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

See Form CT-1 for the following topics:

- Changes for the current tax year (general and by Tax Law Article)
- Business information (how to enter and update)
- Entry formats
  - Dates
  - Negative amounts
  - Percentages
  - Whole dollar amounts
- Are you claiming an overpayment?
- NAICS business code number and NYS principal business activity
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- Use of reproduced and computerized forms
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- Voluntary Disclosure and Compliance Program
- Your rights under the Tax Law
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- Privacy notification

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

### Corporate tax filing requirements

For tax years beginning on or after January 1, 2015, including short periods, all New York C corporations subject to tax under Tax Law Article 9-A (including former Tax Law Article 32 taxpayers) must file using the following returns, as applicable:

- Form CT-3, *General Business Corporation Franchise Tax Return*
- Form CT-3-A, *General Business Corporation Combined Franchise Tax Return*
- Form CT-3-M, *General Business Corporation MTA Surcharge Return*

**Note:** Form CT-4, *General Business Corporation Franchise Tax Return Short Form*, is no longer available for any tax year beginning on or after January 1, 2015.

Any return filed on an incorrect form, or on a form for the wrong year, will not be processed and will not be considered timely filed. As a result, penalties and interest may be incurred.

See Form CT-3-A-I, *Instructions for Form CT-3-A*, for information as to when a combined return is permitted or required.

Use this tax return for calendar year 2015, fiscal years that begin in 2015 and end in 2016, and tax years of less than 12 months that begin on or after January 1, 2015, but before January 1, 2016.

If you have a tax year of less than 12 months that begins and ends in 2016 and the 2016 return is not yet available at the time you are required to file the return, you must file an extension request to file the short period return and wait for the 2016 return to become available on the Tax Department's Web site.

Do **not** use this tax return for **any** tax year that began before January 1, 2015.

### Corporations subject to tax under Article 9-A

The definition of a corporation, as used in Article 9-A and in these instructions, includes associations, limited liability companies (LLCs), limited liability partnerships (LLPs), and publicly traded partnerships that are taxed as corporations under the Internal Revenue Code (IRC). For more information, see §208.1.

A business corporation subject to tax under Article 9-A includes all corporations **except**:

- insurance corporations (including for-profit HMOs required to obtain a certificate of authority under Public Health Law Article 44) (Tax Law Article 33);
- transportation and transmission corporations (other than aviation corporations, corporations principally engaged in transportation, transmission, or distribution of gas, electricity, or steam (TTD corporations), and nonelecting railroad and trucking corporations) (Tax Law Article 9);
- farmers, fruit growers, and similar agricultural cooperatives (Article 9);
- nonstock, not-for-profit corporations, no part of the net earnings of which inures to the benefit of any officer, director, or member;
- continuing §186 taxpayers (Article 9).

**Domestic corporations** – A domestic corporation (incorporated in New York State) subject to tax under Article 9-A is generally liable for franchise taxes for each fiscal or calendar year, or part thereof, during which it is incorporated until it is formally dissolved with the Department of State. However, a domestic corporation that is no longer doing business, employing capital, owning or leasing property, or deriving receipts from activity, in New York State is exempt from the fixed dollar minimum tax for years following its final tax year and is not required to file a franchise tax return provided it meets the requirements listed in §209.8.

**Foreign corporations** – A foreign corporation (incorporated outside of New York State) is liable for franchise taxes under Article 9-A during the period in which it is doing business, employing capital, owning or leasing property, maintaining an office, or deriving receipts from activity, in New York State.

A corporation is considered to be deriving receipts in this state if it has receipts within New York of \$1 million or more in a tax year (§209.1). *Receipts* means the receipts that are subject to the apportionment rules in §210-A, and the term *receipts within this state* means the receipts included in the numerator of the apportionment factor determined under §210-A. Also, receipts from processing credit card transactions for merchants include merchant discount fees received by the corporation (§209.1(b)).

A corporation is doing business in this state if (§209.1(c)):

- it has issued credit cards (including bank, credit, travel, and entertainment cards) to 1,000 or more customers who have a mailing address in this state as of the last day of its tax year;
- it has merchant customer contracts with merchants and the total number of locations covered by those contracts equals 1,000 or more locations in this state to whom the corporation

remitted payments for credit card transactions during the tax year; **or**

- the sum of the number of customers and the number of locations equals 1,000 or more.

A foreign corporation that is a partner in a partnership should see *Corporate partners*.

A foreign corporation shall **not** be deemed to be doing business, employing capital, owning or leasing property, maintaining an office, or deriving receipts from activity, in this state by reason of (§209.2):

- the maintenance of cash balances with banks or trust companies in this state;
- the ownership of shares of stock or securities kept in this state if kept in a safe deposit box, safe, vault, or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or with brokers who are members of a recognized security exchange, in safekeeping or custody accounts;
- the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to the corporation;
- the maintenance of an office in this state by one or more officers or directors of the corporation who are not employees of the corporation if the corporation otherwise is not doing business in this state, and does not employ capital or own or lease property in this state;
- the keeping of books or records of a corporation in this state if such books and records are not kept by employees of the corporation and the corporation does not otherwise do business, employ capital, own or lease property, or maintain an office in this state; **or**
- any combination of the activities listed above.

All business corporations subject to tax under Article 9-A, other than New York S corporations, must file franchise tax returns using Form CT-3, unless such corporations are required or permitted to file as members of a combined group (see Form CT-3-A). A business corporation that has elected to be treated as a New York S corporation by filing Form CT-6, *Election by a Federal S Corporation to be Treated as a New York S Corporation*, must file Form CT-3-S, *New York S Corporation Franchise Tax Return*, instead of Form CT-3.

**Qualified subchapter S subsidiary (QSSS)** – The filing requirements for a QSSS that is owned by a federal S corporation that is a New York C corporation or a nontaxpayer corporation are outlined below. Where New York State follows federal QSSS treatment, the parent and QSSS file a single franchise tax return. The QSSS is ignored as a separate taxable entity, and the assets, liabilities, income, and deductions of the QSSS are included on the parent's franchise tax return. However, for other taxes such as sales and excise taxes, the QSSS continues to be recognized as a separate corporation.

- **Parent is a New York C corporation** – New York State follows the federal QSSS treatment if: 1) the QSSS is a New York State taxpayer; or 2) the QSSS is not a New York State taxpayer but the parent makes a QSSS inclusion election. In both cases, the parent and QSSS are taxed as a single New York C corporation, and file Form CT-3. If the parent does not make a QSSS inclusion election, it files Form CT-3 as a New York C corporation on a stand-alone basis.
- **Nontaxpayer parent** – New York State follows the federal QSSS treatment where the QSSS is a New York State taxpayer but the parent is not, if the parent elects to be taxed as a New York S corporation by filing Form CT-6. The parent and QSSS are taxed as a single New York S corporation, and file Form CT-3-S. If the parent does not elect to be a

New York S corporation, the QSSS must file as a New York C corporation on a stand-alone basis on Form CT-3.

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

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

**Mandated New York S corporations** – Shareholders of an eligible federal S corporation that have not made the election to be treated as a New York S corporation for the current tax year will be deemed to have made that election and must file Form CT-3-S if the corporation's investment income is more than 50% of its federal gross income for that year. For purposes of the mandated New York State S election, *investment income* means the sum of an eligible S corporation's gross income from interest, dividends, royalties, annuities, rents and gains derived from dealings in property, including the corporation's share of such items from a partnership, estate, or trust, to the extent such items would be includable in the corporation's federal gross income for the tax year. In determining whether an eligible S corporation is deemed to have made this election, the income of a QSSS owned, directly or indirectly, by the eligible S corporation shall be included with the income of the eligible S corporation.

#### Corporate partners

- If a partnership is doing business, employing capital, owning or leasing property, maintaining an office, or deriving receipts from activity, in New York State, then a corporation that is a general partner in that partnership is subject to tax under Article 9-A (§209.1(f)).
- If a partnership is doing business, employing capital, owning or leasing property, maintaining an office, or deriving receipts from activity, in New York State, then a corporation that is a limited partner of that partnership (other than a portfolio investment partnership) is subject to tax under Article 9-A if it is engaged, directly or indirectly, in the participation or in the domination or control of all or any portion of the business activities or affairs of the partnership.

An LLC or LLP that is treated as a partnership for federal income tax purposes will be treated as a partnership for New York State tax purposes.

For purposes of determining nexus, the \$1 million threshold for deriving receipts is determined by combining the general partner's receipts in New York with the partnership's receipts in New York.

**Example:** *Partnership A has two general partners: Partner B who owns 60% of the partnership and Partner C who owns 40%. Partnership A has \$600,000 of receipts in New York. Separately, Partner B has \$700,000 of receipts in New York and Partner C has \$450,000 of receipts in New York. For purposes of determining nexus only, both partners B and C would be treated as having \$600,000 from the partnership. Combined with their own receipts, both general partners exceed \$1 million in receipts in New York (\$1.3 million for Partner B and \$1.05 million for Partner C). Therefore, both general partners are subject to tax.*

**Alien corporations** – An alien corporation (a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States, or organized under the laws of a possession, territory or commonwealth of the United States) is **not** deemed to be doing business, employing capital, owning or leasing property, maintaining an office, or

deriving receipts from activity, in this state if its activities in this state are limited solely to:

- investing or trading in stocks and securities for its own account per IRC section 864(b)(2)(A)(ii);
- investing or trading in commodities for its own account per IRC section 864(b)(2)(B)(ii); **or**
- any combination of the above two activities.

An alien corporation that under any provision of the IRC is not treated as a domestic corporation as defined under IRC section 7701 and has no effectively connected income for the tax year will not be subject to tax under Article 9-A for that tax year (§209.2-a).

## Other forms you may need to file

**Form CT-3.1, *Investment and Other Exempt Income and Investment Capital***, must be filed by a corporation that has investment capital (§208.5), investment income (§208.6), or other exempt income (§208.6-a).

**Form CT-3.2, *Subtraction Modification for Qualified Banks***, must be filed to utilize the subtraction modification for qualified residential loan portfolios (§208.9(r)), the subtraction modification for community banks and small thrifts (§208.9(s)), or the subtraction modification for community banks and small thrifts with a captive real estate investment trust (REIT) (§208.9(t)).

**Form CT-3.3, *Prior Net Operating Loss Conversion (PNOLC) Subtraction***, must be filed to calculate and utilize the PNOLC subtraction and carryforward (§210.1(a)(viii)). This form must be filed for **every** tax year for which you carry a balance of a PNOLC subtraction, even if you are unable to utilize the subtraction in a given year.

**Form CT-3.4, *Net Operating Loss Deduction (NOLD)***, must be filed to calculate and utilize the NOLD and carryforward (§210.1(a)(ix)). This form must also be filed with the amended return when the carryback of a net operating loss (NOL) for a tax year beginning on or after January 1, 2015, is claimed.

**Form CT-3-M, *General Business Corporation MTA Surcharge Return***, must be filed by any corporation taxable under Article 9-A that does business, employs capital, owns or leases property, maintains an office, or derives receipts from activity, in the Metropolitan Commuter Transportation District (MCTD). The MCTD includes the counties of New York, Bronx, Kings, Queens, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester. An exception applies to a qualified entity of a New York State innovation hot spot when the qualified entity is located solely within a hot spot.

**Form CT-33-D, *Tax on Premiums Paid or Payable to an Unauthorized Insurer***, must be filed if you purchase or renew a taxable insurance contract directly from an insurer not authorized to transact business in New York State under a *Certificate of Authority* from the Superintendent of Financial Services; you may be liable for a tax of 3.6% (.036) of the premium. For more information, see Form CT-33-D.

**Form CT-60, *Affiliated Entity Information Schedule***, must be filed if you are an Article 9-A taxpayer and you have included the activities of any of the following on your return:

- a QSSS;
- a partnership;
- a disregarded entity - single member LLC; **or**
- a tax-exempt domestic international sales corporation (DISC).

You must also file Form CT-60 if:

- you are a Form 1120S filer; **or**
- you have affiliated entities.

**Tax-exempt DISCs** – A corporation that qualifies as a DISC under IRC section 992(a) is exempt from tax under Article 9-A if during the year it received more than 5% of its:

- gross sales from the sale of inventory or other property purchased from its stockholders;
- gross rentals from the rental of property purchased or leased from its stockholders; **or**
- total receipts, other than sales or rentals, from its stockholders.

All corporate stockholders in tax-exempt DISCs must adjust each item of its receipts, expenses, assets, and liabilities, as otherwise computed under Article 9-A, by adding thereto its attributable share of each such DISC's receipts, expenses, assets, and liabilities as reported by each such DISC to the United States Treasury for its annual reporting period ending during the current tax year of such taxpayer.

**Taxable DISCs** are DISCs that do not meet the 5% test under *Tax-exempt DISCs*. Taxable DISCs must file Form CT-3 on or before the 15th day of the ninth month after the end of the tax year. Such a DISC is subject to the tax on apportioned capital or the fixed dollar minimum, whichever is larger. Write **DISC** after the legal name of the corporation in the address section of the return.

**Form CT-186-E, *Telecommunications Tax Return and Utility Services Tax Return***, must be filed by a corporation that provides telecommunication services. The corporation must pay an excise tax on its gross receipts from the sale of telecommunication services under Article 9 section 186-e.

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

**Form CT-223, *Innovation Hot Spot Deduction***, must be filed if you are a corporation that is a qualified entity located both inside and outside a hot spot, or you are a corporate partner of a qualified entity, or both.

**Form CT-224, *Public Utility, Power Producer, and Pipeline Adjustments***, must be filed to make adjustments to federal taxable income (FTI) pursuant to §208.9(c-2) and §208.9(c-3).

**Form CT-225, *New York State Modifications***, must be filed if you are entering an amount on Form CT-3, Part 3, lines 2 and/or 4.

**Form CT-399, *Depreciation Adjustment Schedule***, must be filed to compute the allowable New York State depreciation deduction if you claim: 1) the federal accelerated cost recovery system (ACRS) depreciation or modified accelerated cost recovery system (MACRS) deduction for certain property placed in service after December 31, 1980; or 2) a 30%/50%/100% federal special depreciation deduction for certain qualified property placed in service on or after June 1, 2003, in tax years beginning after December 31, 2002.

This form also contains schedules for determining a New York State gain or loss on the disposition of ACRS/MACRS property and property for which you claimed a 30%/50%/100% federal special depreciation deduction.

**Form CT-400, *Estimated Tax for Corporations***, must be filed if your New York State franchise tax liability can reasonably be expected to exceed \$1,000.

Most corporations are required to electronically file this form either using tax software or online, after setting up an online services account, through the department's Web site.

**Form DTF-664, Tax Shelter Disclosure for Material Advisors**, must be filed to assist material advisors in complying with New York State's disclosure requirements.

**Form DTF-686, Tax Shelter Reportable Transactions Attachment to New York State Return**, must be filed to assist taxpayers and persons in complying with New York State's disclosure requirements.

For more information about other taxes that may apply to you, see **Publication 20, Tax Guide for New Businesses**.

## When to file

File your return within 2½ months after the end of your reporting period. If you are reporting for the calendar year, your return is due 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.

## Extensions if you cannot meet the filing deadline

If you cannot meet the filing deadline, you may request a six-month extension of time by filing Form CT-5, *Request for Six-Month Extension to File (for franchise/business taxes, MTA surcharge, or both)*, and paying your properly estimated franchise tax and metropolitan transportation business tax (MTA surcharge) on or before the original due date of the return.

Most corporations are required to electronically file their extension request either using tax software or online, after setting up an online services account, through the department's Web site.

You may request up to two additional extensions by filing Form CT-5.1, *Request for Additional Extension of Time to File (for franchise/business taxes, MTA surcharge, or both)*. File it on or before the expiration date of the original extension or previously filed additional extension.

## Where to file

NYS CORPORATION TAX  
PO BOX 15181  
ALBANY NY 12212-5181

**Private delivery services** – See Publication 55, *Designated Private Delivery Services*.

## Penalties and interest

### If you pay after the due date

If you do not pay the tax due on or before the original due date, you must pay interest on the amount of the underpayment from the original due date of the return (**without** regard to any extension of time for filing) to the date the tax is paid.

Exclude from the interest computation any amount shown on Form CT-3, Part 2, line 5 or 6. Interest is always due, without any exceptions, on any underpayment of tax. An extension of time for filing **does not** extend the due date for payment of tax.

### If you file and pay after the due date

Compute additional charges for late filing and late payment on the amount of tax minus any payment made on or before the due date (**with** regard to any extension of time for filing). Exclude from the penalty computation any amount shown on Form CT-3, Part 2, line 5 or 6.

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% (§1085(a)(1)(A)).

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

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

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

## If you understate your tax

If the tax you report is understated by 10% or \$5,000, whichever is greater, you must pay a penalty of 10% of the amount of understated tax. You can reduce the amount on which you pay penalty by subtracting any item for which: 1) there is or was substantial authority for the way you treated it; or 2) there is adequate disclosure on the return or in an attached statement (§1085(k)).

## If you underpay your estimated tax

If you can reasonably expect your New York State franchise tax liability to exceed \$1,000, you must make payments of estimated tax. A penalty will be imposed if you fail to file a declaration of estimated tax or fail to pay the entire installment payment of estimated tax due. For complete details, see Form CT-222.

## Other penalties

Strong civil and criminal penalties may be imposed for negligence or fraud.

## Voluntary Disclosure and Compliance Program

### Have you underreported your tax due on past returns?

Tax Law, Article 36, section 1700 authorizes the Tax Department to waive civil and criminal penalties for taxpayers who disclose and pay overdue taxes. Under the Tax Department's Voluntary Disclosure and Compliance Program, eligible taxpayers who owe back taxes can avoid monetary penalties and possible criminal charges by:

- telling the Tax Department what taxes they owe;
- paying those taxes; and
- entering an agreement to pay all future taxes.

It is easy to apply. Visit our Web site (see *Need help?*).

Follow the prompts, answer a few questions, and submit your application electronically.

### Is this an amended return?

If you are filing an amended return for any purpose, mark an **X** in the *Amended return* box on page 1 of the return.

If you file an amended federal return, you must file an amended New York State return within 90 days thereafter.

You **must** file using the correct year's return for the tax year being amended. Do **not** use the most current year's return if the current year is not the year being amended. If you file on the wrong year's return, it may cause the amended return to

be rejected, or may cause a delay in receiving any tax benefits being claimed.

**For amended returns based on changes to federal taxable income (FTI)** – If your FTI has been changed or corrected by a final determination of the Commissioner of Internal Revenue, or by a renegotiation of a contract or subcontract with the United States, you must file an amended return reflecting the change to FTI within 90 days (120 days if filing an amended combined return) of the final federal determination (as final determination is described under the regulations of the Commissioner of Taxation and Finance).

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

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

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

You must attach the following to your amended return:

- federal claim Form 1139, *Corporation Application for Tentative Refund*, or federal Form 1120X, *Amended U.S. Corporation Income Tax Return*;
- proof of federal refund approval, *Statement of Adjustment to Your Account*;
- a copy of the New York State return previously filed with New York State for the loss year; and
- Form CT-3.4 when carrying back loss incurred in a tax year that began on or after January 1, 2015.

NOLs from tax years that begin on or after January 1, 2015, cannot be carried back to tax years that began before January 1, 2015.

If you are a federal S corporation that files as a New York C corporation, file an amended New York State return for the prior year and attach a copy of federal Form 1120S, *U.S. Income Tax Return for an S Corporation*, for the loss year. File the amended return within 15 months from the end of the loss year.

**For credits or refunds of corporation tax paid** – To claim any refund type that requires an amended return, other than an NOL carryback (see *For credits or refunds based upon carryback of a net operating loss (NOL)*), file an amended New York State return for the year being amended and, if applicable, attach a copy of the claim form filed with the IRS (usually Form 1120X) and proof of federal refund approval, *Statement of Adjustment to Your Account*. You must use the tax return for the year being amended.

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

The amended return must be filed within three years of the date the original return was filed or within two years of the date the tax was paid, whichever is later. If you did not file an original return, you must make the request within two years of the date the tax was paid. However, a claim for credit or refund based on a federal change must be filed within two years from the time the amended return reporting the change or correction was required to be filed (see *For amended returns based on changes*

*to federal taxable income (FTI)*). For additional limitations on credits or refunds, see §1087.

## Filing your final return

Mark an **X** in the *Final return* box on page 1 of the return if the corporation is a:

- domestic corporation that ceased doing business, employing capital, owning or leasing property, or deriving receipts from activity, in New York State during the tax year and wishes to dissolve; or
- foreign corporation that is no longer subject to the franchise tax in New York State.

Do not mark an **X** in the *Final return* box if you are only changing the type of return that you file (for example, from Form CT-3 to CT-3-S).

Do not mark an **X** in the *Final return* box in the case of a merger or consolidation.

Include the full profit from any installment sale made in your final tax year on your final return. Also include on your final return any remaining profit not yet received from a prior year's installment sale.

For information on voluntary dissolution and surrender of authority, see *Instructions for voluntary dissolution of a New York corporation (TR-125)*, and *Instructions for surrender of authority by foreign business corporation (TR-199)*, on our Web site (see *Need help?*).

## New York S corporation termination year

When a New York S corporation terminates its federal or New York S election on a day other than the first day of a tax year, the tax year is divided into two tax periods (an S short year and a C short year). The corporation must file Form CT-3-S for the New York S short year and Form CT-3 for the New York C short year.

When an IRC section 338(h)(10) election is made for a target corporation that is a New York S corporation, the target corporation must file two short-period (less than 12 months) returns. When filing the second short-period return, the FTI of the new target is the starting point for computing entire net income (ENI).

The total tax for the S short year and the C short year may not be less than the fixed dollar minimum tax determined as if the corporation were a C corporation for the entire tax year. For more information, see Form CT-3-S-I, *Instructions for Form CT-3-S*.

The due date of the New York S corporation short year return (Form CT-3-S) is the same as the New York C corporation short year, even though they are treated as separate short tax years.

## Overview of corporation franchise tax

### Tax bases

Corporations subject to tax under Tax Law Article 9-A generally must compute three distinct taxes and pay the tax that results in the largest amount owed. The three taxes include a tax on business income, a tax on capital, and a fixed dollar minimum tax.

### New York State innovation hot spot program

A qualified entity of a New York State innovation hot spot that is located solely within a hot spot is subject only to the fixed dollar minimum tax for five tax years beginning with the first tax year the qualified entity becomes a tenant in, or part of, an innovation hot spot. A qualified entity must be certified by a New York State

innovation hot spot. A taxpayer who claims this benefit or who enters an amount on Form CT-3, Part 3, line 4, as a subtraction from FTI for the income or gain attributable to the operations at, or as part of, the hot spot is no longer eligible for any other New York State exemption, deduction, credit, or refund under the Tax Law to the extent that such exemption, deduction, credit, or refund is attributable to the business operations of a tenant in, or as part of, the New York State innovation hot spot. Claiming these benefits represents an irrevocable election.

## Tax on business income

The tax on the business income base is computed in Part 3. The business income base is determined using a single receipts factor. The factor is computed in Part 6.

## Tax on business capital

The tax on the business capital base is computed in Part 4. The business capital base is determined using a single receipts factor. The factor is computed in Part 6.

## Fixed dollar minimum tax

The fixed dollar minimum tax is determined by a corporation's New York receipts.

A domestic corporation that is no longer doing business, employing capital, owning or leasing property, or deriving receipts from activity, in New York State is exempt from the fixed dollar minimum tax for years following its final tax year and is no longer required to file a franchise tax return, provided it meets the requirements listed in §209.8.

## Computation of tax for corporate partners

A taxpayer that is a partner in a partnership (a corporate partner) computes its tax for its interest in the partnership using either the aggregate method or entity method, whichever applies. For an exception to these methods, see *Election by a foreign corporate limited partner*.

**Aggregate method** – Under the aggregate method, a corporate partner is viewed as having an undivided interest in the partnership's assets, liabilities, and items of receipts, income, gain, loss, and deduction. The partner is treated as participating in the partnership's transactions and activities.

**Entity method** – Under the entity method, a partnership is treated as a separate entity and a corporate partner is treated as owning an interest in the partnership entity. The partner's interest is an intangible asset that is classified as business capital. To the extent a corporate partner's ENI includes its distributive share of partnership items of income, gain, loss, or deduction, those items are treated as business income.

## Corporate partners required to file under the aggregate method

A corporate partner receiving a complete Form IT-204-CP, *New York Corporate Partner's Schedule K-1*, must file using the aggregate method. In addition, a corporate partner must file using the aggregate method if the corporate partner has access to the information necessary to compute its tax using the aggregate method. A corporate partner is presumed to have access to the information and therefore is required to file using the aggregate method if it meets **one or more** of the following conditions:

- it is conducting a unitary business with the partnership;
- it is a general partner of the partnership or is a managing member of an LLC that is treated as a partnership for federal income tax purposes;
- it has a 5% or more interest in the partnership;

- it has reported information from the partnership for a prior tax year using the aggregate method;
- its partnership interest constitutes more than 50% of its total assets;
- its basis in its interest in the partnership determined under IRC section 705 on the last day of the partnership year that ends within or with the taxpayer's tax year is more than \$5 million; or
- any member of its affiliated group has the information necessary to perform such computation.

A corporate partner that does not receive a complete Form IT-204-CP may file using the entity method **only** if it does **not** meet any of the conditions listed above **and** does not have access (and will not have access within the time period allowed for filing a return with regard to all extensions of time to file) to the information necessary to compute its tax using the aggregate method and certifies these facts to the Commissioner of Taxation and Finance.

**Computation of tax under the aggregate method** – The taxpayer's **distributive share** (IRC section 704) of each partnership item of receipts, income, gain, loss, and deduction, and the taxpayer's **proportionate part** of each partnership asset, liability, and partnership activity are included in the computation of the taxpayer's business income base, capital base, and the fixed dollar minimum. These items have the same source and character in the hands of the partner for Article 9-A purposes that the items have for the partner for federal income tax purposes.

**Computation of tax under the entity method** – A corporate partner is treated as owning an interest in the partnership entity for purposes of determining the taxes measured by the business income base, capital base, and the fixed dollar minimum. The partner's interest is an intangible asset that is business capital.

**Election by a foreign corporate limited partner** – A foreign corporation that is a limited partner in, and that is engaged, directly or indirectly, in the participation or in the domination or control of all or any portion of the business activities of, one or more limited partnerships, where such partnership(s) are doing business, employing capital, owning or leasing property, maintaining an office, or deriving receipts from activity, in New York State is subject to tax under Article 9-A. When this is the **sole** reason such foreign corporation is taxable under Article 9-A, and the corporation does not file on a combined basis for Article 9-A purposes, the corporation may elect to compute its tax by taking into account **only** its distributive share of each partnership item of receipts, income, gain, loss, and deduction (including any addition or subtraction modifications to FTI) and its proportionate part of each asset, liability, and partnership activity of the limited partnership.

This election may not be made if the limited partnership and corporate group are engaged in a unitary business, wherever conducted, and there are substantial inter-entity transactions between the limited partnership and the corporate group.

*Corporate group* means the corporate limited partner itself or, if it is a member of an affiliated group, the corporate limited partner and all other members of such affiliated group.

*Affiliated group* has the same meaning as such term is defined in IRC section 1504 without regard to the exclusions provided for in section 1504(b). However, the term *common parent corporation* means any person as defined in IRC section 7701(a)(1).

If the taxpayer meets the criteria to make the election and does not have access to the information necessary to do the computation, the taxpayer may treat its distributive share of the partnership's items of income, gain, loss, and deduction as

business income and its interest in the partnership as business capital, and may allocate that business income and capital entirely to New York State.

## Foreign airlines

Foreign airlines that have a foreign air carrier permit pursuant to section 402 of the Federal Aviation Act of 1958 may exclude from ENI all income from international operations effectively connected to the United States, foreign passive income, and income earned from overseas operations, provided the foreign country in which the airline is based has a similar exemption from tax with respect to United States airlines (§208.9(c-1)).

When computing the tax on capital, foreign airlines may also exclude from business capital those assets used to generate the exempt income (to the extent the assets were employed in generating that income) (§208.7(b)).

However, if the country in which the foreign airline is based does not provide a similar exemption from tax with respect to United States airlines, the foreign airline is not entitled to the exclusions from income and capital described above.

## How to fill out your tax return

### Important identifying information

When preparing your corporation tax return, be sure to accurately complete the corporation's identifying information (employer identification number (EIN) and file number) including your current address. Keep a record of your identifying information for future use.

If you use a paid preparer or accounting firm, make sure they use your complete and accurate information when completing all your forms.

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

### Signature

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

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

If an outside individual or firm prepared the return, all applicable entries in the paid preparer section must be completed, including identification numbers (see *Paid preparer identification numbers* in Form CT-1).

Failure to sign the return will delay the processing of any refunds and may result in penalties.

## Tax rates schedule

Tax base	Tax rates
<b>Table 1 – Business income base for general business taxpayers</b>	.071
<b>Table 2 – Business income base for qualified small business taxpayers</b> Business income base of \$290,000 or less: Business income base of more than \$290,000 but not more than \$390,000:	.065 <ul style="list-style-type: none"> <li>• \$18,850</li> <li>• plus 7.1% of the amount over \$290,000 but not over \$390,000</li> <li>• plus 4.35% of the amount over \$350,000</li> </ul>
<b>Table 3 – Business income base for qualified New York manufacturers</b>	.00
<b>Table 4 – Business income base for qualified emerging technology companies (QETCs)</b>	.057
<b>Table 5 – Capital base</b>	.0015
<b>Table 6 – Capital base for qualified New York manufacturers and QETCs</b>	.00132
<b>Table 7 – Capital base for qualified cooperative housing corporations</b>	.0004
<b>Table 8 – Fixed dollar minimum tax</b> For a corporation with New York receipts of: Not more than \$100,000: More than \$100,000 but not over \$250,000: More than \$250,000 but not over \$500,000: More than \$500,000 but not over \$1,000,000: More than \$1,000,000 but not over \$5,000,000: More than \$5,000,000 but not over \$25,000,000: More than \$25,000,000 but not over \$50,000,000: More than \$50,000,000 but not over \$100,000,000: More than \$100,000,000 but not over \$250,000,000: More than \$250,000,000 but not over \$500,000,000: More than \$500,000,000 but not over \$1,000,000,000: Over \$1,000,000,000:	\$ 25 \$ 75 \$ 175 \$ 500 \$ 1,500 \$ 3,500 \$ 5,000 \$ 10,000 \$ 20,000 \$ 50,000 \$ 100,000 \$ 200,000
<b>Table 9 – Fixed dollar minimum tax for qualified New York manufacturers and QETCs</b> For a corporation with New York receipts of: Not more than \$100,000: More than \$100,000 but not over \$250,000: More than \$250,000 but not over \$500,000: More than \$500,000 but not over \$1,000,000: More than \$1,000,000 but not over \$5,000,000: More than \$5,000,000 but not over \$25,000,000: Over \$25,000,000:	\$ 22 \$ 66 \$ 153 \$ 439 \$ 1,316 \$ 3,070 \$ 4,385

## 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**.

**Line B** – If during the tax year you do business, employ capital, own or lease property, maintain an office, or derive receipts from activity, in the MCTD, you are subject to the MTA surcharge.

A corporation is deriving receipts from activity in the MCTD if it has receipts within the MCTD of \$1 million or more in a tax year.

The MCTD includes the counties of New York, Bronx, Kings, Queens, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

Mark an **X** in the appropriate box. If Yes, you must file Form CT-3-M.

**Line C** – Pursuant to Public Law 86-272, a foreign corporation is not subject to the tax imposed by Article 9-A if its activities are limited to those described in that law. If you are disclaiming tax liability in New York State based on Public Law 86-272, but still want to file a New York State franchise tax return, mark an **X** in the box.

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## Part 1 – General corporate information

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### Section A – Qualification for preferential tax rates

Failure to mark a box that pertains to you may result in a delay in processing your return or the loss of a claimed tax benefit.

Generally, you will have only one box marked in Section A indicating the preferential tax status you are actually utilizing to realize the tax benefits of that status. However, a qualified New York manufacturer can have the boxes on both lines 2 and 3 marked if it meets the principally engaged test for line 2 and the different principally engaged test for line 3.

Also, a small business taxpayer utilizing the small business tax benefits would mark the box on line 6 as well as the box on line 6b if it was also a QETC, or the box on line 6c if it was also a qualified New York manufacturer.

**Line 1** – If you are claiming QETC status for purposes of the lower business income base tax rate, the lower capital base tax rate and cap, and the reduced fixed dollar minimum tax amounts, you must mark an **X** in the box. For qualifying criteria, see New York State Public Authorities Law section 3102-e(1)(c), without regard to the \$10 million limitation. For more information, see TSB-M-12(9)C, *Clarification of Qualifications for Qualified Emerging Technology Company (QETC) Tax Credits*.

**Line 2** – If you are claiming qualified New York manufacturer status based on the principally engaged test (see below) for purposes of the lower business income base tax rate and the reduced fixed dollar minimum tax amounts, you must mark an **X** in the box.

A *qualified New York manufacturer* is a manufacturer (as described below) that has property in New York State that is principally used by the manufacturer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing, and either:

- the adjusted basis of the property for federal income tax purposes is at least \$1 million at the close of the tax year; or
- all of its real and personal property is located in New York State.

A corporation qualifies as a manufacturer if during the tax year the taxpayer is **principally engaged** in the production

of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing. A taxpayer is *principally engaged* in the foregoing activities if during the tax year more than 50% of its gross receipts are derived from receipts for the sale of goods produced by these activities.

For purposes of the 0% business income base tax rate and the reduced fixed dollar minimum tax amounts, the generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity are **not** considered qualifying activities for purposes of the principally engaged test.

For more information, see TSB-M-15(3)C, *Real Property Tax Credit and Reduction of Tax Rates for Qualified New York Manufacturers*, and TSB-M-15(3.1)C, *Revised Information on the Real Property Tax Credit and Reduction of the Capital Base Tax Rate for Qualified New York Manufacturers*.

**Line 3** – If you are claiming qualified New York manufacturer status based on the principally engaged test for purposes of the lower capital base tax rate and capital base tax cap, you must mark an **X** in the box. The definition of *qualified New York manufacturer* and the principally engaged test, as described in line 2 instructions, apply; however, the generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity **are** considered qualifying activities for purposes of the principally engaged test. For more information, see TSB-M-15(3)C and TSB-M-15(3.1)C.

**Line 4** – If you are claiming qualified New York manufacturer status based on the significant employment and property test (see below) for purposes of the lower business income base tax rate, the lower capital base tax rate and cap, and the reduced fixed dollar minimum tax amounts, you must mark an **X** in the box.

A taxpayer (or in the case of a combined report, a combined group) that does not satisfy the principally engaged test may be a qualified New York manufacturer if the taxpayer or the combined group employs during the tax year at least 2,500 employees in manufacturing in New York and the taxpayer or the combined group has property in the state used in manufacturing, the adjusted basis of which for federal income tax purposes at the close of the tax year is at least \$100 million.

For purposes of the 0% business income base tax rate and the reduced fixed dollar minimum tax amounts, the generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity are **not** considered qualifying activities for purposes of determining if employees are employed in manufacturing, or if property is used in manufacturing. For more information, see TSB-M-15(3)C and TSB-M-15(3.1)C.

**Line 5** – A qualified cooperative housing corporation is entitled to use a reduced tax rate of .0004 when computing its tax using the capital base. To claim this reduced rate, you must mark an **X** in the box.

A corporation that has only one class of stock that entitles the shareholder to live in a house or an apartment in a building owned or leased by the corporation may be a cooperative housing corporation. For a complete definition, see IRC section 216(b).

**Note:** All cooperative housing corporations must file Form TP-588, *Cooperative Housing Corporation Information Return*, twice a year. For more information, see the instructions on Form TP-588.

**Line 6** – If you are claiming small business taxpayer status for purposes of the lower business income base tax rate and possible exemption from the capital base if you are reporting for either of your first two tax years, you must mark an **X** in the box.

A corporation qualifies as a small business taxpayer if:

- 1) its ENI is not more than **\$390,000**;
- 2) the total amount of money and other property it received for stock, as a contribution to capital and as paid-in surplus, is not more than \$1 million as of the last day of its tax year;
- 3) the average number of individuals (excluding general executive officers) employed full time in New York State during the tax year is 100 or fewer; **and**
- 4) the corporation is not part of an affiliated group, as defined in IRC section 1504, unless the group itself would have met the above criteria if it had filed a combined return.

For purposes of item 3 above, determine the average number of individuals employed full time in the state by averaging the sum of such individuals employed on March 31, June 30, September 30, and December 31 of the tax year.

An individual *employed full time* means an employee in a job consisting of at least 35 hours per week, or two or more employees who are in jobs that together constitute the equivalent of a job of at least 35 hours per week (full-time equivalent). A full-time equivalent employee in New York State includes any employee regularly connected with or working out of an office or place of business of the taxpayer in New York State.

*General executive officers* include the chairman, president, vice president, secretary, assistant secretary, treasurer, assistant treasurer, comptroller, and any other officer charged with the general executive affairs of the corporation. An executive officer whose duties are restricted to territory either in or outside New York State is not a general executive officer.

**Short periods:** A corporation that files Form CT-3 for a tax year of less than 12 months must annualize ENI from Form CT-3, Part 3, line 7, to determine if it qualifies as a small business taxpayer. For a period of less than 12 months, annualize the ENI by multiplying the ENI by 12 and dividing the result by the number of months in the short period.

**Line 6a** – If you are using the small business taxpayer business income base tax rate (see line 6 instructions), you must provide the information requested on this line. The amount taken into account with respect to any property other than money is the amount equal to the adjusted basis to the taxpayer of such property for determining gain, reduced by any liability to which the property was subject or was assumed by the taxpayer. Use the worksheet below to determine the total capital contributions to enter on this line.

	No. of shares	Amount
Par value stock.....		
No-par value stock .....		
Contributions to capital and paid-in surplus .....		
Total capital contributions; enter on line 6a .....		

**Line 7** – For information as to how to qualify as an entity of a New York State innovation hot spot, see TSB-M-14(1)C, *New York State Business Incubator and Innovation Hot Support Support Act*.

**Part 1 Section B – New York State information**

**Line 1** – Enter the number of full-time employees at the end of the tax year. For more information, see Section A, line 6 instructions.

**Line 2** – Enter the total amount of all wages and compensation of employees (except general executive officers) that work out of an office or location in New York State.

**Line 3** – A *business establishment* is a single physical location where business is conducted, or where services or industrial operations are performed.

**Lines 4a and 4b** – If you marked the box on line 4 and have an interest in, or rent, real property in **multiple** counties in New York State, write **see attached** on the dotted line before line 4a, and attach a separate sheet with all counties listed showing the value or rent of each property. Transfer the total shown on the attached sheet to line 4b.

**Line 5** – A taxpayer that is not included in a combined return with a related member must add back royalty payments directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members during the tax year. These royalty payments must be added back to the extent deductible in calculating FTI. This addback applies unless the taxpayer meets one of the following four exceptions:

1. The addback will not apply to the portion of the royalty payment for which the taxpayer establishes by clear and convincing evidence of the form and type specified by the Commissioner of Taxation and Finance that:
  - the related member was subject to tax in New York or another state or possession of the United States, a foreign nation, or a combination of these on a tax base that included the royalty payment paid, accrued, or incurred by the taxpayer;
  - the related member during the same tax year directly or indirectly paid, accrued, or incurred the portion of the royalty payment to a person that is not a related member; and
  - the transaction giving rise to the royalty payment between the taxpayer and the related member was undertaken for a valid business purpose.
2. The addback will not apply if the taxpayer establishes by clear and convincing evidence of the form and type specified by the commissioner that:
  - the related member was subject to tax on, or measured by, its net income in New York, another state or possession of the United States, or a combination of these;
  - the tax base for the tax included the royalty payment paid, accrued, or incurred by the taxpayer; and
  - the aggregate effective rate of tax applied to the related member in those jurisdictions is not less than 80% of the statutory rate of tax that applied to the taxpayer under §210 for the tax year.
3. The addback will not apply if the taxpayer establishes by clear and convincing evidence of the form and type specified by the commissioner that:
  - the royalty payment was paid, accrued, or incurred to a related member organized under the laws of a country other than the United States;
  - the related member's income from the transaction was subject to a comprehensive income tax treaty between that country and the United States;
  - the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued, or incurred by the taxpayer;
  - the related member's income from the transaction was taxed in that country at an effective rate of tax at least equal to that imposed by New York; and
  - the royalty payment was paid, accrued, or incurred pursuant to a transaction that was undertaken for a

valid business purpose and using terms that reflect an arm’s-length relationship.

- The addback will not apply if the taxpayer and the commissioner agree in writing to the application or use of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations if he or she concludes that the income of the taxpayer would not be properly reflected in the absence of such an agreement.

If you are claiming one of these exceptions, mark an **X** in the box and see the instructions for line 5a.

**Line 5a** – Enter the number of the applicable exception (see above) and the amount of royalty payments excluded from ENI.

**Line 6** – A corporation is deriving receipts from activity in this state if it has receipts within this state of \$1 million or more in the tax year. If you are not protected by Public Law 86-272 and are subject to tax **solely** as a result of deriving receipts in New York, mark an **X** in the box (§209.1).

### Part 1 Section C – Filing information

To avoid an erroneous assessment or delayed refund, all filers **must** complete the applicable lines in this section.

## Part 2 – Computation of balance due or overpayment

**Line 1b** – The tax on the capital base does not apply to certain filers. If you are a:

- REIT as defined in IRC section 856 that is subject to tax under IRC section 857, or
- RIC as defined in IRC section 851 that is subject to tax under IRC section 852,

enter **0** here and on Part 4, line 15.

A REIT or RIC filing federal Form 1120-REIT or 1120-RIC **must** mark an **X** in the applicable box on Part 1, Section C, line 1, to avoid an erroneous assessment or delayed refund.

A **small business taxpayer** may claim an exemption from the tax on capital base for its first two tax years if it meets certain requirements. However, it must mark the correct box on Part 4, line 14 for the return to process properly, and must complete lines 6 through 6c in Part 1, Section A.

**Line 1c** – The fixed dollar minimum tax is determined by the corporation’s New York receipts. Enter your New York receipts in the first box. If you do not have New York receipts, enter **0**. **To avoid an erroneous assessment or a delay in your refund, you must** enter an amount on this line.

New York receipts are the receipts included in the numerator of the apportionment factor as determined in Part 6, *Computation of business apportionment factor*.

For a short period, compute New York receipts by dividing the amount of New York receipts for the tax year by the number of months in the tax year and multiplying the result by 12.

See Table 8 or 9 of the *Tax rates schedule* to determine the applicable fixed dollar minimum tax to enter on line 1c. The fixed dollar minimum tax may be reduced for short periods.

Period	Reduction
Not more than six months.....	50%
More than six months but not more than nine months .....	25%
More than nine months.....	None

A homeowners association, as such term is defined in IRC section 528(c) without regard to section 528(c)(1)(E), with no

FTI, as the term is defined in section 528(d), is not subject to the fixed dollar minimum tax and must enter **0** on line 1c. A homeowners association filing federal Form 1120-H must mark an **X** in the applicable box on Part 1, Section C, line 1, to avoid an erroneous assessment or delayed refund.

Qualified New York manufacturers and QETCs must mark an **X** in the applicable box on Part 1, Section A, line 1, 2, or 4, to avoid an erroneous assessment or delayed refund.

### Line 2 – Tax due

**Small business taxpayer exception:** If line 1b (capital base tax) is larger than line 1a (business income base tax) **only** because of the reduced business income base tax rate applicable to small business taxpayers, enter the larger amount from line 1a or 1c (§210.1).

If you qualify as **both** a small business taxpayer **and** either a qualified New York manufacturer or a QETC, you must use the small business taxpayer rate for purposes of the business income base in order to be exempt from the tax on capital base. You **cannot** claim qualified New York manufacturer or QETC status for those lower business income base tax rates, **and** also claim small business taxpayer status for the exemption from the capital base tax.

To indicate that you are claiming small business taxpayer status, mark an **X** in the box on Part 1, Section A, line 6, but do **not** mark an **X** in any of the boxes on Part 1, Section A, line 1, 2, 3, or 4.

**Qualified entity of a New York State innovation hot spot exception:** If located **solely** within a hot spot and electing to be subject only to the fixed dollar minimum tax, enter only the amount from line 1c. To indicate that you are making this election, mark an **X** in the box on Part 1, Section A, line 7.

**Taxable DISC exception:** Enter the larger of line 1b or 1c.

**Line 3** – Complete Part 7, and enter the total amount of the tax credits that you are claiming to reduce your tax due. If you are claiming more than one tax credit, see Form CT-600-I, *Instructions for Form CT-600*, for the order of application under Article 9-A. **Attach** copies of all forms and schedules used. If you claim a tax credit without filing the appropriate tax credit claim form, the tax credit will be disallowed.

The only instances in which the use of a tax credit can reduce your tax below the fixed dollar minimum tax shown on line 1c are by using the manufacturer’s real property tax credit which may reduce your tax to \$25, the QEZE tax reduction credit if you have a 100% zone allocation which may reduce your tax to zero, and if you have a 100% area allocation factor for both the tax-free New York area excise tax on telecommunications credit, and the tax-free New York area tax elimination credit.

**Line 6** – If the tax on line 4 exceeds \$1,000 and 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 the tax on line 4 exceeds \$1,000, but is not greater than \$100,000, multiply the amount on line 4 by 25% (.25). If the tax on line 4 exceeds \$100,000, multiply the amount on line 4 by 40% (.4).

**Line 8** – Form CT-222 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 §1085(d).

**Lines 9 and 10** – If you are not filing this return on time, you must pay interest and additional charges. See *Penalties and interest*.

**Lines 12a through 12g**

If you want to make a contribution to *Return a Gift to Wildlife, Breast Cancer Research and Education Fund, Prostate and Testicular Cancer Research and Education Fund, National September 11 Memorial & Museum at the World Trade Center, Volunteer Firefighting and Volunteer Emergency Services Recruitment and Retention Fund, Veterans Remembrance and Cemetery Maintenance and Operations Fund, Women's Cancers Education and Prevention Fund*, or all seven, enter the whole dollar amount(s) on the appropriate line(s). Your gift will increase your payment due or reduce your overpayment. You cannot change the amount of your gift after you file your return.

**Line 12a – Return a Gift to Wildlife** – Your contribution will benefit New York's fish, wildlife, and marine resources, and you can receive a free issue of *Conservationist* magazine. Call 1 800 678-6399 for your free sample issue. For more information about New York State's environmental conservation programs, go to [www.dec.ny.gov](http://www.dec.ny.gov). For information about *Conservationist*, go to [www.TheConservationist.org](http://www.TheConservationist.org).

**Line 12b – Breast Cancer Research and Education Fund** – Your contribution will support ground-breaking research and education in New York State to prevent, treat, and cure breast cancer. Help make breast cancer a disease of the past. For more information, go to [www.wadsworth.org/extramural/breastcancer](http://www.wadsworth.org/extramural/breastcancer). New York State will match your contribution to the Breast Cancer Research and Education Fund, dollar for dollar.

**Line 12c – Prostate and Testicular Cancer Research and Education Fund** – Your contribution will advance prostate and testicular cancer research, support programs and education projects in New York State. New York State will match contributions to the Prostate and Testicular Cancer Research and Education Fund, dollar for dollar.

**Line 12d – National September 11 Memorial & Museum at the World Trade Center (9/11 Memorial)** – Your contribution will help create and sustain the National September 11 Memorial & Museum which will commemorate and honor the thousands of people who died in the attacks of September 11, 2001, and February 26, 1993. The Memorial and Museum will recognize the endurance of those who survived, the courage of those who risked their lives to save others, and the compassion of all who supported us in our darkest hours. Help New York State, the nation, and the world remember by making a contribution. For more information, go to [www.911memorial.org](http://www.911memorial.org).

**Line 12e – Volunteer Firefighting and Volunteer Emergency Services Recruitment and Retention Fund** – Contributions to this fund will help recruit and retain the men and women who make up our volunteer fire and volunteer emergency medical services units. Volunteer firefighters and volunteer emergency services workers are crucial to the effective operation of a municipality and for the safety and well-being of the citizens of this state. Volunteer firefighters and volunteer emergency medical services workers provide invaluable benefits to their local communities. Despite their importance, the number of volunteer firefighters and volunteer emergency services workers has declined significantly over the past few years. For more information, go to [www.dhss.ny.gov/ofpc](http://www.dhss.ny.gov/ofpc) or contact the State Office of Fire Prevention and Control at (518) 474-6746.

**Line 12f – Veterans Remembrance and Cemetery Maintenance and Operation Fund (Veterans Remembrance)** Your contribution will help provide for the perpetual care of state veterans cemeteries. Contributions will be used for the purchase, leasing, and improvement of land for veterans cemeteries, the purchase and leasing of equipment and other materials needed for the maintenance of cemeteries, and other associated costs.

**Line 12g – Women's Cancers Education and Prevention Fund** – Contributions to this fund will be used for grants for women's cancers education and prevention programs that have been approved by the New York State Department of Health. High risk women's cancers include cervical, endometrial, gestational trophoblastic tumors, ovarian, uterine sarcoma, vaginal, and vulvar cancers. Increased education and early detection can help women become more aware of symptoms and seek timely medical attention. For more information, go to [www.health.ny.gov/diseases/cancer/](http://www.health.ny.gov/diseases/cancer/).

**Composition of prepayments on Part 2, line 22** – If you need more space, write **see attached** in this section, and attach a separate sheet showing all relevant prepayment information. Transfer the total shown on the attached sheet to line 22.

**Line 24 – Unrequested refunds to be credited forward** – If the corporation overpays its tax, it will not automatically receive a refund. Instead, we will credit your overpayment to the following tax year unless you request a refund on line 28. We will notify you that the overpayment has been credited and explain how to request a refund of the credited amount. If you choose to request a refund of such credited amount, you must claim a refund of such overpayment prior to the original due date of the following year's return.

**Lines 25 through 28** – You may apply an overpayment to your next state franchise tax period, or to your MTA surcharge for this period, or you may have it refunded. Indicate on these lines the amount of overpayment you want credited or refunded.

**Lines 29 and 30** – If you request a refund of unused tax credits, enter the total amount on line 29. If you request tax credits to be credited as an overpayment to next year's return, enter the total amount on line 30. **Do not include** these amounts in the total credits claimed on Part 2, line 3; or Part 7, line 2 or 3. Attach the appropriate tax credit forms.

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## Part 3 – Computation of tax on business income base

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*Business income* is ENI minus investment income and other exempt income.

ENI is:

- FTI for non-alien corporations; **or**
- income effectively connected with the conduct of a trade or business within the United States, as determined under IRC section 882, for an alien corporation that under any provision of the IRC is not treated as a *domestic corporation* as defined in IRC section 7701; **or**
- FTI that would have been reported to the IRS in the case of a corporation which is exempt from federal income tax (other than tax on unrelated business income imposed under IRC section 511), but is taxable under Article 9-A;

**plus or minus** certain New York State modifications.

The sum of investment income and other exempt income must **not** exceed ENI.

**Line 1** – Enter your FTI, before NOL and special deductions, as required to be reported to the U.S. Treasury Department.

- If you file federal Form 1120, use the amount from line 28.
- If you file Form 1120-REIT, use the sum of:
  - REIT taxable income (as defined in IRC section 857(b)(2), but **before** the NOL deduction, total deduction for dividends paid, and the IRC section 857(b)(2)(e) deduction), as modified by IRC section 858; **plus**
  - the amount taxable under IRC section 857(b)(3).

- If you file Form 1120-RIC, use the sum of:
  - investment company taxable income (as defined in IRC section 852(b)(2), but **before** the deduction for dividends paid and the deductions for tax imposed under IRC sections 851(d)(2) and 851(i)), as modified by IRC section 855; **plus**
  - the amount taxable under IRC section 852(b)(3).
- If you file federal Form 1120-H or Form 1120-POL, use the amount from line 19.
- If you file federal Form 1120-C, use the amount from line 25c.
- If you are a member of a federal affiliated group that files a consolidated return, complete a pro forma 1120 reporting the FTI you would have been required to report on a separate federal tax return, and attach a copy of the federal consolidating workpaper indicating your separate taxable income before any elimination of intercorporate transactions included in the federal consolidated return.
- If you are a federal S corporation filing federal Form 1120S but you have not made an election to be treated as a New York S corporation, you must determine the amount you would have had to report as FTI, before NOL and special deductions, were you not a federal S corporation. Attach a separate sheet showing how you determined this amount. In general, the items on Form 1120 affected are:
  - dividends
  - interest
  - gross rents
  - gross royalties
  - capital gain net income
  - charitable contributions
  - IRC section 199 deduction
- If you file Form 1120-F, use the amount from Section II, line 29. Mark an **X** in the box on Part 1, Section C, line 5.
- If you are exempt from federal income tax but subject to New York State franchise tax, you must determine the amount you would have had to report as FTI, before NOL and special deductions, were you not exempt. Attach a separate sheet showing how you determined the amount.
- If you have an amount of excess inclusion as a result of having a residual interest in a real estate mortgage investment conduit (REMIC), you must properly reflect this income in FTI.
- If you are a corporate stockholder in a tax-exempt DISC, all transactions between you and each such DISC must be eliminated from your receipts, expenses, assets, and liabilities. Your ENI must not include the amount of the deemed distribution of current income, if any, that was included in your FTI.

**Line 6** – Certain thrifts and community banks are eligible to make **one** of the following modifications to ENI:

- Subtraction modification for qualified residential loan portfolios (§208.9(r))
- Subtraction modification for community banks and small thrifts (§208.9(s))

Enter the amount of subtraction modification (r) or (s) from Form CT-3.2, Schedule A, line 1.

**Note:** The subtraction modification under §208.9(t) will only be claimed by a thrift or community bank that is filing as part of a combined group on Form CT-3-A.

**Line 8** – The amount entered on this line must **not** exceed your ENI (line 7).

**Line 12** – An addback to business income is required when the presumptive holding period for qualification as investment capital is not met. See Form CT-3.1.

**Line 20** – If you do not qualify as a QETC (see Part 1, Section A, line 1 instructions), a qualified New York manufacturer (see Part 1, Section A, lines 2, 3, and 4 instructions), or a small business taxpayer (see Part 1, Section A, line 6 instructions), multiply line 19 by 7.1% (.071). Enter the result on this line and on Part 2, line 1a.

**Small business taxpayers:** If your business income base is \$290,000 or less, multiply line 19 by 6.5% (.065). Enter the result on this line and on Part 2, line 1a. If your business income base is more than \$290,000 but not over \$390,000, your effective rate will be between 6.5% and 7.1%.

Use Worksheet A below to compute your tax:

<b>Worksheet A – Small business taxpayers</b>	
Business income base from Part 3, line 19 ...	A. <input type="text" value="\$18,850"/>
Subtract ..... 290,000	
Multiply balance ..... by .071 = .....	B. <input type="text"/>
Subtract ..... 60,000	
Multiply balance ..... by .0435 = .....	C. <input type="text"/>
Add boxes A, B, and C; enter the result here and on line 20 and Part 2, line 1a .....	D. <input type="text"/>

**QETCs:** Multiply line 19 by 5.7% (.057). Enter the result on this line and on Part 2, line 1a.

**Qualified New York manufacturers:** Enter **0** on this line and on Part 2, line 1a.

Mark an **X** in the applicable box in Part 1, Section A, to avoid an erroneous assessment or delayed refund.

## Part 4 – Computation of tax on capital base

The tax on the capital base is computed on that portion of the total business capital apportioned to New York State. §208.7(a) defines business capital as all assets, other than investment capital and stock issued by the taxpayer, less liabilities not deducted from investment capital. Business capital includes only those assets the income, loss, or expense of which are properly reflected (or would have been properly reflected if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the computation of ENI for the tax year.

### Lines 1 through 15

To determine the value of your assets for the capital base computations, you must include real property and marketable securities at fair market value (FMV). You must include all other property at the value shown on your books in accordance with generally accepted accounting principles (GAAP). Use lines 2 through 5 to adjust the value of the real property and marketable securities you reported on your federal return. If you are not required to complete the balance sheet on your federal tax return, use the amount that would have been reported on the federal return.

On lines 1 through 6, enter the values at the beginning of the year in column A and at the end of the year in column B. Enter the average value in column C. Average value is generally computed quarterly if your usual accounting practice permits it. However, you may use a more frequent basis such as monthly, weekly, or daily. If your usual accounting practice does not permit a quarterly or more frequent computation of the

average value of assets, you may use a semiannual or annual computation if no distortion of average value results.

**Short periods** – If a tax return is for a period of less than 12 months, determine the amount of business capital by multiplying the average value by the number of months covered by the return and dividing by 12 (§210.2).

**Line 4** – Enter the FMV of real property and marketable securities included on line 2. The *fair market value* of an asset is the price (without deduction of an encumbrance whether or not the taxpayer is personally liable) at which a willing seller will sell and a willing purchaser will buy. You can generally find the FMV of marketable securities from price quotes in financial newspapers. For determination of FMV of real property, see TSB-M-85(18.1)C, *Valuation of Real Property*.

**Line 6** – Enter the amount of all liabilities attributable to assets entered on line 1, both long and short term. Use the same method of averaging used to determine average value of assets.

**Line 10** – An addback to business capital is required when the presumptive holding period for qualifications of investment capital is not met (§208.5(d)). See Form CT-3.1.

**Line 14 – Small business taxpayers** (see Part 1, Section A, line 5 instructions): You may claim an exemption from the tax on the capital base for your first two tax years. If you are claiming this exemption, enter **0** on line 15 and mark the box indicating the year for which the exemption is taken. You will continue to be liable for the tax computed on Part 2, line 2.

**Line 15 – Capital base tax computation** – If you do not qualify as a cooperative housing corporation, QETC, or qualified New York manufacturer, multiply line 13 by the tax rate of .0015. Do **not** enter more than \$5 million.

**Cooperative housing corporations:** Multiply line 13 by the tax rate of .0004 (see Part 1, Section A, line 5 instructions). Do **not** enter more than \$5 million.

**Qualified New York manufacturers** (see Part 1, Section A, lines 2, 3, and 4 instructions) **and QETCs** (see Part 1, Section A, line 1 instructions): Multiply line 13 by the tax rate of .00132. Do **not** enter more than \$350,000.

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## Part 5 – Computation of investment capital for the current tax year

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This part computes the amount of investment capital that is excluded from the tax on the capital base and is reported on Part 4, line 8.

For more information on investment capital, see Form CT-3.1.

**Note:** You **must** file Form CT-3.1 and identify investment capital items or the subtraction will be disallowed.

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## Part 6 – Computation of business apportionment factor

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For tax years beginning on and after January 1, 2015, significant changes were made to the rules for computing the business apportionment factor. Business income is apportioned based on a single receipts factor generally using customer-based sourcing. Receipts from services are generally sourced to New York State if the customer receives the benefit of the service in the state.

Both the business income base and total business capital are apportioned to New York State using a single receipts factor. Include only the receipts, net income, net gains, and other items described in §210-A that are included in your business income,

determined without regard to the amount subtracted on Part 3, line 6 (*Subtraction modification for qualified banks*).

**Columns A and B** – *New York State* (column A) amounts are determined per the specific line instructions. *Everywhere* (column B) amounts should be 100% of the receipts, net income, net gains (not less than zero), or other applicable items, unless otherwise specified. If only one category of receipts, net income, net gains (not less than zero), or other applicable item applies to your business, you must still complete both columns for that category. Skip a line only if both the numerator (column A) and the denominator (column B) are zero.

### Section 210-A.2 – Sales of tangible personal property, electricity and net gains from real property

**Line 1** – Receipts from the sale of tangible personal property are apportioned to New York State when shipments are made to points in the state, or the destination of the property is a point in the state.

**Line 2** – Receipts from the sale of electricity are apportioned to New York State when delivered to points in the state. Receipts from sales of tangible personal property and electricity that are traded as commodities, as defined in IRC section 475, are included on line 27, in accordance with §210-A.5(a)(2)(I).

**Line 3** – Net gains (not less than zero) from the sales of real property located within the state are apportioned to New York State.

### Section 210-A.3 – Rentals of real and tangible personal property, royalties, and rights for certain closed-circuit and cable TV transmissions

**Line 4** – Receipts from rentals of real and tangible personal property located within the state are apportioned to New York State.

**Line 5** – Receipts of royalties from the use of patents, copyrights, trademarks, and similar intangible personal property within the state are apportioned to New York State.

**Line 6** – Receipts from the sales of rights for closed-circuit and cable television transmissions of an event (other than events occurring on a regularly scheduled basis) taking place within the state as a result of the rendition of services by employees of the corporation, as athletes, entertainers, or performing artists, are entered in the New York column to the extent that those receipts are attributable to such transmissions received or exhibited within the state.

### Section 210-A.4 – Receipts from sale of, license to use, or granting of remote access to digital products

**Line 7** – For Article 9-A apportionment purposes, the term *digital product* means any property or service, or combination thereof, of whatever nature delivered to the purchaser through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media, or any combination of these. Digital product includes, but is not limited to, an audio work, audiovisual work, visual work, book or literary work, graphic work, game, information or entertainment service, storage of digital products and computer software by whatever means delivered. The term *delivered* to includes furnished or provided to or accessed by. A digital product does not include legal, medical, accounting, architectural, research, analytical, engineering or consulting services.

If the receipt for a digital product is comprised of a combination of property and services, it cannot be divided into separate components and is considered to be one receipt, regardless of whether it is separately stated for billing purposes. The entire receipt must be allocated according to a hierarchy (see below).

Receipts from the sale of, license to use, or granting of remote access to digital products within the state, are determined according to the following hierarchy:

- 1) The customer's primary use location of the digital product.
- 2) The location where the digital product is received by the customer or is received by a person designated for receipt by the customer.
- 3) The apportionment fraction used on the Article 9-A return of the taxpayer for the preceding tax year for such digital product.
- 4) The apportionment fraction in the current tax year for those digital products that can be sourced using the methods in items 1 and 2.

**Note:** Item 3 does not apply to your first tax period that begins on or after January 1, 2015.

The taxpayer must exercise due diligence under each method before rejecting it and proceeding to the next method in the hierarchy, and must base its determination on information known to the taxpayer or information that would be known to the taxpayer upon reasonable inquiry.

### Section 210-A.5(a)1 – Qualified financial instruments (QFIs), the 8% method

**Line 8** – A *qualified financial instrument* means a financial instrument of a type that is reported on lines 11 through 24, 27, 29, or 30 that is marked to market in the tax year by the taxpayer under IRC section 475 or 1256. Further, if the taxpayer has in the tax year marked to market a financial instrument of the type described on the aforementioned lines, then any financial instrument within that type that has not been marked to market by the taxpayer under IRC section 475 or 1256 is a QFI in the tax year. If the only loans that are marked to market under IRC section 475 or 1256 are loans secured by real property, then no loans are QFIs. Stock that is investment capital shall not be a QFI.

Taxpayers may elect to use the *fixed percentage method* to apportion QFIs; if so, all income, gain or loss from QFIs, including marked to market net gains as described in the line 28 instructions, constitutes business income, gain or loss. Under the fixed percentage method, 8% of all net income (not less than zero) from QFIs is included in the New York State column. This election is irrevocable, applies to all QFIs and must be made on an annual basis on the original timely filed return (determined with regard to extensions of time for filing) by marking an **X** in the box on line 8. If you do not mark the box but still apportion QFI receipts by 8%, you will be considered to have made the election.

When **any** financial instrument has been marked to market that is reported on:

- a) **either** line 11 or 12, then **both** boxes on lines 11 and 12 must be marked; and
- b) **any** of lines 13 through 24, and 27 through 30, then the box next to the section heading above the line on which the financial instrument is reported must be marked.

For all financial instruments that do **not** meet the definition of a QFI and if you did **not** elect the fixed percentage method for QFI's, use the apportionment rules as detailed in the instructions for lines 9 through 30.

For purposes of these apportionment instructions, an individual is deemed to be located in New York State if his or her billing address is in the state. A business entity is deemed to be located in New York State if its commercial domicile is located in the state.

Use the following hierarchy to determine the *commercial domicile* of a business entity, based on known information, or information that would be known upon reasonable inquiry:

- 1) The seat of management and control of the business entity.
- 2) The billing address of the business entity in the taxpayer's records.

You must exercise due diligence before rejecting the first method and proceeding to the next method in this hierarchy.

For purposes of these apportionment instructions, *registered securities broker or dealer* means a broker or dealer registered as such by the Securities and Exchange Commission (SEC) or a broker or dealer registered as such by the commodities futures trading commission, and shall include an over-the-counter (OTC) derivatives dealer as defined under regulations of the SEC (17 CFR 240.3b-12).

For purposes of these apportionment instructions, *gross proceeds* are determined after the deduction of any cost incurred to acquire the securities, but shall not be less than zero.

### Section 210-A.5(a)(2)(A) – Loans

A loan is secured by real property if 50% or more of the value of the collateral used to secure the loan (when valued at FMV as of the time the loan was entered into) consists of real property. Gross proceeds are determined after the deduction of any cost to acquire the loans, but shall not be less than zero.

**Line 9** – Include in the New York column, interest from loans secured by real property located within the state.

**Line 10** – For the New York column, multiply the amount of net gains (not less than zero) from sales of loans secured by real property by a fraction, the numerator of which is the amount of gross proceeds from sales of loans secured by real property located within the state, and the denominator of which is the amount of gross proceeds from sales of such loans everywhere.

In the Everywhere column, include the amount of net gains (not less than zero) from sales of loans secured by real property both within and outside New York State.

**Line 11** – In the New York column, include interest from loans **not** secured by real property if the borrower is located in New York State.

**Line 12** – For the New York column, multiply net gains (not less than zero) from sales of loans **not** secured by real property by a fraction, the numerator of which is the amount of gross proceeds from sales of loans not secured by real property to purchasers located within the state, and the denominator of which is the amount of gross proceeds from sales of such loans to purchasers located within and outside the state.

In the Everywhere column, include the amount of net gains (not less than zero) from sales of loans **not** secured by real property within and outside the state.

### Section 210-A.5(a)(2)(B) – Federal, state, and municipal debt

**Lines 13 through 18** – Receipts are **not** included in column A **unless** you have made the election to apportion QFI receipts using the 8% method. For lines 13 through 16, in the Everywhere column, enter 100% of the applicable receipts. For lines 17 and 18, in the Everywhere column, enter 50% of the receipts constituting interest and net gains (not less than zero)

from sales of debt instruments issued by other states or their political subdivisions.

### **Section 210-A.5(a)(2)(C) – Asset-backed securities and other government agency debt**

**Line 19** – In the New York column, enter 8% of the interest income from:

- 1) Asset-backed securities issued by government agencies;
- 2) Other securities issued by government agencies, including but not limited to securities issued by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Small Business Administration (SBA); or
- 3) Asset-backed securities issued by other entities.

**Line 20** – In the New York column, enter 8% of the net gains (not less than zero) from:

- 1) Sales of asset-backed securities or other securities issued by government agencies, including but not limited to securities issued by GNMA, FNMA, FHLMC, or the SBA; or
- 2) Sales of other asset-backed securities that are sold through a registered securities broker or dealer, or through a licensed exchange.

**Line 21** – For the New York column, multiply net gains (not less than zero) from sales of other asset-backed securities **not** reported on line 20 by a fraction, the numerator of which is the amount of gross proceeds from such sales to purchasers located in the state, and the denominator of which is the amount of gross proceeds from such sales to purchasers located within and outside the state.

In the Everywhere column, enter 100% of the amount of net gains (not less than zero) from sales of other asset-backed securities not reported on line 20.

### **Section 210-A.5(a)(2)(D) – Corporate bonds**

**Line 22** – In the New York column, enter interest from corporate bonds when the commercial domicile of the issuing corporation is in the state.

**Line 23** – In the New York column, enter 8% of the net gains (not less than zero) from sales of corporate bonds sold through a registered securities broker or dealer, or through a licensed exchange.

**Line 24** – For the New York column, multiply net gains (not less than zero) from those sales of corporate bonds **not** reported on line 23 by a fraction, the numerator of which is the amount of gross proceeds from such sales to purchasers located within the state, and the denominator of which is the amount of gross proceeds from such sales to purchasers located within and outside the state.

In the Everywhere column, enter the amount of net gains (not less than zero) from sales of corporate bonds to purchasers within and outside the state.

### **Section 210-A.5(a)(2)(E) – Interest income from reverse repurchase and securities borrowing agreements**

**Line 25** – In the New York column, enter 8% of net interest income (not less than zero) from reverse repurchase agreements and securities borrowing agreements. For this calculation, net interest income is determined after the deduction of the amount of interest expense from the taxpayer's repurchase agreements and securities lending transactions, but cannot be less than zero. The amount of such interest expense

is the interest expense associated with the sum of the value of the taxpayer's repurchase agreements where the taxpayer is the seller or borrower, **plus** the value of the taxpayer's securities lending agreements where the taxpayer is the securities lender (provided such sum is limited to the sum of the value of the taxpayer's reverse repurchase agreements where the taxpayer is the purchaser or lender, **plus** the value of the taxpayer's securities lending agreements where the taxpayer is the securities borrower).

### **Section 210-A.5(a)(2)(F) – Interest income from federal funds**

**Line 26** – In the New York column, enter 8% of the net interest (not less than zero) from federal funds (determined after deduction of interest expense from federal funds).

### **Section 210-A.5(a)(2)(I) – Net income from sales of physical commodities**

**Line 27** – For the New York column, multiply the net income from sales of physical commodities by a fraction, the numerator of which is the amount of receipts from sales of physical commodities actually delivered to points within the state or, if there is no actual delivery of the physical commodity, the amount sold to purchasers located in the state, and the denominator of which is the amount of receipts from all sales of physical commodities actually delivered to points within and outside the state or, if there is no actual delivery of the physical commodity, the amount sold to purchasers located both within and outside the state.

Net income (not less than zero) from sales of physical commodities is determined after the deduction of the cost to acquire or produce the physical commodities.

In the Everywhere column, enter 100% of the net income (not less than zero) from sales of physical commodities.

### **Section 210-A.5(a)(2)(J) – Marked to market net gains**

**Line 28** – For purposes of lines 9 through 43, *marked to market* means that a financial instrument is **treated** by the taxpayer as sold for its FMV on the last business day of the taxpayer's tax year, despite no actual sale having taken place, under IRC section 475 or 1256. The term *marked to market gain or loss* means the gain or loss recognized by the taxpayer under IRC section 475 or 1256 because the financial instrument is **treated** as sold for its FMV on the last business day of the tax year.

The amount of marked to market net gains (not less than zero) from each type of financial instrument to be included in the New York column is determined by multiplying such net gains (not less than zero) from each such type of financial instrument by a fraction, the numerator of which is the numerator of the apportionment fraction for the net gains from **actual** sales of that type of financial instrument as reported on lines 9 through 30 (as applicable), and the denominator of which is the denominator of the apportionment fraction for the net gains from **actual** sales of that type of financial instrument determined on the applicable line.

In the Everywhere column, enter 100% of the marked to market net gains (not less than zero) from financial instruments for which the amount to be included in the New York column is determined under the immediately preceding paragraph.

If the type of financial instrument that is marked to market is not otherwise sourced by the taxpayer on lines 9 through 30, or if the taxpayer has a net loss from the sales of that type of financial instrument not otherwise sourced on lines 9 through 30, for the New York column, multiply the marked to market net gains (not less than zero) from that type of financial instrument by a fraction, the numerator of which is the sum of the amount of receipts from financial instruments entered in the New York column on lines 9 through 30, and the denominator of which is the sum of the amount of receipts entered in the Everywhere column on lines 9 through 30.

In the Everywhere column, enter 100% of the marked to market net gains (not less than zero) from financial instruments for which the amount to be included in the New York column is determined under the immediately preceding paragraph.

### **Section 210-A.5(a)(2)(H) – Income from other financial instruments**

**Line 29** – In the New York column, enter interest from other financial instruments when the payor is located in New York State.

**Line 30** – In the New York column, include net gains (not less than zero) from sales of other financial instruments and other income (not less than zero) from other financial instruments when the purchaser or payor is located in the state. However, if the purchaser or payor is a registered securities broker or dealer, or the transaction is made through a licensed exchange, then include 8% of the net gains (not less than zero) or other income (not less than zero).

### **Section 210-A.5(b) – Other receipts from broker or dealer activities**

For the purposes of lines 31 through 37, *securities* has the same meaning as in IRC section 475(c)(2), and *commodities* has the same meaning as in IRC section 475(e)(2). If the taxpayer receives any of the receipts reported on lines 31 through 35 as a result of a securities correspondent relationship that the taxpayer has with another broker or dealer (with the taxpayer acting in this relationship as the clearing firm), those receipts are deemed generated within the state to the extent set forth in §210-A.5(b)(1) through §210-A.5(b)(4). The amount of those receipts excludes the amount the taxpayer is required to pay to the correspondent firm for the correspondent relationship. If the taxpayer receives any of the receipts reported on lines 31 through 35 as a result of a securities correspondent relationship that the taxpayer has with another broker or dealer (with the taxpayer acting in this relationship as the introducing firm), these receipts are deemed generated within the state to the extent set forth in §210-A.5(b)(1) through §210-A.5(b)(4). If the taxpayer is unable to determine the mailing address of the customer from its records, include 8% of the receipts in the numerator of the apportionment fraction.

**Line 31** – In the New York column, enter brokerage commissions derived from the execution of securities or commodities purchase or sales orders for the accounts of customers if in the records of the taxpayer, the mailing address of the customer responsible for paying the commissions is in the state.

**Line 32** – In the New York column, enter margin interest earned on behalf of brokerage accounts if in the records of the taxpayer, the mailing address of the customer responsible for paying such margin interest is in the state.

**Line 33** – In the New York column, enter the amount of fees for advisory services to a customer in connection with the underwriting of securities for the entity that is contemplating issuing or is issuing securities, or fees for managing an

underwriting, if in the records of the taxpayer, the mailing address of the customer responsible for paying such fees is in the state.

**Line 34** – In the New York column, enter the receipts constituting the primary spread of selling concession from underwritten securities if the customer is located in the state. The term *primary spread* means the difference between the price paid by the taxpayer to the issuer of the securities being marketed and the price received from the subsequent sale of the underwritten securities at the initial public offering price, less any selling concession and any fees paid to the taxpayer for advisory services or any manager's fees, if those fees are not paid by the customer to the taxpayer separately. The term *public offering price* means the price agreed upon by the taxpayer and the issuer at which the securities are to be offered to the public. The term *selling concession* means the amount paid to the taxpayer for participating in the underwriting of a security where the taxpayer is not the lead underwriter.

**Line 35** – In the New York column, enter account maintenance fees if in the records of the taxpayer, the mailing address of the customer responsible for paying such account maintenance fees is in the state.

**Line 36** – In the New York column, enter fees for management or advisory services, including fees for advisory services in relation to merger or acquisition activities, if in the records of the taxpayer, the mailing address of the customer responsible for paying such fees is in the state. Exclude fees paid for services reported on line 43.

**Line 37** – Interest earned on loans and advances made by the taxpayer to a corporation affiliated with the taxpayer, but with which the taxpayer is not included in a combined return under Article 9-A are deemed to arise from services performed at the principal place of business of the affiliated corporation. If such principal place of business is in New York State, include the interest in the New York column.

### **Section 210-A.5(c) – Receipts from credit card and similar activities**

**Line 38** – In the New York column, enter interest, fees, and penalties in the nature of interest from bank, credit, travel, and entertainment card receivables if in the records of the taxpayer, the mailing address of the card holder is in the state.

**Line 39** – In the New York column, enter service charges and fees from such cards, if in the records of the taxpayer, the mailing address of the card holder is in the state.

**Line 40** – In the New York column, enter receipts from merchant discounts when the merchant is located within the state. If the merchant has locations both within and outside of New York State, **only** receipts from merchant discounts attributable to sales made from locations within New York State are entered in the New York column. The location of the merchant is presumed to be the address of the merchant shown on the invoice submitted to the taxpayer by the merchant.

**Line 41** – In the New York column, enter receipts from credit card authorization processing, and clearing and settlement processing, received by credit card processors if the location where the customer of the credit card processor accesses the credit card processor's network is located within the state.

**Line 42** – For the New York column, multiply the total amount of all other receipts received by credit card processors not reported on lines 1 through 53 by the average of 8% and the percent of its New York access points. The *percent of New York access points* is the number of locations within the state from which the credit card processor's customers access the credit card processor's

network, divided by the total number of locations in the United States where the credit card processor's customers access the credit card processor's network.

### Section 210-A.5(d) – Receipts from certain services to investment companies

**Line 43** – For the New York column, multiply the receipts received from an investment company arising from the sale of management, administration, or distribution services to such investment company by a fraction, the numerator of which is the sum of the monthly percentages determined for each month of the investment company's federal tax year that ends within the tax year of the taxpayer (but excluding any month during which the investment company had no outstanding shares), and the denominator of which is the number of those monthly percentages.

To determine the monthly percentage for each month, divide the number of shares in the investment company that are owned on the last day of the month by shareholders that are located in New York State by the total number of shares in the investment company outstanding on that date.

In the Everywhere column, enter 100% of the receipts received from an investment company arising from the sale of management, administration, or distribution services to the investment company.

For purposes of these receipts, the following apply:

- An individual, estate or trust is deemed located in the state if his, her, or its mailing address in the records of the investment company is in the state. A business entity is deemed located in the state if its commercial domicile is located in the state.
- *Investment company* means a regulated investment company, as defined in IRC section 851, and a partnership to which IRC section 7704(a) applies (by virtue of section 7704(c)(3)) and that meets the requirements of IRC section 851(b). This is applied to the tax year, for federal income tax purposes, of the business entity that is asserted to constitute an investment company that ends within the tax year of the taxpayer.
- *Receipts from an investment company* includes amounts received directly from an investment company as well as amounts received from the shareholders in the investment company, in their capacity as such.
- *Management services* means the rendering of investment advice to an investment company, making determinations as to when sales and purchases of securities are to be made on behalf of an investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed pursuant to a contract with the investment company entered into according to the federal Investment Company Act of 1940, section 15(a), as amended.
- *Distribution services* means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of an investment company; but in the case of advertising, servicing investor accounts (including redemptions) or marketing shares, **only** where such service is performed by a person who is (or was, in the case of a closed end company) also engaged in the service of selling such shares. In the case of an open-end company, the service of selling shares must be performed pursuant to a contract entered into pursuant to the federal Investment Company Act of 1940, section 15(b), as amended.
- *Administration services* includes clerical, accounting, bookkeeping, data processing, internal auditing, legal, and

tax services performed for an investment company, but only if the provider of such service or services during the tax year in which such service or services are sold also sells management or distribution services (as defined above), to such investment company.

### Section 210-A.6 – Receipts from railroad and trucking businesses

**Line 44** – For the New York column, multiply receipts from the conduct of a railroad business or a trucking business (including surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car or sleeping car business) by a fraction, the numerator of which is the miles in such business within the state during the period covered by this return, and the denominator of which is the miles in such business both within and outside the state during such period.

### Section 210-A.6-a – Receipts from operation of vessels

**Line 45** – For the New York column, multiply receipts from the operation of vessels by a fraction, the numerator of which is the aggregate number of working days of the vessels owned or leased by the taxpayer in territorial waters of the state during the period covered by this return, and the denominator of which is the aggregate number of working days of all vessels owned or leased by the taxpayer during such period.

### Section 210-A.7 – Receipts from aviation services

**Line 46 Air freight forwarding** – In the New York column, enter the receipts from the activity of air freight forwarding acting as principal and like indirect air carrier receipts arising from that activity as follows:

- 100% of such receipts if both the pickup and delivery associated with those receipts are made in the state; and
- 50% of such receipts if either the pickup or delivery associated with those receipts is made in this state.

In the Everywhere column, enter the amount of receipts from all such activity.

**Line 47 Other aviation services** – For the New York and Everywhere columns, determine the portion of receipts from aviation services, other than services described in line 46 (but including the receipts of a qualified air freight forwarder, as described below) to enter by averaging lines 1, 3, and 5 (shown in bold) in the worksheet below.

*Aircraft arrivals and departures* means the number of landings and takeoffs in the tax year, **plus** the number of air pickups and deliveries by such aircraft. Do **not** include arrivals and departures solely for maintenance, repair, or refueling (where no debarkation or embarkation of traffic occurs). Arrivals and departures of ferry and personnel training flights, or in the event of emergency situations, are also not included. Arrivals and departures of flights transporting officers and employees receiving air transportation are included (but see *Note*: below for exceptions) without regard to remuneration.

**Note:** The Commissioner of Taxation and Finance may exempt from the calculation arrivals and departures of all non-revenue flights including flights involving the transportation of officers and employees receiving air transportation to perform maintenance or repair services, or where such officers or employees are transported in conjunction with an emergency situation or the investigation of an air disaster (other than on a scheduled flight).

*Revenue tons handled by the taxpayer at airports* means the weight, in tons, of revenue passengers (at 200 pounds per passenger) and revenue cargo first received, either as originating or connecting traffic or finally discharged at an airport.

*Originating revenue* means revenue to the taxpayer from the transportation of revenue passengers and revenue property first received by the taxpayer as originating or connecting traffic at airports.

A corporation is a *qualified air freight forwarder* with respect to another corporation if:

- it owns or controls, either directly or indirectly, all of the capital stock of such other corporation; or if all of its capital stock is owned or controlled, either directly or indirectly, by such other corporation; or if all of the capital stock of both corporations is owned or controlled, either directly or indirectly, by the same interests;
- it is principally engaged in the business of air freight forwarding; and
- its air freight forwarding business is carried on principally with the airline or airlines operated by such other corporation.

**Section 210-A.8 – Advertising: newspapers/periodicals, TV/radio, and other means**

**Line 48** – For the New York column, multiply receipts from sales of advertising in newspapers or periodicals by a fraction, the numerator of which is the number of newspapers and periodicals delivered to points within the state, and the denominator of which is the number of newspapers and periodicals delivered to points both within and outside the state.

**Line 49** – For the New York column, multiply receipts from sales of advertising on television or radio by a fraction, the numerator of which is the number of viewers or listeners within the state, and the denominator of which is the number of viewers or listeners both within and outside the state.

**Line 50** – For the New York column, multiply receipts from sales of advertising **not** reported on either line 48 or 49 that is furnished, provided, or delivered to or accessed by the viewer or listener through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media, or any combination of these by a fraction, the numerator of which is the number of viewers or listeners within the state, and the denominator of which is the number of viewers or listeners both within and outside the state.

**Section 210-A.9 – Receipts from the transportation or transmission of gas through pipes**

**Line 51** – For the New York column, multiply receipts from the transportation or transmission of gas through pipes by a fraction, the numerator of which is the taxpayer’s transportation units within the state, and the denominator of which is the taxpayer’s transportation units both within and outside the state. A *transportation unit* is the transportation of one cubic foot of gas over a distance of one mile.

**Section 210-A.10 – Receipts from other services/activities not specified**

**Line 52** – In the New York column, enter receipts from services and other business receipts not reported on lines 1 through 53, if the location of the customer is within the state. The determination of the amount of receipts included in the New York column is made according to the *Hierarchy of methods* below. The taxpayer must exercise due diligence under each method

**Worksheet for Part 6, line 47**

		A Within NYS	B Column A X 60% (.60)	C Everywhere	D NYS percentage (round to three decimal places)
<b>1</b>	<b>Aircraft arrivals and departures</b> during the period of this return .....				
	..... <b>1</b>				
<b>2</b>	Divide line 1, column B, by line 1, column C .....				
	..... <b>2</b>				
<b>3</b>	<b>Revenue tons handled at airports</b> during the period of this return .....				
	..... <b>3</b>				
<b>4</b>	Divide line 3, column B, by line 3, column C .....				
	..... <b>4</b>				
<b>5</b>	<b>Originating revenue</b> during the period of this return .....				
	..... <b>5</b>				
<b>6</b>	Divide line 5, column B, by line 5, column C .....				
	..... <b>6</b>				
<b>7</b>	Add all percentage amounts in column D, lines 2, 4, and 6; then divide by 3 .....				
	..... <b>7</b>				
<b>8</b>	Enter 100% of receipts from other aviation services; also enter on line 47, in column B .....				
	..... <b>8</b>				
<b>9</b>	Multiply line 7 by line 8; also enter on line 47, in column A .....				
	..... <b>9</b>				

described before rejecting it and proceeding to the next method in the hierarchy, and must base its determination on information known to the taxpayer, or information that would be known to the taxpayer upon reasonable inquiry.

#### Hierarchy of methods

- 1) The benefit is received in this state.
- 2) Delivery destination.
- 3) The apportionment fraction for such receipts within the state determined according to §210-A.10 for the preceding tax year.
- 4) The apportionment fraction for the current tax year determined according to §210-A.10 for those receipts that can be sourced using the hierarchy of sourcing method in item 1 or 2.

**Note:** Item 3 does not apply to your first tax period that begins on or after January 1, 2015.

#### Section 210-A.11 – Discretionary adjustments

If it appears that the apportionment fraction determined according to §210-A does not result in a proper reflection of the taxpayer's business income or capital within the state, the Commissioner of Taxation and Finance is authorized in his or her discretion to adjust it, or the taxpayer may request that the commissioner adjust it. This is done by:

- excluding one or more items in such determination,
- including one or more other items in such determination, or
- any other similar or different method calculated to effect a fair and proper apportionment of the business income and capital reasonably attributed to the state.

The party seeking the adjustment bears the burden of proof to demonstrate that the apportionment fraction determined according to §210-A does not result in a proper reflection of the taxpayer's business income or capital within the state and that the proposed adjustment is appropriate.

Where you have received approval from the commissioner to make such adjustment, use line 52 to report it. Do **not** use line 52 to report an adjustment **unless** you have received the approval of the commissioner. If you have not received the approval of the commissioner before filing this return, you must file using the statutory rules for apportionment. You may file an amended return after you have received approval.

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### Part 7 – Summary of tax credits

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Enter in the appropriate box the amount of each tax credit that is being used to reduce the Part 2, line 2 tax due amount. Attach the corresponding properly completed credit form to the return.

**Line 2** – Enter the total amount of any tax credits that you are claiming against your current year's franchise tax here and on Part 2, line 3. For other credits not specified, enter the amount of credits being claimed in the *Other credits* box and include this amount in the total. Generally, the *Other credits* box will be used only when a credit claim form for a newly-enacted tax credit was not developed in time to appear on Form CT-3. Do not include any amount of tax credit requested as a refund on Part 2, line 29, or requested as a tax credit to be credited as an overpayment to next year's return on Part 2, line 30. If you are required to recapture a tax credit that was allowed in a previous reporting period and the result is a negative credit amount on your credit claim form, enter this negative amount using a minus sign (-) in the applicable box.

**Line 3** – Enter the amount of credits that are **refund eligible** claimed on Part 2, line 3, against your current year's franchise tax. Do **not** include any amount of credits actually requested as a refund on Part 2, line 29, or requested as an overpayment credited to next year's tax on Part 2, line 30. Refer to the individual credit forms and Form CT-600-I for refund eligibility.

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