



Instructions for Form CT-33-C

Captive Insurance Company Franchise Tax Return

CT-33-C-1

Important reminder to file a complete return: You must complete all required schedules and forms that make up your return, and include **all pages** of those forms and schedules when you file. Returns that are missing required pages or that have pages with missing entries are considered incomplete and cannot be processed, and may subject taxpayers to penalty and interest.

Up-to-date information affecting your tax return

Visit our Web site for tax law changes or forms corrections that occurred after the forms and instructions were printed (see *Need help?*).

Changes for 2009

Credit or refund form is obsolete — Effective January 1, 2009, and applicable to all open tax periods, Form CT-8, *Claim for Credit or Refund of Corporation Tax Paid*, can no longer be used. For further information, see Important Notice, N-09-2, *Form CT-8, Claim for Credit or Refund of Corporation Tax Paid, and Form CT-9, Claim for Tentative Refund Based Upon Carryback of Net Operating Loss, Are Obsolete*.

Increase in the mandatory first installment (MFI) of estimated tax — The Tax Law was amended to provide an increase in the MFI for taxpayers, other than life insurance corporations filing Form CT-33, *Life Insurance Corporation Franchise Tax Return*, or CT-33-A, *Life Insurance Corporation Combined Franchise Tax Return*, and continuing section 186 taxpayers filing Form CT-186, *Utility Corporation Franchise Tax Return*, whose preceding year's tax, exclusive of the metropolitan transportation business tax (MTA surcharge), exceeded \$100,000. For tax years beginning on or after January 1, 2010, those taxpayers are required to pay a first installment equal to 40% of the preceding year's tax. Additionally, taxpayers who are required to pay their MFI at the 40% rate and are subject to the MTA surcharge are also required to calculate their estimated tax for the MTA surcharge at 40% of the preceding year's MTA surcharge. The remaining three estimated tax payments are to be adjusted so that the total payments do not exceed 100% of the estimated tax due. The MFI of estimated tax and estimated MTA surcharge remains at 25% of the preceding year's tax and tax surcharge, respectively, for those taxpayers whose preceding year's tax exceeded \$1,000, but was less than or equal to \$100,000.

More collection options for New York State — If you owe unpaid debt to New York State, we are now able to collect your debt by taking money from, or offsetting, payments owed you by the federal government or by another state. Reciprocal offset agreements also allow the federal government, as well as other states, to collect delinquent non-tax debt by offsetting payments owed you by New York State.

Health maintenance organizations (HMOs) taxed as insurance corporations — Effective for tax years beginning on or after January 1, 2009, any for-profit HMO required to obtain a certificate of authority under Article 44 of the Public Health Law is subject to a franchise tax based solely on premiums under Tax Law section 1502-a. These HMOs are now included in the definition of an insurance corporation under Tax Law section 1500(a). For more information, see Form CT-33-NL, *Non-Life Insurance Corporation Franchise Tax Return*, and its instructions.

Overcapitalized captive insurance companies must be included in combined returns under Article 9-A or 32 — Effective for tax years beginning on or after January 1, 2009,

any overcapitalized captive insurance company (as defined in Tax Law section 2.11) must be included in a combined return under Article 9-A or 32 with the closest corporation that directly or indirectly owns or controls over 50% of the voting stock of the insurance company. Such insurance companies no longer meet the definition of an insurance corporation under Tax Law section 1500(a). For more information, see TSB-M-09(9)C, *Tax Treatment of Overcapitalized Captive Insurance Companies*.

Fee for payments returned by banks — A new law allows the Tax Department to charge a \$50 fee when a check, money order, or electronic payment is returned by a bank for nonpayment. However, if an electronic payment is returned as a result of an error by the bank or the department, the department won't charge the fee. If your payment is returned, we will send a separate bill for \$50 for each return or other tax document associated with the returned payment.

Important information

Reporting requirements for tax shelters — The Tax Law requires taxpayers to report information about transactions that present the potential for tax avoidance (tax shelters). There are separate reporting requirements for those who use tax shelters and for those who promote the use of tax shelters. For the most recent information on these reporting requirements visit our Web site.

Voluntary Disclosure and Compliance Program — A Voluntary Disclosure and Compliance Program has been established. The program provides relief from certain penalties and criminal prosecution to eligible taxpayers who come forward and reveal previously undisclosed liabilities.

Electronic filing and electronic payment mandate — Certain tax preparers using tax software to prepare tax documents, and certain taxpayers preparing their own tax documents using tax software, must, for the applicable calendar year and all succeeding calendar years, e-file all documents authorized by the Commissioner to be e-filed. Any tax liability or other amount due required to be paid with a tax document that must be e-filed must also be e-paid.

General information

A premiums tax is imposed under Tax Law section 1502-b on captive insurance companies licensed by the Superintendent of Insurance under Insurance Law Article 70.

Exceptions: The Metropolitan Transportation Authority (MTA), and a public benefit corporation or not-for-profit corporation formed by a city with a population of 1 million or more pursuant to Insurance Law section 7005(a), are expressly exempt from the payment of fees, taxes, or assessments whether state or local. Overcapitalized captive insurance companies, as defined in Tax Law section 2.11, are required to file a combined return under either Article 9-A or 32 with their closest controlling stockholder.

Captive insurance companies licensed by the Superintendent of Insurance under Insurance Law Article 70 are not subject to the taxes imposed by Tax Law section 1501, 1502-a, or 1510, or to the metropolitan transportation business tax surcharge imposed by Tax Law section 1505-a.

The tax on captive insurance companies is based on gross direct premiums and assumed reinsurance premiums. However, the tax cannot be less than the minimum tax of \$5,000. Tax credits are not allowed against the tax imposed on captive insurance companies. Captive insurance companies are not permitted to file a combined return and must compute their tax separately on Form CT-33-C.

When and where to file

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

If you cannot meet this filing deadline, you may request a six-month extension of time to file by filing Form CT-5, *Request for Six-Month Extension to File*.

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

If you use a delivery service other than the U.S. Postal Service, see below.

You **must** also send a **copy** of Form CT-33-C to:

**THE NEW YORK STATE INSURANCE DEPARTMENT
ONE COMMERCE PLAZA
ALBANY NY 12257**

Private delivery services

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

Computerized returns

We will accept computer-produced corporation tax returns if they meet our printing specifications. For information, see Publication 76, *Specifications for Reproduction of New York State Corporation Tax Forms*.

Specific instructions

Reporting period — Use this tax return for calendar year 2009 and fiscal years that begin in 2009 and end in 2010.

You can also use the 2009 return if:

- you have a tax year of less than 12 months that begins and ends in 2010, **and**
- the 2010 return is not yet available at the time you are required to file the return.

In this case you must show your 2010 tax year on the 2009 return and take into account any tax law changes that are effective for tax years beginning after December 31, 2009.

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

Business information — Enter the corporation's business information at the top of the first page. Be sure to enter the corporation's mailing name if different from its legal name.

If you need to update your corporation tax address or phone information, you can do so online. Visit our Web site at www.nystax.gov and look for the change my address option.

Otherwise, enter your new address and/or phone number in the appropriate area of your return and mark an **X** in the box under the address. Do not mark an **X** in this box if your address and/or phone number is new since your last filing but was already updated online, or for any change of business information other than your address and/or phone number. Once your corporation tax information is updated online, you do not need to indicate a change of address on any corporation tax forms submitted to the Tax Department (or for any forms for tax types you select to be updated in addition to corporation tax).

If you prefer to change this information by form, use Form DTF-96, *Report of Address Change for Business Tax Accounts*. You must report other changes (such as business name or ID number) on Form DTF-95, *Business Tax Account Update*. You can get these forms from our Web site, by fax, or by phone (see *Need help?*).

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

When filing an amended return for a credit or refund, the amended return must be filed within three years of the date the original return was filed or within two years of the date the tax was paid, whichever is later. If you did not file an original return, you must make the request within two years of the date the tax was paid. For additional limitations on credits or refunds, see Tax Law section 1087.

Third-party designee — If you want to authorize another person (third-party designee) to discuss this tax return with the New York State Tax Department, mark an **X** in the *Yes* box in the *Third-party designee* area of your return. Also **print** the designee's name, phone number, and any five-digit number the designee chooses as his or her personal identification number (PIN). If you want to authorize the paid preparer who signed your return to discuss the return with the Tax Department, **print** the preparer's name in the space for the designee's name and enter the preparer's phone number in the space for the designee's phone number. You do not have to provide the other information requested. If you do not want to authorize another person, mark an **X** in the *No* box.

If you mark the *Yes* box, you are authorizing the Tax Department to discuss with the designee any questions that may arise during the processing of your return. You are also authorizing the designee to:

- give the Tax Department any information that is missing from your return;
- call the Tax Department for information about the processing of your return or the status of your refund or payment(s); and
- respond to certain Tax Department notices that you shared with the designee about math errors, offsets, and return preparation. The notices will not be sent to the designee.

You are not authorizing the designee to receive your refund check, bind you to anything (including any additional tax liability), or otherwise represent you before the Tax Department. If you want the designee to perform those services for you, you must file Form POA-1, *Power of Attorney*, making that designation with the Tax Department. Copies of statutory tax notices or documents (such as a *Notice of Deficiency*) will only be sent to your designee if you file Form POA-1.

You cannot change the PIN. The authorization will automatically end on the due date (without regard to extensions) for filing your next year's tax return.

Signature — The company's president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the taxpayer must certify the return.

If an outside individual or firm prepared the return, the signature of the person and the name of the firm must be included.

Whole dollar amounts — You may elect to show amounts in whole dollars rather than in dollars and cents. Round any amount from 50 cents through 99 cents to the next higher dollar. Round any amount less than 50 cents to the next lower dollar.

Negative amounts — Show any negative amounts with a minus (-) sign.

Entering dates — Unless you are specifically directed to use a different format, enter dates in the *mm-dd-yy* format (using dashes and not slashes).

Line instructions

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

Computation of tax and installment payments of estimated tax — Unless the captive insurance company can prove otherwise, we will assume that all its premiums on lines 1 through 8 are allocated to New York State and its issuer's allocation percentage is 100%. For a captive company to prove that less than 100% of its premiums are allocated to New York State and its issuer's allocation percentage is less than 100%, it must demonstrate that the premiums were taxed by another state.

Tax on New York State gross direct premiums

Lines 1 through 4 — Four tax rates apply to gross direct premiums, as shown on lines 1 through 4 of this form.

Gross direct premiums are defined in Tax Law section 1510(c). These premiums include total gross premiums, deposit premiums, and assessments, less returns thereon, on all policies, certificates, renewals, policies subsequently canceled, insurance and reinsurance executed, issued, or delivered on property or risks located or resident in New York State. *Gross direct premiums* also include premiums written, procured, or received in New York State on business that cannot be specifically allocated or apportioned and reported as taxable premiums, or that have not been used as a measure of a tax on business of any other state or states. For special risk premiums, only include premiums written, procured, or received in New York State on risks located or resident in New York State. Do not include premiums on annuity contracts, ocean marine insurance, policies issued under Insurance Law section 4236, and any premiums that New York State cannot tax according to federal law including federal long-term care insurance policies issued under United States Code Chapter 90, Title 5. Also exempt from this tax are premiums on risks located outside the United States that were written, procured, or received in New York State.

The term *premiums*, as used in the previous paragraph, includes all amounts received as consideration for insurance or reinsurance contracts, or contracts with health maintenance organizations for health services (other than for annuity contracts), and includes premium deposits, assessments, policy fees, membership fees, and separate costs assessed upon the captive insurance company's policyholders, and every other compensation for such contract. In addition, *premiums* include any amount received by a captive insurance company as consideration for insurance provided to its parents and affiliated companies, in the case of a pure captive insurance company, and to the industrial insureds that comprise the industrial insured group, in the case of a group captive insurance company. The terms *pure captive insurance company*, *group captive insurance company*, *industrial insureds*, and *industrial insured group* are defined in Insurance Law section 7002.

Deductions from gross direct premiums include:

A. Reinsurance premiums — When computing gross direct premiums, deduct (1) reinsurance premiums that have been received by way of reinsurance from corporations or other insurers authorized to transact business in New York State and (2) reinsurance premiums that relate to transactions authorized under Insurance Law section 2105 and that are subject to the premiums tax on excess-lines brokers under Insurance Law section 2118.

B. Dividends paid or credited — Deduct dividends on direct premiums and unused or unabsorbed portions of premium deposits paid or credited to policyholders. This deduction does not include deferred dividends paid in cash to policyholders on maturing policies nor cash surrender values.

Tax on New York State reinsurance premiums

Lines 5 through 8 — Insurance Law section 7010 explains the reinsurance business that may be performed by a captive insurance company. A captive insurance company may assume reinsurance on risks ceded by any other insurer when the risks ceded are solely those of the industrial insured or members of the industrial insured group owning the captive insurance company. Also, when it has the permission of the Superintendent of Insurance, a captive insurance company may assume risks of any insurer, provided the reinsurance premiums assumed do not exceed 50% of the gross premiums written by the captive insurance company in the calendar year.

Four rates apply to reinsurance premiums. Any reinsurance premiums deducted from gross direct premiums on lines 1 through 4 should be included and subjected to tax on lines 5 through 8.

Line 10 — Tax Law section 1502-b imposes a minimum tax of \$5,000.

Line 12b — If you did not file Form CT-5, a mandatory first installment is required for the period following the one that is covered by this return. If line 11 does not exceed \$100,000, enter 25% of the tax shown on line 11. If line 11 exceeds \$100,000, enter 40% of the tax shown on line 11.

Line 16 — Form CT-222, *Underpayment of Estimated Tax by a Corporation*, is filed by a corporation to inform the Tax Department that the corporation meets one of the exceptions to reduce or eliminate the underpayment of estimated tax penalty pursuant to Tax Law section 1085(d).

Line 17 — If you do not pay the tax due on or before the original due date (**without** regard to any extension of time for filing), you must pay interest on the amount of underpayment from the original due date to the date you paid (line 11 minus line 14). Exclude from the interest computation any amount shown on line 12a or 12b, first installment of estimated tax for next period.

Line 18 — Compute charges (penalties) for late filing and late payment of tax required to be shown on the return, after deducting any payment made on or before the due date, **with** regard to any extension of time for filing (line 11 minus line 14). Exclude from the penalty computation any amount shown on line 12a or 12b, first installment of estimated tax for next period.

- A. If you do not file a return when due, or if the request for extension is invalid, add to the tax 5% per month up to 25% (section 1085(a)(1)(A)).
- B. If you do not file a return within 60 days of the due date, the addition to tax in item A above cannot be less than the smaller of \$100 or 100% of the amount required to be shown as tax (section 1085(a)(1)(B)).
- C. If you do not pay the tax shown on a return, add to the tax ½% per month up to 25% (section 1085(a)(2)).
- D. The total of the additional charges in items A and C above may not exceed 5% for any one month, except as provided for in item B above (section 1085(a)(4)).

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

Note: You may compute your penalty and interest by accessing our Web site and clicking on *Online Tax Center*, or you may call and we will compute the penalty and interest for you. See *Need help?*.

Collection of debts from your refund or overpayment

We will keep all or part of your refund or overpayment if you owe a past-due, legally enforceable debt to a New York State agency, or if you owe a New York City tax warrant judgment debt. We may also keep all or part of your refund or overpayment if you owe a past-due legally enforceable debt to another state, provided that state has entered into a reciprocal agreement with New York State. If we keep your refund or overpayment, we will notify you.

A New York State agency includes any state department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, office, or other entity performing a governmental or proprietary function for the state or a social services district. We will refund or apply as an overpayment any amount over your debt.

The Tax Department is authorized to charge the taxpayer, as part of the taxpayer's tax debt, any cost or fee imposed or charged by the United States, or any state, for the payment or remittance of a taxpayer's overpayment to satisfy a New York State tax debt.

If you have any questions about whether you owe a past-due, legally enforceable debt to a state agency, or to another state, or whether you owe a New York City tax warrant judgment debt, contact the state agency, the other state, or the New York City Department of Finance.

For New York State tax liabilities only, call (518) 457-5434 (in-state callers without free long distance call 1 800 835-3554) or write to: NYS Tax Department, Collections and Civil Enforcement Division, W A Harriman Campus, Albany NY 12227.

Line 27 — Composition of prepayments on line 14 — If you need additional space, enter **see attached** under line 27 and attach all additional prepayment information. Include additional amounts in the total on line 27 and on line 14.

Privacy notification — The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3676



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

Corporation Tax Information Center: (518) 485-6027
In-state callers without free long distance: 1 888 698-2908

To order forms and publications: (518) 457-5431
In-state callers without free long distance: 1 800 462-8100



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at 1 800 634-2110. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.