to that particular item of investment capital) and the amount of liabilities directly attributable to that particular item of investment capital.

Column H – Determine the net average FMV of each item listed in column A by subtracting column G from column F. The net average FMV of any particular item cannot be less than zero.

Lines 1, 2, and 3 – In each part, add the amounts in columns F, G, and H; enter the totals on lines 1, 2, and 3, respectively. If none, enter **0** in the appropriate column. The totals on lines 1, 2, and 3 are then entered on Form CT-3 or CT-3-A, Part 5, lines 16, 17, and 18, in columns A, B, and C, respectively.

(continued on next page)

Column G worksheet – Computation of liabilities indirectly attributable to a particular item of investment capital			
A Total liabilities (see instructions below)	A		
B Liabilities directly attributable to investment capital (see instructions below)	B		
C Liabilities directly attributable to business capital (see instructions below) ...	C		
D Total liabilities directly attributable (add lines B and C)	D		
E Total liabilities indirectly attributable (subtract line D from line A)	E		
F Average FMV of investment capital before subtraction of liabilities attributable (from Schedule E, line 4, column F)	F		
G Average FMV of adjusted total assets (see instructions below)	G		
H Investment capital factor (divide line F by line G)	H		
I Liabilities indirectly attributable to total investment capital (multiply line E by line H)	I		
J Enter the average FMV of a particular item of investment capital before subtraction of liabilities attributable (see instructions below)	J		
K Investment capital factor for that particular item of investment capital (divide line J by line F)	K		
L Liabilities indirectly attributable to that particular item of investment capital (multiply line I by line K)	L		
Instructions			
Line A – Enter the amount from Form CT-3, Part 4, line 6, column C; or from Form CT-3-A, Part 4, line 6, column D.			
Line B – Enter the total average FMV of all liabilities directly traceable to the items of investment capital reported in Schedule E, Parts 1, 2, and 3.			
Line C – Enter the total average FMV of all liabilities directly traceable to business capital.			
Include the lesser of:			
(a) the sum of the total average FMV of repurchase agreements and stock lending agreements, or			
(b) the sum of the total average FMV of reverse repurchase agreements and stock borrowing agreements.			
Note: Reverse repurchase agreements, securities borrowing agreements, and their underlying securities, are business capital. Repurchase agreements and stock lending agreements are liabilities directly traceable to business capital to the extent of the sum of the total value of reverse repurchase agreements and stock borrowing agreements.			
Line G – Most taxpayers should enter the amount from Form CT-3, Part 4, line 5, column C; or from Form CT-3-A, Part 4, line 5, column D. However, if you have reverse repurchase agreements and/or stock borrowing agreements, you must reduce such amount by the lesser of:			
(a) the sum of the total average FMV of reverse repurchase agreements and stock borrowing agreements, or			
(b) the sum of the total average FMV of repurchase agreements and stock lending agreements.			
Line J – For each item of investment capital listed in Schedule E, Parts 1, 2, and 3, column A, enter the amount from the respective line in column F.			
Note: Lines J through L are completed for each item of investment capital listed in Schedule E, and the line L amount computed is entered in each respective line in column G.			

Schedule F – Current year addback of prior year presumed investment capital and investment income [§ 208.5(d) and 20 NYCRR 3-4.4]

Schedule F computes the addback of prior year presumed investment capital items that failed to meet the holding period presumption, as well as the related income.

If the taxpayer reported presumed investment capital items in the prior year, and then failed to hold a particular item of such presumed investment capital for more than one year, the taxpayer must increase its total business capital in the immediately succeeding tax year by the amount included in investment capital in the prior year return for that stock, net of any liabilities attributable to that stock in the prior year return, and must increase its business income in the immediately succeeding tax year by the amount of income and net gains (not less than zero) from that stock included in investment income in the prior year return, less either any interest deductions directly and indirectly attributable to that stock, or if the safe harbor reduction election is made, less 40% of the gross investment income from that stock claimed in the prior year return. Alternatively, a taxpayer may file an amended return for the

preceding tax year to reflect the fact that the stock is no longer considered investment capital.

Part 1

List all prior year presumed investment capital items, as previously reported on your prior tax year Form CT-3.1, that did **not** meet the holding period requirement. If more space is needed, attach additional sheets, providing the information in the same format. Add together all such amounts, and include the sum in the *Total from additional sheet(s)* line. **Note:** Enter only **directly** owned investments in items A through G; the sum of the proportionate part of partnership items from Form IT-204-CP are included in the *Total from partnerships* line.

For all columns other than columns D and E, the information entered for each item of investment capital should be identical to the information reported on your prior tax year Form CT-3.1, Schedule E, Part 3, for that particular item of investment capital.

Part 2

Lines 2 and 3 – Enter the requested information for the stocks identified in Part 1, as previously reported on your prior tax year Form CT-3.1.

Need help? and Privacy notification

See Form CT-1, *Supplement to Corporation Tax Instructions*.
