

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-95(2)C
Corporation Tax
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ATTRIBUTION OF NONINTEREST DEDUCTIONS

This Technical Services Bureau Memorandum (TSB-M) provides guidance on the direct and indirect attribution of **noninterest** deductions among the various classes of capital and income for purposes of Article 9-A of the Tax Law (Franchise Tax on Business Corporations). This TSB-M is effective for tax years beginning on or after January 1, 1995, and supersedes TSB-M-88(5)C for those years. This TSB-M does not address the issue of attribution of **interest** expenses, to which TSB-M-88(5)C continues to apply, nor the issue of the attribution of liabilities in computing the tax on business and investment capital, or the tax on subsidiary capital, which are covered on the applicable form instructions.

This TSB-M is the product of a coordinated effort by the New York State Department of Taxation and Finance and the New York City Department of Finance. It is the policy of the Department of Taxation and Finance that if a taxpayer has previously been the subject of a field audit by the New York City Department of Finance on the issue of noninterest expense attribution, and the City audit has been concluded by the issuance of a no-change letter, a consent determination or a notice of determination prior to the commencement of the State audit for the same tax period, State auditors will not propose noninterest expense attribution adjustments that are inconsistent with the audit findings of the Department of Finance, except to the extent necessitated by differences between applicable City and State law. A taxpayer may waive such conformity during the course of the State audit. Any such waiver shall be irrevocable for the tax period under audit. In the case of simultaneous audits, the State and City have agreed to consult with each other on this issue. It should be noted in this regard that such State/City conformity rules will apply only if the taxpayer makes the same elections, for both State and City purposes, under section III (A)(1) (relating to direct attribution to business capital), section IV (relating to the 95% safe harbors) and section V (A) (relating to the use of the asset percentage in indirect allocation).

I. Background

The Franchise Tax Law and regulations require the add-back to federal taxable income, for purposes of computing entire net income, of certain amounts generally deductible for federal income tax and New York State corporation franchise tax purposes that are directly or indirectly attributable to subsidiary capital. In addition, investment income is computed with the subtraction of deductions directly or indirectly attributable to investment capital or to income, gains or losses from investment capital.

In accordance with New York's headquarters state tradition, the expense attribution rules are

to be construed so as not to alter a system designed and intended to enable New York to attract and retain corporate activity by attracting capital and offering a unique and certain set of structures for the favorable treatment of various business activities, such as the holding of subsidiaries and investments. Accordingly, under the Franchise Tax investment income generally is allocated to the State at a lower percentage than business income. Further, income, gains and losses from subsidiary capital are excluded from entire net income. There is, however, a tax on subsidiary capital, but one imposed at a very low rate. The purpose of expense attribution is to avoid a double tax benefit resulting from giving favorable tax treatment to income from investment and subsidiary capital while simultaneously allowing a deduction against business income for expenses related to investment or subsidiary capital.

References in this memorandum to subsidiary "capital" should be understood to refer also to income (including gains and losses) from that type of capital, and references to investment "capital" should be understood to refer also to investment income. Deductible amounts are referred to either as "deductions" or "expenses". In addition, it should be noted that expenses required to be capitalized and for which no deduction is allowed are not subject to attribution pursuant to this TSB-M.

Expenses subject to discretionary adjustment. Tax Law sections 208.9(d) and 211.5 authorize the Commissioner of Taxation and Finance to make certain adjustments to items of income, deduction, capital or assets where necessary to properly and accurately reflect income of a taxpayer in the State. The Commissioner may determine that the taxpayer has improperly reported its federal taxable income and that gross income, deductions, credits or allowances should be redistributed, apportioned or allocated between the taxpayer and certain related entities, pursuant to the principles applicable under section 482 of the Internal Revenue Code. In any case where the Commissioner of Taxation and Finance has exercised his or her discretion by adjusting a deduction, that deduction is subject to attribution after such adjustment. However, a deduction may not be attributed to a class of capital or income in lieu of making a discretionary adjustment, as described above, to all or any part of a deduction.

II. Attribution - General

Article 9-A requires taxpayers to characterize most deductions (see below) as either (1) directly attributable to subsidiary, investment or business capital, or (2) not directly attributable to subsidiary, investment or business capital. Deductions which are directly attributable to subsidiary capital are generally required to be added back to federal taxable income in computing entire net income. (Tax Law § 208.9(b)(6)). Deductions which are directly attributable to investment capital are subtracted from income derived from investment capital in computing investment income (Tax Law, § 208.6). Deductions which are directly attributable to business capital require no special treatment.

The taxpayer's deductions which are not directly attributable to one or more of the three types of capital are treated as indirectly attributable to the three types of capital. The sum of such indirectly attributable deductions is apportioned among the three types of capital by formula. The portion thus indirectly attributable to subsidiary capital is generally required to be added back to federal taxable income in computing entire net income (Tax Law, § 208.9(b)(6)). The portion thus indirectly attributable to investment capital is subtracted from income derived from investment capital in computing investment income (Tax Law, § 208.6). The portion thus indirectly attributable to business capital is automatically reflected in the computation of business income and requires no special treatment.

The deductions subject to such direct and indirect attribution are those includible on line E of worksheet B included in the instructions for line 5b of Form CT-3 and CT-3-A, and for line 4b of Form CT-3-S. Noninterest expenses incurred by a taxpayer for the benefit of, or on behalf of, an affiliated corporation or other affiliated entity that are either charged back to that corporation or other entity or offset on the books and records of the taxpayer, other than through a reimbursement arrangement or through a management fee are not subject to attribution, provided a deduction for such expenses is not claimed by the taxpayer.

Where a taxpayer is reimbursed in whole or in part for noninterest expenses incurred on behalf of another person or entity, the amount of reimbursement must be treated as business income, and deductions for expenses for which, and to the extent, such reimbursement is received must be directly attributed to business capital. Noninterest expenses will be treated as reimbursed provided that on or before the due date, excluding extensions, for its corporation franchise tax return for the taxable year, reimbursement is made pursuant to a written agreement between the parties, or the taxpayer receives payment of an amount equal to the amount of the expense incurred either as a direct cash payment or through offsets to other accounts receivable or payable and the payment or adjustment is identified as a reimbursement on the books and records of the taxpayer and the payor. Absent such written agreement or timely reimbursement, the nature of the transaction as one involving reimbursed expenses must be proven by the taxpayer. Amounts incurred by a taxpayer for expenses charged back to another person or entity for which no reimbursement is received will not be considered reimbursed for these purposes.

Compensation received through a management or similar fee arrangement between the taxpayer and a corporation or other entity, whether or not affiliated with the taxpayer, must be treated as business income, and deductions for noninterest expenses compensated for by such management or similar fee must be directly attributed to business capital. Noninterest expenses will be treated as compensated for through a management or similar fee provided the fee is paid pursuant to a written agreement. Absent a written agreement the nature of the

transaction as one involving compensation through a management or similar fee must be proven by the taxpayer, for example, by submission of contemporaneous corporate minutes or memoranda.

III. Direct attribution of noninterest deductions.

Where possible, the taxpayer must directly attribute to the appropriate class of capital those noninterest deductions which are for expenses that proximately, and not incidentally, benefit that class of capital. The determination of the appropriate classes of capital to which particular deductions must be attributed should be made on the basis of all of the facts and circumstances including, but not limited to, the nature of the income that proximately relates to the expenditures that are the basis for the deduction. Taxpayers should maintain books and records sufficient to support the direct attribution of expenses among the three classes of capital.

Except as provided in subsection (A)(1), below, if a deduction is attributable to more than one class of capital, the deduction must be apportioned among those classes of capital.

(A) Direct attribution of noninterest deductions to business capital.

- (1) At the election of the taxpayer, each of the following noninterest deductions will be irrebuttably presumed to be directly attributable to business capital.¹ The taxpayer need only substantiate the nature and amount of each item on this list with respect to which such an election is made; the taxpayer is not required to separately establish the basis for direct attribution of those items for which such an election is made to business capital:
 - (a) cost of goods sold;
 - (b) bad debts other than items properly classified as subsidiary or investment capital;
 - (c) property, excise and sales and use taxes;
 - (d) real estate rents, depreciation and repairs;
 - (e) utilities, including telecommunications costs;
 - (f) amortization of real property leasehold costs and improvements;
 - (g) depletion;
 - (h) advertising;

¹ This does not preclude as a separate issue a discretionary adjustment pursuant to sections 208.9(d) and 211.5 of the Tax Law, as described above, to any expense on this list. Such adjustments could relate, for example, to the amount of the expense or the identity of the taxpayer to which the deduction is allowable.

- (i) noninterest expenses for which reimbursement is received in the form of a management fee treated on the return as business income;
 - (j) research and development expenses;
 - (k) marketing expenses;
 - (l) property and casualty and product liability insurance; uninsured deductible casualty and product liability losses;
 - (m) compensation packages of the chief executive officer, chief financial officer and chief operating officer (identified by reference to duties and not to titles);
 - (n) directors' fees, expenses and indemnity insurance;
 - (o) charitable contributions;
 - (p) stationery, printing, postage and other similar distribution costs;
 - (q) noninterest costs and expenses relating to communication and interaction with the taxpayer's shareholders and investors;
 - (r) noninterest costs and expenses relating to routine reporting requirements of the Securities and Exchange Commission or other Federal, State or local regulatory entities, or to routine financial statements and tax filings;
 - (s) travel and entertainment expenses;
 - (t) noninterest costs and expenses incurred in connection with an uncompleted acquisition;
 - (u) noninterest costs and expenses of developing company or group-wide administrative procedures; and
 - (v) internal auditing costs and expenses.
- (2) Taxpayers shall directly attribute to business capital those noninterest deductions which are for expenses that proximately, and not incidentally, benefit business capital. The following is a non-exclusive list of examples of noninterest deductions that, except as provided in subsection (A) (1) above, under appropriate facts and circumstances may be directly attributed to business capital:
- (a) deductible costs of shipping goods to customers;
 - (b) compensation and other benefits of officers and employees engaged in manufacturing, sales, services, or other activities directly producing business capital or income (for situations where such activities are not exclusive, see examples in section VI, below);
 - (c) deductible legal expenses incurred in conducting the taxpayer's business, such as costs incurred to acquire or protect a copyright or patent owned by the taxpayer and used in the taxpayer's business, or

legal expenses incurred in negotiating contracts or resolving labor disputes with employees engaged directly in manufacturing, sales, services, or other activities directly producing business capital or income;

- (d) reimbursed noninterest expenses (see section II).

(B) Direct attribution of noninterest deductions to subsidiary capital.

Taxpayers shall directly attribute to subsidiary capital those noninterest deductions which are for expenses that proximately, and not incidentally, benefit subsidiary capital. The following is a non-exclusive list of examples of noninterest deductions that, except as provided in subsection (A)(1), above, should be directly attributed to subsidiary capital:

- (1) compensation and other benefits of officers and employees engaged in the acquisition, management or disposition of subsidiary capital or income therefrom (for situations where such activities are not exclusive, see examples in section VI, below);
- (2) legal and accounting expense deductions relating to the management of subsidiary capital or income therefrom;
- (3) computer expense deductions relating to the management of subsidiary capital or income therefrom;
- (4) other deductible fees and expenses incurred in connection with the completed purchase of subsidiary capital, or the sale, whether or not completed, of subsidiary capital;
- (5) other deductible expenses incurred by the taxpayer for its own benefit in its role as a holder of subsidiary capital, including but not limited to:
 - (a) deductible expenses incurred in reviewing information prepared by the subsidiary, where such review is undertaken by the taxpayer in its role as a holder of subsidiary capital;
 - (b) deductible expenses incurred in connection with the general supervision of a subsidiary by the taxpayer's employees (stewardship expenses). These expenses do not include expenses relating to the day-to-day operation of the subsidiary;
 - (c) deductible expenses incurred by the taxpayer to preserve its investment in subsidiary capital; and
 - (d) deductible expenses incurred in meeting reporting requirements or other legal obligations imposed on the taxpayer in its role as a holder of subsidiary capital.

(C) Direct attribution of noninterest deductions to investment capital.

Taxpayers shall directly attribute to investment capital those noninterest deductions which are for expenses that proximately, and not incidentally, benefit investment capital. The following is a non-exclusive list of examples of noninterest deductions that, except as provided in subsection (A)(1), above, should be directly attributed to investment capital:

- (1) safe deposit box rentals for safekeeping of certificates or other documents relating to investment capital;
- (2) financial news subscriptions utilized exclusively by employees engaged primarily in the acquisition, management or disposition of investment capital or the income therefrom;
- (3) compensation and other benefits of officers and employees engaged in the acquisition, management or disposition of investment capital or the income therefrom (for situations where such activities are not exclusive, see examples in section VI, below);
- (4) the deductible cost of insurance and fidelity bonds covering investment capital;
- (5) deductible custodian fees, investment advisory fees and legal and accounting costs and fees relating to the management of investment capital or the income therefrom;
- (6) deductible computer expenses relating to the management of investment capital or the income therefrom;
- (7) deductible fees and expenses incurred in connection with the completed purchase of investment capital, or the sale, whether or not completed, of investment capital; and
- (8) other deductible expenses incurred by the taxpayer for its own benefit in its role as a holder of investment capital, including but not limited to:
 - (a) deductible expenses incurred in reviewing information prepared by the corporation, where such review is undertaken by the taxpayer in its role as a holder of investment capital;
 - (b) deductible expenses incurred in connection with the general supervision of the corporation in which the investment is held by the taxpayer's employees, excluding expenses relating to the day-to-day operation of the corporation;
 - (c) deductible expenses incurred by the taxpayer to preserve its investment capital; and
 - (d) deductible expenses incurred in meeting reporting requirements or other legal obligations imposed on the taxpayer in its role as a holder of

investment capital.

(D) Direct attribution to more than one class of capital.

A particular noninterest deduction may be attributable to more than one class of capital. In that case, the taxpayer should directly attribute a portion of that deduction to each class of capital proximately benefitted by the expense which gave rise to that deduction, using a method that is reasonable for that particular deduction. Such a method can be based on one or more factors appropriate given the nature of the deduction. Such factors may include, but are not limited to, time, space, payroll, and numbers of personnel. See examples below. Deductions listed in subsection (A)(1), above, are, where the taxpayer so elects, irrebuttably presumed to be directly attributable entirely to business capital.

IV. 95% Safe Harbor Rules.

- (A) **Operating Division.** If the taxpayer can substantiate that at least 95 percent of the noninterest expenses of an operating division are directly attributable to a particular class of capital, 100 percent of the noninterest expenses of that operating division may, at the election of the taxpayer, be directly attributed to that class of capital. Noninterest expenses subject to this rule include expenses listed in section III (A)(1), above, and all other noninterest expenses of that operating division. A taxpayer electing to use these rules for operating divisions may not also elect to use the 95 percent safe harbor provided in subsection (B) of this section.

For purposes of this section, the term "operating division" shall mean a subunit of a corporation that meets the following criteria:

- (1) the activities of the subunit constitute a trade or business; and
- (2) a separate set of books and records is maintained with respect to the subunit

The determination as to whether activities constitute a trade or business is dependent on all of the facts and circumstances. Generally a trade or business is a specific set of activities that constitutes or would constitute an independent economic enterprise carded on for profit if carried on by a separate entry. To constitute a trade or business, a group of activities must ordinarily include every operation that forms a part of, or a step in, an income producing or profit making process, including the collection of income and the payment of expenses. It is not necessary that the activities carded out by a subunit constitute a different trade or business from those carded out by other subunits of the taxpayer. A vertical, functional or geographic division of the same

trade or business may be a trade or business for this purpose, provided that the activities otherwise qualify as a trade or business under this subsection. However, activities that are merely ancillary to a trade or business do not constitute a trade or business. For example, administrative activities, including, but not limited to legal, accounting or financial services, where such services are not offered to the public on a regular or continuous basis by the taxpayer will generally be considered ancillary and will not constitute a trade or business for this purpose.

To meet the separate set of books and records requirement the subunit must maintain, at a minimum, a separate set of ledger accounts (i.e., cash receipts, cash disbursements, accounts receivable, and accounts payable) and a general journal or similar book of original entry.

- (B) Corporation. If a taxpayer can substantiate that at least 95 percent of the noninterest expenses of the taxpayer are directly attributable to a particular class of capital, the taxpayer may elect to directly attribute 100 percent of the noninterest expenses of the taxpayer to that class. A taxpayer electing to use this safe harbor may not elect also to apply the operating division rules in subsection (A), above; the operating division rules in subsection (A), above cannot be applied to enable a taxpayer to qualify for this safe harbor.
- (C) Combined Returns. Each member of a group of corporations filing a combined return may separately opt to apply either the operating division safe harbor described in subsection (A) or the corporation safe harbor described in subsection (B). Alternatively, for purposes of the corporation safe harbor in subsection (B), all of the corporations filing a combined return may opt to be treated as a single taxpayer.

V. Indirect attribution of residual noninterest deductions.

- (A) Noninterest deductions that cannot be directly attributed as provided in sections III and IV, above, ("residual noninterest deductions") must be attributed to business, subsidiary and investment capital using either the combined asset and income method set out in subsection (B), below, or if an election is made as provided for therein, the alternative asset method set out in subsection (C) below. The amount of residual noninterest deductions is determined by subtracting the amount of noninterest deductions attributed directly under sections III and IV, above, from the total amount of attributable noninterest deductions.

(B) Combined asset and income method.

- (1) An amount of residual noninterest deductions determined by multiplying residual noninterest deductions by the subsidiary capital combined percentage (defined in (E) below), must be indirectly attributed to subsidiary capital and the income therefrom.
- (2) An amount of residual noninterest deductions determined by multiplying residual noninterest deductions by the investment capital combined percentage (defined in (E) below), must be indirectly attributed to investment capital and income.
- (3) The excess of the amount of residual noninterest deductions over the amount of residual noninterest deductions indirectly attributed pursuant to (1) and (2) above must be indirectly attributed to business capital and income.

(C) Alternative Asset Method.

(1) Method of Attribution

- (a) The taxpayer must indirectly attribute to subsidiary capital and income an amount of residual noninterest deductions determined by multiplying residual noninterest deductions by the asset factor (defined in (D) below) for subsidiary capital.
 - (b) The taxpayer must indirectly attribute to investment capital and income an amount of residual noninterest deductions determined by multiplying residual noninterest deductions by the asset factor (defined in (D) below) for investment capital.
 - (c) The taxpayer must indirectly attribute to business capital and income the excess of the amount of residual noninterest deductions over the amount of residual noninterest deductions indirectly attributed pursuant to (a) and (b), above.
- (2) Election. In order to use the alternative asset method to attribute its residual noninterest deductions, the taxpayer must elect to do so for both subsidiary and investment capital and the income therefrom on a return or amended return for the applicable tax year. A separate election must be made for each year. This election is irrevocable for each year with respect to which the election is made unless the filing

status of the taxpayer as combined or separate is changed as a result of an audit or where a change in the composition of a combined group is made on audit. The taxpayer may not elect the alternative asset method for any year in which the value of the taxpayer's total assets is not greater than zero. The taxpayer may elect the alternative asset method on an amended return provided that at the time it is filed no audit has been commenced with respect to the year covered by the return. In the absence of a timely election the taxpayer must use the combined asset and income method specified in subsection 03) above.

(D) Computation of Asset and Income Factors.

- (1) Asset Factor. The asset factor with respect to subsidiary capital is determined by dividing the average value of the taxpayer's subsidiary capital, without reduction for liabilities, by the total average value of all the taxpayer's assets without reduction for liabilities. The asset factor with respect to investment capital is determined by dividing the average value of the taxpayer's assets constituting investment capital, without reduction for liabilities, by the total average value of all the taxpayer's assets without reduction for liabilities. If the value of a taxpayer's assets constituting investment or subsidiary capital is not greater than zero and total assets is greater than zero, the respective asset factor for that class is zero. For these purposes, real property and marketable securities must be valued at fair market value and the value of personal property other than marketable securities must be the value thereof shown on the books and records of the taxpayer in accordance with generally accepted accounting principles, consistent with Tax Law, § 210.2.
- (2) Income factor. The income factor for subsidiary capital is determined by dividing the taxpayer's gross income from subsidiary capital by its total gross income. The income factor for investment capital is determined by dividing the taxpayer's gross income from investment capital by its total gross income. If a taxpayer's gross income from investment or subsidiary capital is equal to zero and total gross income is greater than zero, the respective income factor for that class is zero.
 - (a) For these purposes total gross income means gross income as defined in Internal Revenue Code section 61, increased by (a) those items described in such section 61 that are included in the computation of entire net income by reason of Tax Law, § 208.9(c), and (b) interest on State and local bonds excluded from gross income under Internal Revenue Code section 103.

Gross income is not reduced by any deduction for capital losses or by any other deductions.

- (b) Gross income from subsidiary capital is that portion of total gross income consisting of dividends, interest, and gains (but not losses) from subsidiary capital; and
- (c) Gross income from investment capital is that portion of total gross income consisting of (i) dividends, interest, and gains (but not losses) from investment capital and (ii) items described in section 4-8.3(a)(2)-(5) of the Franchise Tax Regulations.

(E) Computation of subsidiary and investment capital combined percentages.

- (1) The subsidiary capital combined percentage is computed by adding together two times the taxpayer's income factor for subsidiary capital and the taxpayer's asset factor for subsidiary capital and dividing the total by three. (The income and asset factors are defined in (D) above.)
- (2) The investment capital combined percentage is computed by adding together two times the taxpayer's income factor for investment capital and the taxpayer's asset factor for investment capital and dividing the total by three.
- (3) In determining the subsidiary capital and investment capital combined percentages, if total gross income is zero, the subsidiary and investment capital combined percentages are equal to their respective asset factors. If total assets are not greater than zero, the subsidiary and investment capital combined percentages are equal to their respective income factors.

VI. Examples

The following examples illustrate the direct and indirect attribution of noninterest deductions to subsidiary, investment and business capital.

Example 1: Each member of a taxpayer's accounting staff spends 40% of his or her time analyzing whether the taxpayer should restructure its subsidiaries. Each member of the accounting staff spends 20% of his or her time analyzing the taxpayer's investment portfolio. The accounting staff does not spend any other time on issues relating to subsidiary or investment capital or income. The taxpayer attributes 40% of the accounting staffs salaries and related

employee benefit expenses and payroll taxes to subsidiary capital and 20% to investment capital. This method is acceptable.

Example 2: The facts are the same as in example 1. In addition, the accounting staff occupies 10% of a building rented by the taxpayer. The other 90% is used for the taxpayer's service business. All rental expense may, at the election of the taxpayer, be directly attributed to business capital pursuant to section III (A)(1)(d). None of the rental expense would then be attributed to subsidiary or investment capital or income.

Example 3: The facts are the same as in example 1. The taxpayer has a total of 100 employees. Ten employees are in the accounting department. Each member of the accounting staff spends 40% of his or her time analyzing whether the taxpayer should restructure its subsidiaries and each member of the accounting staff spends 20% of his or her time analyzing the taxpayer's investment portfolio. Ten employees are in the personnel department. They are responsible for managing the hiring, salaries, pension and medical benefits of all employees. Of the remaining 80 employees, five spend 20% of their time on activities related to investment capital and 40% of their time on activities related to subsidiary capital. The other 75 employees spend no time on activities relating to subsidiary or investment capital. The 15 employees engaged in activities relating to investment and subsidiary capital (ten from the accounting staff and five others) represent 25% of the total payroll of the taxpayer other than the payroll of the personnel department.

The taxpayer attributes 5% ($25\% \times 20\%$) of the salaries and related employee benefit expenses and payroll taxes of the personnel department employees to investment capital and 10% ($25\% \times 40\%$) to subsidiary capital. This method, based on time and payroll, is reasonable under the circumstances and is acceptable.

Example 4: The CEO of a corporation does not maintain detailed time records. However, she does maintain a diary that shows that she spends approximately 20% of her time in planning the corporation's strategy for investment in subsidiaries and 80% of her time in planning the corporation's strategy for developing, manufacturing and marketing its products. The taxpayer may elect to attribute the CEO's entire compensation package to business capital pursuant to section III (A)(1)(m). None of the CEO's compensation package would then be attributed to subsidiary (or investment) capital.

Example 5: Income and assets. Corp. X has \$10,000 of business income, \$4,000 of business assets, \$300 of income from subsidiary capital, \$1,000 of subsidiary assets, \$500 of investment income and \$2000 of investment assets. (Assets here are calculated without reduction for liabilities.)

Expenses. Corp. X has \$6,000 in noninterest expenses, of which \$3,500 (incurred other than by its manufacturing division) is directly attributable to business capital and properly substantiated, including items on the list of expenses, which Corp. X elects to attribute to business capital under section III (A)(1), above.

Separate Operating Division. Corp. X has a manufacturing division that qualifies as an operating division. \$1,000 of the \$6,000 of noninterest expenses are incurred by that division and are not included in the \$3,500. Of that \$1,000, \$400 is wages and salaries, \$100 is for equipment rental and depreciation, and \$500 consists of items on the list in section III (A)(1) that Corp. X elects to directly attribute to business capital. Corp. X can substantiate that at least \$950 of the \$1,000 is directly attributable to business capital. Therefore, Corp. X may elect to attribute all \$1,000 of the expenses of that division directly to business capital, and does so elect.

The total of directly attributable expenses is \$4,500 (\$1,000 from the division and \$3,500 from the corporation as a whole).

Subsidiary and Investment Capital Percentages

Subsidiary: $[\$300/\$10,800 \text{ (income)} + \$300/\$10,800 \text{ (income)} + \$1,000/\$7,000 \text{ (assets)}]/3 = 6.61\%$

Investment: $[\$500/\$10,800 \text{ (income)} + \$500/\$10,800 \text{ (income)} + \$2,000/\$7,000 \text{ (assets)}]/3 = 2.61\%$

Indirect residual noninterest deductions of \$1,500 (\$6,000 less the \$4,500 directly attributed to business capital) are attributed, 6.61% (\$99.15) to subsidiary capital and 12.61% (\$189.15) to investment capital. The remainder, \$1211.70 (\$1500-[\$99.15+\$189.15]) is attributed to business capital.

The total direct and indirect noninterest expense attribution is \$5711.70 to business, \$99.15 to subsidiary and \$189.15 to investment capital.

Example 6: Income and Assets. Corp. X has \$10,000 of business income, \$4,000 of business assets, \$300 of income from subsidiary capital, \$1,000 of subsidiary assets, \$500 of investment income and \$2000 of investment assets. (Assets here are calculated without reduction for liabilities.)

Expenses. Corp. X, a broker dealer, has \$5,000 in noninterest expenses, of which \$2,000 is substantiated as compensation of account representatives, \$1,000 is substantiated as for computer equipment and software and wire services used exclusively to manage customer accounts and execute customer transactions, \$1,000 consists of items on the list in section III (A)(1), above, that Corp. X elects to directly attribute to business capital, and \$500 is substantiated as directly attributable to investment capital.

The total of directly attributable expenses is \$4,500 (\$4,000 to business capital and \$500 to investment capital).

Subsidiary and Investment Capital Percentages.

Subsidiary: $[\$300/\$10,800 \text{ (income)} + \$300/\$10,800 \text{ (income)} + \$1,000/\$7,000 \text{ (assets)}]/3 = 6.61\%$

Investment: $[\$500/\$10,800 \text{ (income)} + \$500/\$10,800 \text{ (income)} + \$2,000/\$7,000 \text{ (assets)}]/3 = 12.61\%$

Indirect residual noninterest expenses of \$500 are attributed 6.61% (\$33.05) to subsidiary capital and 12.61% (\$63.05) to investment capital. The remainder, \$403.90, ($\$500 - [\$33.05 + \$63.05]$) is attributed to business capital.

The total direct and indirect noninterest expense attribution is \$4403.90 to business, \$33.05 to subsidiary and \$563.05 to investment capital.

APPENDIX A
1995 CT-3 INSTRUCTIONS
For lines 4 and 5

Lines 4a and 4b -

Complete lines 4a and 4b if you have subsidiary capital includable on Form CT-3-ATT, line 51, column C (otherwise, enter "0" on lines 4a and 4b).

Line 4a- Enter the amount of **interest** deductions allowed in the computation of entire net income (i.e. includable in the amount on worksheet A, line E) that are **directly** attributable to subsidiary capital (or to income, losses or gains from subsidiary capital).

Line 4b- Enter the amount of **noninterest** deductions allowed in the computation of entire net income (i.e. includable in the amount on worksheet B, line E) that are **directly** attributable to subsidiary capital (or to income, losses or gains from subsidiary capital).

The direct attribution of deductions is based on an analysis of facts and circumstances. Deductions directly attributable to subsidiary capital or income include but are not limited to the following:

- interest on debt incurred to buy subsidiary capital;
- salaries of employees engaged in the management, supervision or conservation of subsidiary capital;
- expenses for legal advice relating to the acquisition of subsidiary capital; and
- stewardship deductions relating to subsidiary capital.

Do not include on lines 4a or 4b interest deductions or noninterest deductions that are directly attributable to:

- investment capital (or to income, losses or gains from investment capital); see Form CT-3-ATT, line 43a or line 43b; or
- business capital (or to income, losses or gains from business capital). Note: For tax years beginning in 1995 or after certain expenses may, at the taxpayer's election, be deemed to be directly attributable to business capital (or income, losses or gains from business capital). These expenses include, among others: depletion, advertising, research and development expenses, compensation packages of chief executive officer, chief financial officer and chief operating officer, charitable contributions and internal auditing expenses. For a complete listing of deductions so deemed attributable to business capital, see section III (A)(1) of this TSB-M.

If at least 95% of the noninterest deductions of an operating division or corporation are directly attributable to a particular class of capital or income, 100% of the noninterest deductions of that division or corporation may be directly attributed to that class of capital or income. See section IV of this TSB-M for details.

Lines 5a and 5b -

Complete lines 5a and 5b if you have subsidiary capital includable on Form CT-3-ATT, line 51, column C (otherwise, enter "0" on lines 5a and 5b).

Line 5a- Enter the amount of **interest** deductions that are **indirectly** attributable to subsidiary capital (or to income, gains or losses from subsidiary capital) (from worksheet A, line N).

Use worksheet A to determine the amount of interest deductions indirectly attributable to subsidiary capital.

Worksheet A

A. Enter federal interest deductions shown on federal Form 1120, line 18 _____

B. Enter amounts of interest deductions which are required to be added back to federal taxable income in computing entire net income (other than the amount on Form CT-3, line 5a)

Enter the line number and amount below.

Line # _____ Amount _____

Line # _____ Amount _____

Line # _____ Amount _____

Total _____

C. Total-subtract line B from line A _____

D. Enter amounts of interest deductions which are required to be subtracted from federal taxable income in computing entire net income (for example the interest deductions taken in computing the amount on Form CT-3, line 2 or amounts related to foreign source income not included on Federal Form 1120).

Enter the line number and amount below.

Line # _____ Amount _____
Line # _____ Amount _____
Line # _____ Amount _____

Total _____

- E. Total New York interest deductions included in entire net income
-add lines C and D _____
- F. Enter any interest deduction directly attributable to subsidiary
capital included on Form CT-3, line 4a _____
- G. Enter any interest deductions directly attributable to investment
capital included on Form CT-3-ATT, line 43a _____
- H. Enter any interest deduction directly attributable to business capital _____
- I. Subtotal- add lines F, G and H _____
- J. Interest deductions subject to indirect attribution- subtract line I
from line E _____
- K. Enter the amount from Form CT-3-ATT, line 51, column C _____
- L. Enter the amount from Form CT-3, line 30, column C _____
- M. Percentage - Divide line K by line L % _____
- N. Amount of interest deductions indirectly attributable to subsidiary
capital- multiply line J by line M. Enter this amount on line 5a _____

Line 5b- Enter the amount of **noninterest** deductions that are **indirectly** attributable to subsidiary capital (or to income, gains or losses from subsidiary capital) (from worksheet B, line R).

Use worksheet B to determine the amount of noninterest deductions indirectly attributable to subsidiary capital.

Worksheet B

A. Enter federal noninterest deductions included on federal Form 1120, line 27 (excluding the amount from federal Form 1120, line 18) _____

B. Enter amounts of noninterest deductions which are required to be added back to federal taxable income in computing entire net income. Include the New York excess depreciation amount described in Tax Law section 208.9(b)(11) to the extent that such amount as subtracted in computing entire net income for prior taxable years which began on or after January 1, 1987. _____

Enter the line number and amount below.

| | | |
|--------------|--------------|-------------|
| Line _____ # | Amount _____ | |
| Line _____ # | Amount _____ | |
| Line _____ # | Amount _____ | Total _____ |

C. Total- subtract line B from line A

D. Enter amount of noninterest deductions listed above which are required to be subtracted from federal taxable income in computing entire net income. _____

- In the case of a taxpayer organized outside the United States, deductions attributable to income which is not included in federal taxable income but is required to be included in entire net income (e.g., foreign source income) (Tax Law, section 208.9(c); see also Franchise Tax Regulations, 20 NYCRR 3-2.3(a)(9)).
- The portion of wages and salaries paid or incurred for the tax year for which a deduction is not allowed pursuant to section 280C of the IRC (Tax Law, Section 208.9(a)(7)).
- Depreciation deductions permitted under Article 9-A with respect to **decoupled** property pursuant to Tax Law, section 208.9(a)(11) and (12).
- Deductions arising from **decoupling** from federal safe harbor lease provisions pursuant to Tax Law, section 208.9(a)(10).
- The noninterest deductions taken in computing the amount on Form CT-3, line 2.

Enter the line number and amount below.

| | | |
|--------------|--------------|-------------|
| Line _____ # | Amount _____ | |
| Line _____ # | Amount _____ | |
| Line _____ # | Amount _____ | Total _____ |

- E. Total New York noninterest deduction included in entire net income
- add lines C and D _____

- F. Enter noninterest deductions directly attributable to subsidiary capital
from Form CT-3, line 4b _____

- G. Enter noninterest deductions directly attributable to investment capital,
from Form CT-3-ATT, line 43b _____

- H. Enter noninterest deductions directly attributable to business capital _____

- I. Subtotal- add lines F, G and H _____

- J. Noninterest deductions subject to indirect attribution
-subtract line I from line E (see instructions for line R) _____

- K. Enter gross income attributable to subsidiary capital from Form
CT-3-ATT, line 50 _____

- L. Enter total gross income (See definition in section V (C)(1) of this
TSB-M.) _____

- M. Income percentage- divide line K by line L _____ %

- N. Enter amount from Form CT-3-ATT, line 51, column C _____

- O. Enter amount from Form CT-3, line 30, column C _____

- P. Asset percentage - divide line N by line O _____ %

- Q. Subsidiary capital percentage (If line L is -0- the subsidiary capital
percentage is equal to the asset percentage. If line O is -0- the
subsidiary capital percentage is equal to the income percentage.)

- a. Enter percentage from line M _____; multiply by 2 _____
- b. Enter percentage from line P _____
- c. Total- add lines a and b _____
- d. Subsidiary capital percentage- divide line c by 3 _____ %

R. Amount of noninterest deductions indirectly attributable to subsidiary capital - multiply line J by the percentage from line Q or, if an election has been made to use the asset percentage, by the percentage from line P. Enter this amount on line 5b _____

CT-3-ATT Instructions
For line 43

Lines 43a and 43b-

Complete lines 43a and 43b if you have investment capital includable on Form CT-ATT, line 35, column C (otherwise, enter "0" on lines 43a and 43b).

Line 43a- Enter the amount of **interest** deductions allowable in the computation of entire net income (i.e., includable in the amount on worksheet A, line E) that are **directly** attributable to investment capital (or to income, losses or gains from investment capital).

Line 43b- Enter the amount of **noninterest** deductions allowed in the computation of entire net income (i.e., includable in the amount on worksheet B, line E) that are **directly** attributable to investment capital (or to income, losses or gains from investment capital).

The direct attribution of deductions is based on an analysis of the facts and circumstances. Deductions directly attributable to investment capital or income include but are not limited to the following:

- interest on debt incurred to buy investment capital
- safe deposit box rentals
- financial news subscriptions
- salaries of employees engaged in the management and conservation of stocks, bonds and other securities included in investment capital
- investment counsel fees
- custodian fees

- the cost of insurance and fidelity bonds covering investment capital
- expenses for legal advice relating to the acquisition of investment capital

Do not include on lines 43a or 43b interest deductions or noninterest deductions that are directly attributable to:

- subsidiary capital (or to income, losses or gains from subsidiary capital) see Form CT-3, lines 4a and 4b; or
- business capital (or to income, losses or gains from business capital). Note: For tax years beginning in 1995 or after certain expenses may, at the taxpayer's election, be deemed to be directly attributable to business capital (or income, losses or gains from business capital). These expenses include, among others: depletion, advertising, research and development expenses, compensation packages of chief executive officer, chief financial officer and chief operating officer, charitable contributions and internal auditing expenses. For a complete listing of deductions so deemed attributable to business capital, see section III (A)(1) of this TSB-M.

If at least 95% of the noninterest deductions of an operating division or corporation are directly attributable to a particular class of capital or income, 100% of the noninterest deductions of that division or corporation may be directly attributed to that class of capital or income. See section IV of this TSB-M for details.

Lines 44a and 44b-

Complete line 44a and 44b if you have investment capital includable on Form CT-3-ATT, line 35, column C (otherwise, enter "0" on lines 44a and 44b).

Line 44a- Enter the amount of **interest** deductions that are **indirectly** attributable to investment capital (or to income, gains or losses from investment capital) (from worksheet A, line N).

Use worksheet A to determine the amount of interest deductions indirectly attributable to investment capital.

Worksheet A

- A. Enter federal interest deductions included on federal Form 1120, line 18 _____
- B. Enter amounts of interest deductions which are required to be added back to federal taxable income in computing entire net income (other than the amount on Form CT-3, line 5a).

Enter the line number and amount below.

Line # _____ Amount _____
Line # _____ Amount _____
Line # _____ Amount _____

Total _____

C. Total-subtract line B from line A

D. Enter amounts of interest deductions which are required to be subtracted from federal taxable income in computing entire net income (for example the interest deductions taken in computing the amount on Form CT-3, line 2 or amounts related to foreign source income not included on Federal Form 1120).

Enter line number and amount

Line # _____ Amount _____
Line # _____ Amount _____
Line # _____ Amount _____

Total _____

E. Total New York interest deductions included in entire net income - add lines C and D

F. Enter any interest deductions directly attributable to subsidiary capital from Form CT-3, line 4a

G. Enter any interest deductions directly attributable to investment capital from Form CT-3-ATT, line 43a

H. Enter any interest deductions directly attributable to business capital

I. Subtotal-add lines F, G and H

J. Interest deductions subject to indirect attribution-subtract line I from line E

K. Enter amount from Form CT-3-ATT, line 35, column C

- L. Enter amount from Form CT-3, line 30, column C _____
- M. Percentage-Divide line K by line L _____%
- N. Amount of interest deductions indirectly attributable to investment capital. -multiply line J by line M. Enter this amount on line 44a. _____

Line 44b-Enter the amount of **noninterest** deductions that are **indirectly** attributable to investment capital (or to income, gains or losses from investment capital) (from worksheet B, line R).

Use worksheet B to determine the amount of noninterest deductions indirectly attributable to investment capital.

Worksheet B

- A. Enter federal noninterest deductions included on federal Form 1120, line 27 (excluding the amount from federal Form 1120, line 18) _____
- B. Enter amounts of noninterest deductions which are required to be added back to federal taxable income in computing entire net income. Include the New York excess depreciation amount described in Tax Law section 208.9(b)(11) to the extent that such amount was subtracted in computing entire net income for prior taxable years which began on or after January 1, 1987.

Enter the line number and amount below.

| | | |
|--------------|--------------|-------------|
| Line # _____ | Amount _____ | |
| Line # _____ | Amount _____ | |
| Line # _____ | Amount _____ | Total _____ |

- C. Total-subtract line B from line A _____
- D. Enter amounts of noninterest deductions listed below which are required to be subtracted from federal taxable income in computing entire net income.

- In the case of a taxpayer organized outside the United States, deductions attributable to income which is not included in federal taxable income but is required to be included in entire net income (e.g., foreign source income) (Tax Law, section 208.9 (c); see also Franchise Tax Regulations, 20 NYCRR 3-2.3(a)(9)).
- The portion of wages and salaries paid or incurred for the tax year for which a deduction is not allowed pursuant to section 280C of the IRC(Tax Law, Section 208.9(a)(7)).
- Depreciation deductions permitted under Article 9-A with respect to decoupled property pursuant to Tax Law, section 208.9(a)(11) and (12).
- Deductions arising from decoupling from federal safe harbor lease provisions pursuant to Tax Law, section 208.9(a)(10).
- The noninterest deductions taken in computing the amount on Form CT-3, line 2

Enter the line number and amount below.

Line # _____ Amount _____

Line # _____ Amount _____

Line # _____ Amount _____

Total _____

- E. Total New York noninterest deductions included in entire net income -add lines C and D. _____
- F. Enter noninterest deductions directly attributable to subsidiary capital from Form CT-3, line 4b _____
- G. Enter noninterest deductions directly attributable to investment capital from Form CT-3-ATT, line 43b _____
- H. Enter noninterest deductions directly attributable to business capital _____
- I. Subtotal- add lines F, G and H _____
- J. Noninterest deductions subject to indirect attribution -subtract line I from line E. (see instructions for line R)

- K. Enter gross income attributable to investment capital from Form CT-3-ATT, line 42 _____
- L. Enter total gross income (see definition in section V (C)(1) of this TSB-M.) _____
- M. Income percentage - divide line K by line L _____
- N. Enter amount from Form CT-3-ATT, line 35, column C _____
- O. Enter amount from Form CT-3, line 30, column C _____
- P. Asset percentage-divide line N by line O _____
- Q. Investment capital percentage (If line L is -0- the investment capital percentage is equal to the asset percentage. If line O is -0- the investment capital percentage is equal to the income percentage.)
 - a. Enter percentage from line M____; multiply by 2 _____
 - b. Enter percentage from line P _____
 - c. Total- add lines a and b _____
 - d. Investment capital percentage-divide line ϕ by 3 _____%
- R. Amount of noninterest deductions indirectly attributable to investment capital - multiply line J by the percentage from line Q or, if an election has been made to use the asset percentage, by the percentage from line P. Enter this amount on line 44b _____

APPENDIX B
CT-3-A INSTRUCTIONS
For lines 4 and 5

Lines 4a and 4b -

Complete lines 4a and 4b if you have combined subsidiary capital. The term "combined subsidiary capital" as used in these instructions for lines 4a, 4b, 5a, and 5b means stock or indebtedness of a corporation not included on this return which constitutes subsidiary capital includable on line 246 (otherwise, enter "0" on lines 4a and 4b).

Line 4a- Enter the amount of **interest** deductions allowed in the computation of entire net income (i.e., includable in the amount on worksheet A, line E) that are **directly** attributable to combined subsidiary capital (or to income, losses or gains from combined subsidiary capital).

Line 4b- Enter the amount of **noninterest** deductions allowed in the computation of entire net income (i.e., includable in the amount on worksheet B, line E) that are **directly** attributable to combined subsidiary capital (or to income, losses or gains from combined subsidiary capital).

The direct attribution of deductions is based on an analysis of facts and circumstances. Deductions directly attributable to combined subsidiary capital or income include but are not limited to the following:

- interest on debt incurred to buy combined subsidiary capital;
- salaries of employees engaged in the management, supervision or conservation of combined subsidiary capital;
- expenses for legal advice relating to the acquisition of combined subsidiary capital; and
- stewardship deductions relating to combined subsidiary capital.

Do not include on lines 4a or 4b interest deductions or noninterest deductions that are directly attributable to:

- combined investment capital (or to income, losses or gains from investment capital); see Form CT- 3-A, line 235 or line 236; or
- combined business capital (or to income, losses or gains from business capital). **Note:** For tax years beginning in 1995 or after certain expenses may, at the taxpayer's election, be **deemed** to be directly attributable to business capital (or income, losses or gains from business capital). These expenses include, among others: depletion, advertising, research and development expenses, compensation packages of chief executive officer, chief financial officer and chief operating officer, charitable contributions and internal auditing expenses. For a complete listing of deductions so **deemed** attributable to business capital, see section III (A)(1) of this TSB-M.

If at least 95% of the noninterest deductions of an operating division, a corporation or a combined group are directly attributable to a particular class of capital or income, 100% of the noninterest deductions of that division, corporation or combined group may be directly attributed to that class of capital or income. See section IV of this TSB-M for details.

Lines 5a and 5b -

Complete lines 5a and 5b if you have combined subsidiary capital includable on Form CT-3-A, line 246 (otherwise, enter "0" on lines 5a and 5b).

Line 5a- Enter the amount of **interest** deductions that are **indirectly** attributable to combined subsidiary capital (or to income gains or losses from combined subsidiary capital) (from worksheet A, line N).

Use worksheet A to determine the amount of interest deductions indirectly attributable to combined subsidiary capital.

Worksheet A

A. Enter federal interest deductions shown on federal Form 1120, line 18 _____

B. Enter amounts of interest deductions which are required to be added back to federal taxable income in computing combined entire net income (other than the amount on Form CT-3-A, line 5a) _____

Enter the line number and amount below.

Line # _____ Amount _____

Line # _____ Amount _____

Line # _____ Amount _____

Total _____

C. Total- subtract line B from line A _____

D. Enter amounts of interest deductions which are required to be subtracted from federal taxable income in computing combined entire net income (for example the interest deductions taken in computing the amount on Form CT-3-A, line 2.

Enter the line number and amount below.

Line # _____ Amount _____
Line # _____ Amount _____
Line # _____ Amount _____

Total _____

E. Total New York interest deductions included in combined entire net income -add lines C and D _____

F. Enter any interest deductions directly attributable to combined subsidiary capital included on Form CT-3-A, line 4a _____

G. Enter any interest deductions directly attributable to combined investment capital included on Form CT-3-A, line 235 _____

H. Enter any interest deductions directly attributable to combined business capital _____

I. Subtotal- add lines F, G and H _____

J. Interest deductions subject to indirect attribution- subtract line I from line E _____

K. Enter the amount from CT-3-A, line 246 (reduced by any portion of such amount which is required to be eliminated in column D) _____

L. Enter the amount from CT-3-A, line 30 (reduced by any portion of such amount which is required to be eliminated in column D) _____

M. Percentage - Divide line K by line L _____ %

N. Amount of interest deductions indirectly attributable to combined subsidiary capital - multiply line J by line M. Enter this amount on line 5a. _____

Enter the amount of **noninterest** deductions that are **indirectly** attributable to combined subsidiary capital (or to income, gains or losses from combined subsidiary capital) (from worksheet B, line R).

Use worksheet B to determine the amount of noninterest deductions indirectly attributable to combined subsidiary capital.29

Worksheet B

A. Enter federal noninterest deductions included on federal Form 1120, line 27 (excluding the amount from federal Form 1120, line 18) _____

B. Enter amounts of noninterest deductions which are required to be added back to federal taxable income in computing entire net income. Include the New York excess depreciation amount described in Tax Law section 208.9(b)(11) to the extent that such amount was subtracted in computing entire net income or combined entire net income for prior taxable years which began on or after January 1, 1987.

Enter the line number and amount below.

Line # _____ Amount _____

Line # _____ Amount _____

Line # _____ Amount _____

Total _____

C. Total- subtract line B from line A _____

D. Enter amounts of noninterest deductions listed below which are required to be subtracted from federal taxable income in computing combined entire net income.

- The portion of wages and salaries paid or incurred for the tax year for which a deduction is not allowed pursuant to section 280C of the IRC(Tax Law, Section 208.9(a)(7)).
- Depreciation deductions permitted under Article 9-A with respect to decoupled property pursuant to Tax Law, section 208.9(a)(11) and (12).
- Deductions arising from decoupling from federal safe harbor lease provisions pursuant to Tax Law, section 208.9(a)(10).
- The noninterest deductions taken in computing the amount on CT-3-A, line 2.

Enter the line number and amount below.

Line # _____ Amount _____

Line # _____ Amount _____

Line # _____ Amount _____

Total _____

- E. Total New York noninterest deductions included in entire net income -add lines C and D _____
- F. Enter noninterest deductions directly attributable to combined subsidiary capital from Form CT-3-A, line 4b _____
- G. Enter noninterest deductions directly attributable to combined investment capital, from Form CT-3-A, line 236 _____
- H. Enter noninterest deductions directly attributable to combined business capital _____
- I. Subtotal- add lines F, G and H _____
- J. Noninterest deductions subject to indirect attribution-subtract line I from line E (see instructions for line R) _____
- K. Enter gross income attributable to combined subsidiary capital from Form CT-3-A, lines 242, 243 and 244, reduced by any portion of such amounts required to be eliminated in column D of such lines on form CT-3-A. _____
- L. Enter total gross income (see definition in section V (C)(1) of this TSB-M.) _____
- M. Income percentage - divide line K by line L _____ %
- N. Enter amount from Form CT-3-A, line 246 (reduced by any portion of such amount which is required to be eliminated in column D) _____
- O. Enter amount from Form CT-3-A, line 30 (reduced by any portion of such amount which is required to be eliminated in column D) _____
- P. Asset percentage - divide line N by line O _____ %
- Q. Combined subsidiary capital percentage (If line L is -0- the combined subsidiary capital percentage is equal to the asset percentage. If line O is -0- the combined subsidiary capital percentage is equal to the

income percentage.)

- a. Enter percentage from line M____; multiply by 2 _____
- b. Enter percentage from line P _____
- c. Total- add lines a and b _____
- d. Subsidiary capital percentage- divide line c by 3 _____ %

R. Amount of noninterest deductions indirectly attributable to combined subsidiary capital- multiply line J by the percentage from line Q or, if an election has been made to use the asset percentage, by the percentage from line P. Enter this amount on line 5b. _____

For line 235 and 238

Lines 235 and 236-

Complete lines 235 and 236 if you have combined investment capital includable on Form CT-A, line 227 (otherwise, enter "0" on lines 235 and 236). The term "combined investment capital" as used in these instructions for line 235-238 means stocks, bonds and other securities other than those issued by a corporation included in this return which constitute investment capital.

Line 235- Enter the amount of **interest** deductions allowable in the computation of combined entire net income (i.e. includable in the amount on worksheet A, line E) that are **directly** attributable to combined investment capital (or to income, losses or gains from combined investment capital).

Line 236- Enter the amount of **noninterest** deductions allowed in the computation of entire net income (i.e., includable in the amount on worksheet B, line E) that are **directly** attributable to combined investment capital (or to income, losses or gains from combined investment capital).

The direct attribution of deductions is based on an analysis of the facts and circumstances. Deductions directly attributable to combined investment capital or income include but are not limited to the following:

- interest on debt incurred to buy combined investment capital
- safe deposit box rentals
- financial news subscriptions
- salaries of employees engaged in the management and conservation of stocks, bonds and other securities included in combined investment capital

- investment counsel fees
- custodian fees
- the cost of insurance and fidelity bonds covering combined investment capital
- expenses for legal advice relating to the acquisition of combined investment capital

Do not include on lines 235 or 236 interest deductions or noninterest deductions that are directly attributable to:

- combined subsidiary capital (or to income, losses or gains from combined subsidiary capital) see Form CT-3-A, lines 4a and 4b; or
- combined business capital (or to income, losses or gains from combined business capital).
Note: For tax years beginning in 1995 or after certain expenses may, at the taxpayer's election, be **deemed** to be directly attributable to business capital (or income, losses or gains from business capital). These expenses include, among others: depletion, advertising, research and development expenses, compensation packages of chief executive officer, chief financial officer and chief operating officer, charitable contributions and internal auditing expenses. For a complete listing of deductions so **deemed** attributable to business capital, see section m (A)(1) of this TSB-M.

If at least 95% of the noninterest deductions of an operating division, a corporation or a combined group are directly attributable to a particular class of capital or income, 100% of the noninterest deductions of that division, corporation or combined group may be directly attributed to that class of capital or income. See section IV of this TSB-M for details.

Lines 237 and 238-

Complete line 237 and 238 if you have combined investment capital includable on Form CT-3-A, line 227, column C (otherwise, enter "0" on lines 237 and 238).

Line 237-Enter the amount of **interest** deductions that are **indirectly** attributable to combined investment capital (or to income, gains or losses from combined investment capital) (from worksheet A, line N).

Use worksheet A to determine the amount of interest deductions indirectly attributable to combined investment capital.

Worksheet A

- A. Enter federal interest deductions included on federal Form 1120, line 18 _____

B. Enter amounts of interest deductions which are required to be added back to federal taxable income in computing combined entire net income (other than the amount on Form CT3-A, line 237).

Enter the line number and amount below.

Line # _____ Amount _____
Line # _____ Amount _____
Line # _____ Amount _____

Total _____

C. Total-subtract line B from line A _____

D. Enter amounts of interest deductions which are required to be subtracted from federal taxable income in computing combined entire net income (for example the interest deductions taken in computing the amount on Form CT-3-A, line 2).

Enter the line number and amount below

Line # _____ Amount _____
Line # _____ Amount _____
Line # _____ Amount _____

Total _____

E. Total New York interest deductions included in combined entire net income- add lines C and D _____

F. Enter any interest deductions directly attributable to combined subsidiary capital from Form CT-3-A, line 4a _____

G. Enter any interest deductions directly attributable to combined investment capital from Form CT-3-A, line 235 _____

H. Enter any interest deductions directly attributable to combined business capital _____

I. Subtotal-add lines F, G and H _____

- J. Interest deductions subject to indirect attribution-subtract line I from line E _____
- K. Enter amount from Form CT-3-A/ATT, line 7, column C, reduced by any portion of such amount required to be eliminated at CT-3-A, lines 222A and 223A, column D _____
- L. Enter amount from Form CT-3-A, line 30 (reduced by any portion of such amount which is required to be eliminated in column D) _____
- M. Percentage-Divide line K by line L _____ %
- N. Amount of interest deductions indirectly attributable to combined investment capital -multiply line J by line M. Enter this amount on line 237 _____

Line 238-Enter the amount of **noninterest** deductions that are indirectly attributable to combined investment capital (or to income, gains or losses from combined investment capital) (from worksheet B, line R).

Use worksheet B to determine the amount of noninterest deductions indirectly attributable to combined investment capital.

Worksheet B

- A. Enter federal noninterest deductions included on federal Form 1120, line 27 (excluding the amount from federal Form 1120, line 18) _____
- B. Enter amounts of noninterest deductions which are required to be added back to federal taxable income in computing entire net income. Include the New York excess depreciation amount described in Tax Law section 208.9(b)(11) to the extent that such amount was subtracted in computing entire net income or combined entire net income for prior taxable years which began on or after January 1, 1987.

Enter the line number and amount below.

| | | |
|--------------|--------------|-------------|
| Line # _____ | Amount _____ | |
| Line # _____ | Amount _____ | |
| Line # _____ | Amount _____ | Total _____ |

C. Total-subtract line B from line A

D. Enter amounts of noninterest deductions listed below which are required to be subtracted from federal taxable income in computing combined entire net income.

- The portion of wages and salaries paid or incurred for the tax year for which a deduction is not allowed pursuant to section 280C of the IRC (Tax Law, Section 208.9(a)(7)).
- Depreciation deductions permitted under Article 9-A with respect to **decoupled** property pursuant to Tax Law, section 208.9(a)(11) and (12).
- Deductions arising from **decoupling** from federal safe harbor lease provisions pursuant to Tax Law, section 208.9(a)(10).
- The noninterest deductions taken in computing the amount on CT-3-A, line 2.

Enter the line number and amount below.

| | | |
|--------------|--------------|-------------|
| Line # _____ | Amount _____ | |
| Line # _____ | Amount _____ | |
| Line # _____ | Amount _____ | Total _____ |

E. Total New York noninterest deductions included in combined entire net income -add lines C and D. _____

F. Enter noninterest deductions directly attributable to combined subsidiary capital from Form CT-3-A, line 4b _____

G. Enter noninterest deductions directly attributable to combined investment capital from Form CT-3-A, line 236 _____

H. Enter noninterest deductions directly attributable to combined business capital

- I. Subtotal- add lines F, G and H _____
- J. Noninterest deductions subject to indirect attribution-subtract line I from line E (see instructions for line R) _____
- K. Enter gross income attributable to combined investment capital from Form CT-3-A, line 234, reduced by any portion of such amount to be eliminated in column D _____
- L. Enter total gross income (for definition see section V(C)(1) of this TSB-M.) _____
- M. Income percentage - divide line K by line L _____
- N. Enter amount from Form CT-3-A/ATT, line 7, column C, reduced by any portion of such amount required to be eliminated at CT-3-A, lines 222A and 223A, column D _____
- O. Enter amount from Form CT-3-A, line 30 (reduced by any portion of such amount which is required to be eliminated in column D) _____
- P. Asset percentage-divide line N by line O _____
- Q. Combined investment capital percentage (If line L is -0- the combined investment capital percentage is equal to the asset percentage. If line O is -0- the combined investment capital percentage is equal to the income percentage.)
 - a. Enter percentage from line M____.; multiply by 2 _____
 - b. Enter percentage from line P _____
 - c. Total - add lines a and b _____
 - d. Combined investment capital percentage- divide line c by 3 _____ %
- R. Amount of noninterest deductions indirectly attributable to combined investment capital- multiply line J by the percentage from line Q or, if an election has been made to use the asset percentage, by or the percentage from line P. Enter this amount on line 238 _____

APPENDIX C
INSTRUCTIONS FOR 1995 CT-3-S
September 6, 1995
CT-3-S, Lines 3a, 3b, 4a and 4b

Lines 3a and 3b -

Complete lines 3a and 3b if you have subsidiary capital includable on Form CT-3-S-ATT, line 43, column C (otherwise, enter " 0" on lines 3a and 3b).

Line 3a- Enter the amount of **interest** deductions allowed in the computation of entire net income (i.e. includable in the amount on worksheet A, line E) that are **directly** attributable to subsidiary capital (or to income, losses or gains from subsidiary capital).

Line 3b- Enter the amount of **noninterest** deductions allowed in the computation of entire net income (i.e. includable in the amount on worksheet B, line E) that are **directly** attributable to subsidiary capital (or to income, losses or gains from subsidiary capital).

The direct attribution of deductions is based on an analysis of facts and circumstances. Deductions directly attributable to subsidiary capital or income include but are not limited to the following:

- interest on debt incurred to buy subsidiary capital;
- salaries of employees engaged in the management, supervision or conservation of subsidiary capital;
- expenses for legal advice relating to the acquisition of subsidiary capital; and
- stewardship deductions relating to subsidiary capital.

Do not include on lines 3a and 3b interest deductions or noninterest deductions that are directly attributable to:

- investment capital (or to income, losses or gains from investment capital); see Form CT-3-S-ATT, lines 6la ,and 6lb; or
- business capital (or to income, losses or gains from business capital). **Note:** For tax years beginning in 1995 or after certain expenses may, at the taxpayer's election, be **deemed** to be directly attributable to business capital (or income, losses or gains from business capital). These expenses include, among others: depletion, advertising, research and development expenses, compensation packages of chief executive officer, chief financial officer and chief operating officer, charitable contributions and internal auditing expenses. For a complete listing of deductions so **deemed** attributable to business capital, see section III (A)(1) of this TSB-M.

If at least 95% of the noninterest deductions of an operating division or corporation are directly attributable to a particular class of capital or income, 100% of the noninterest deductions of that division or corporation may be directly attributed to that class of capital or income. See section IV of this TSB-M for details.

Lines 4a and 4b -

Complete lines 4a and 4b if you have subsidiary capital includable on Form CT-3-S-ATT, line 43, column C (otherwise, enter "0" on lines 4a and 4b).

Line 4a- Enter the amount of **interest** deductions that are **indirectly** attributable to subsidiary capital (or to income, gains or losses from subsidiary capital) (from worksheet A, line N).

Use worksheet A to determine the amount of interest deductions indirectly attributable to subsidiary capital.

Worksheet A

A. Enter federal interest deductions that would have been shown on federal Form 1120, line 18 had the New York S corporation not made the election under Subchapter S of Chapter one of the IRC and filed federal Form 1120 instead of federal Form 1120S. _____

B. Enter amounts of interest deductions which are required to be added back to federal taxable income in computing entire net income (other than the amount on Form CT-3-S, line 4a)

Enter the line number and amount below.

| | | | | |
|--------|-------|--------|-------|-------------|
| Line # | _____ | Amount | _____ | |
| Line # | _____ | Amount | _____ | |
| Line # | _____ | Amount | _____ | Total _____ |

C. Total- subtract line B from line A _____

D. Enter amounts of interest deductions which are required to be subtracted from federal taxable income in computing entire net income (for example the interest deductions taken in computing the amount on Form CT-3-S, line 2).

Enter the line number and amount below.

Line # _____ Amount _____
Line # _____ Amount _____
Line # _____ Amount _____

Total _____

E. Total New York interest deductions included in entire net income -add lines C and D _____

F. Enter any interest deductions directly attributable to subsidiary capital included on Form CT-3-S, line 3a _____

G. Enter any interest deductions directly attributable to investment capital included on Form CT-3-S-ATT, line 6la _____

H. Enter any interest deductions directly attributable to business capital _____

I. Subtotal- add lines F, G and H _____

J. Interest deductions subject to indirect attribution - subtract line I from line E _____

K. Enter the amount from Form CT-3-S-ATT, line 43, column C _____

L. Enter the amount from Form CT-3-S-ATT, line 32, column C _____

M. Percentage - Divide line K by line L _____ %

N. Amount of interest deductions indirectly attributable to subsidiary capital - multiply line J by line M. Enter this amount on line 4-a. _____

Line 4b- Enter the amount of **noninterest** deductions that are **indirectly** attributable to subsidiary capital (or to income, gains or losses from subsidiary capital) (from worksheet B, line R).

Use worksheet B to determine the amount of noninterest deductions indirectly attributable to subsidiary capital.

Worksheet B

A. Enter federal noninterest deductions that would have been included on federal Form 1120, line 27 (excluding the amount from federal Form 1120, line 18) had the New York S Corporation not made the election under Subchapter S of Chapter one of the IRC and filed federal Form 1120 instead of federal Form 1120S _____

B. Enter amounts of noninterest deductions which are required to be added back to federal taxable income in computing entire net income. Include the New York excess depreciation amount described in Tax Law section 208.9(b)(11) to the extent that such amount was subtracted in computing entire net income for prior taxable years which began on or after January 1, 1987.

Enter the line number and amount below.

Line # _____ Amount _____
Line # _____ Amount _____
Line # _____ Amount _____

Total _____

C. Total- subtract line B from line A _____

D. Enter amounts of noninterest deductions listed below which are required to be subtracted from federal taxable income in computing entire net income.

- The portion of wages and salaries paid or incurred for the tax year for which a deduction is not allowed pursuant to section 280C of the IRC(Tax Law, Section 208.9(a)(7)).
- Depreciation deductions permitted under Article 9-A with respect to decoupled property pursuant to Tax Law, section 208.9(a)(11) and (12).
- Deductions arising from decoupling from federal safe harbor lease provisions pursuant to Tax Law, section 208.9(a)(10).
- The noninterest deductions taken in computing the amount on Form CT-3-S, line 2.

Enter the line number and amount below.

Line # ____ Amount _____
Line # ____ Amount _____
Line # ____ Amount _____

Total _____

- E. Total New York noninterest deductions included in entire net income -add lines C and D _____
- F. Enter noninterest deductions directly attributable to subsidiary capital from Form CT-3-S, line 3b _____
- G. Enter noninterest deductions directly attributable to investment capital from Form CT-3-ATT, line 6lb _____
- H. Enter non-interest deductions directly attributable to business capital _____
- I. Subtotal- add lines F, G and H _____
- J. Noninterest deductions subject to indirect attribution -subtract line I from line E (see instructions for line R) _____
- K. Enter gross income attributable to subsidiary capital from Form CT-3-S-ATT, line 49 _____
- L. Enter total gross income (see definition in section V (C)(1) of this TSB-M). _____
- M. Percentage - divide line K by line L _____ %
- N. Enter amount from Form CT-3-S-ATT, line 43, column C _____
- O. Enter amount from Form CT-3-S-ATT, line 32, column C _____
- P. Percentage - divide line N by line O _____
- Q. Subsidiary capital percentage (If line L is -0- the subsidiary _____

capital percentage is equal to the asset percentage. (If line O is -0- the subsidiary capital percentage is equal to the income percentage)

- a. Enter percentage from line M____; multiply by 2 _____
- b. Enter percentage from line P _____
- c. Total- add lines a and b _____
- d. Subsidiary capital percentage- divide line c by 3 _____ %

R. Amount of noninterest deductions indirectly attributable to subsidiary capital- multiply line J by the percentage from line Q or, if an election has been made to use the asset percentage, by the percentage from line P. Enter this amount on line 4-b _____

CT-3-S-ATT, Lines 61a, 61b, 62a, and 62b

Lines 61a and 61b-

Complete lines 61 a and 61 b if you have investment capital includable on Form CT-3-S-ATT, line 53, column C (otherwise, enter "0" on lines 61a and 61b).

Line 61a- Enter the amount of **interest** deductions allowed in the computation of entire net income (i.e. includable in the amount on worksheet A, line E) that are **directly** attributable to investment capital (or to income, losses or gains from investment capital).

Line 61b- Enter the amount of **noninterest** deductions allowed in the computation of entire net income (i.e. includable in the amount on worksheet B, line E) that are **directly** attributable to investment capital (or to income, losses or gains from investment capital).

The direct attribution of deductions is based on an analysis of the facts and circumstances.. Deductions directly attributable to investment capital or income include but are not limited to the following:

- interest on debt incurred to buy investment capital
- safe deposit box rentals
- financial news subscriptions
- salaries of employees engaged in the management and conservation of stocks, bonds and other securities included in investment capital
- investment counsel fees
- custodian fees
- the cost of insurance and fidelity bonds covering investment capital

- expenses for legal advice relating to the acquisition of investment capital

Do not include on lines 61a and 61b interest deductions or noninterest deductions that are directly attributable to:

- subsidiary capital (or to income, losses or gains from investment capital) see Form CT-3-S, lines 3a and 3b; or
- business capital (or to income, losses or gains from business capital). **Note:** For tax years beginning in 1995 or at, er certain expenses may, at the taxpayer's election, be **deemed** to be directly attributable to business capital (or income, losses or gains from business capital). These expenses include, among others: depletion, advertising, research and development expenses, compensation packages of chief executive officer, chief financial officer and chief operating officer, charitable contributions and internal auditing expenses. For a complete listing of deductions so **deemed** attributable to business capital, see section III (A)(1) of this TSB-M.

If at least 95% of the noninterest deductions of an operating division or corporation are directly attributable to a particular class of capital or income, 100% of the noninterest deductions of that division or corporation may be directly attributed to that class of capital or income. See section IV of this TSB-M for details.

Lines 62a and 62b-

Complete lines 62a and 62b if you have investment capital includable on Form CT-3-ATT, line 53, column C (otherwise, enter "0" on lines 62a and 62b).

Line 62a- Enter the amount of **interest** deductions that are **indirectly** attributable to investment capital (or to income, gains or losses from investment capital) (from worksheet A, line N).

Use worksheet A to determine the amount of interest deductions indirectly attributable to investment capital.

Worksheet A

A. Enter federal interest deductions that would have been shown on federal Form 1120, line 18 had the New York S corporation not made the election under Subchapter S of Chapter one of the IRC and filed federal Form 1120 instead of federal Form 1120S _____

B. Enter amounts of interest deductions which are required to be

added back to federal taxable income in computing entire net income (other than the amount on Form CT3-S, line 4a).

Enter the line number and amount below.

| | | | | |
|--------|------|--------|-------|-------------|
| Line # | ____ | Amount | _____ | |
| Line # | ____ | Amount | _____ | |
| Line # | ____ | Amount | _____ | Total _____ |

C. Total-subtract line B from line A _____

D. Enter amounts of interest deductions which are required to be subtracted from federal taxable income in computing entire net income (for example the interest deductions taken in computing the amount on Form CT-3-S, line 2).

Enter line number and amount

| | | | | |
|--------|------|--------|-------|-------------|
| Line # | ____ | Amount | _____ | |
| Line # | ____ | Amount | _____ | |
| Line # | ____ | Amount | _____ | Total _____ |

E. Total New York interest deductions included in entire net income - add lines C and D _____

F. Enter any interest deductions directly attributable to subsidiary capital from Form CT-3-S, line 3a _____

G. Enter any interest deductions directly attributable to investment capital from Form CT-3-S-ATT, line 6la _____

H. Enter any interest deductions directly attributable to business capital _____

I. Subtotal-add lines F, G and H _____

J. Interest deductions subject to indirect attribution-subtract line I from line E _____

- K. Enter amount from Form CT-3-S-ATT, line 53, column C _____
- L. Enter amount from Form CT-3-S-ATT, line 32, column C _____
- M. Percentage-Divide line K by line L _____ %
- N. Amount of interest deductions indirectly attributable to investment capital. -multiply line J by line M. Enter this amount on line 62a _____

Line 62b- Enter the amount of **noninterest** deductions that are **indirectly** attributable to investment capital (or to income, gains or losses from investment capital) (from worksheet B, line R).

Use worksheet B to determine the amount of noninterest deductions indirectly attributable to investment capital.

Worksheet B

- A. Enter federal noninterest deductions that would have been included on federal Form 1120, line 27 (excluding the amount from federal Form 1120, line 18) had the New York S corporation not made the election under Subchapter one of the IRC and filed federal Form 1120 instead of federal Form 1120S _____
- B. Enter amounts of noninterest deductions which are required to be added back to federal taxable income in computing entire net income. Include the New York excess depreciation amount described in Tax Law section 208.9(b)(11) to the extent that such amount was subtracted in computing entire net income for prior taxable years which began on or after January 1, 1987.

Enter the line number and amount below.

| | | |
|--------------|--------------|-------------|
| Line # _____ | Amount _____ | |
| Line # _____ | Amount _____ | |
| Line # _____ | Amount _____ | Total _____ |

- C. Total-subtract line B from line A _____

D. Enter amounts on noninterest deductions listed below which are required to be subtracted from federal taxable income in computing entire net income.

- The portion of wages and salaries paid or incurred for the tax year for which a deduction is not allowed pursuant to section 280C of the IRC(Tax Law, Section 208.9(a)(7)).
- Depreciation deductions permitted under Article 9-A with respect to **decoupled** property pursuant to Tax Law, section 208.9(a)(11) and (12).
- Deductions arising from **decoupling** from federal safe harbor lease provisions pursuant to Tax Law, section 208.9(a)(10).
- The noninterest deductions taken in computing the amount on Form CT-3-S, line 2.

Enter the line number and amount below.

Line # _____ Amount _____
 Line # _____ Amount _____
 Line # _____ Amount _____

Total _____

E. Total New York noninterest deductions included in entire net income -add lines C and D _____

F. Enter noninterest deductions directly attributable to subsidiary capital from Form CT-3-S, line 3b _____

G. Enter noninterest deductions directly attributable to investment capital from Form CT-3-S-ATT, line 6lb _____

H. Enter noninterest deductions directly attributable to business capital _____

I. Subtotal- add lines F, G and H _____

J. Noninterest deductions subject to indirect attribution- subtract line I from line E (see instructions for line R) _____

K. Enter gross income attributable to investment capital from Form CT-3-S-ATT, line 60

- L. Enter total gross income (see definition in section V (C)(1) of this TSB-M) _____
- M. Income percentage - divide line K by line L _____
- N. Enter amount from Form CT-3-S-ATT, line 53, column C. _____
- O. Enter amount from Form CT-3-S, line 32, column C _____
- P. Asset percentage-divide line N by line O _____
- Q. Investment capital percentage (If line L is -0- the investment capital percentage is equal to the asset percentage. If line O is -0- the investment capital percentage is equal is equal to income percentage.)
 - a. Enter percentage from line M____; multiply by 2 _____
 - b. Enter percentage from line P _____
 - c. Total - add lines a and b _____
 - d. Investment capital percentage-divide line c by 3 _____ %
- R. Amount of noninterest deductions indirectly attributable to investment capital- multiply line J by the percentage from line Q or, if an election has been made to use the asset percentage, by the percentage from line P. Enter this amount on line 62b. _____