



**Instructions for Forms CT-3-S and CT-3-S-ATT  
New York S Corporation Franchise Tax Return and Attachment**

Tax Law — Articles 9-A and 22

**General Information**

An S corporation is a small business corporation whose shareholders have made an election to be taxed under personal income tax law rather than corporation tax law as permitted under Subchapter S of Chapter One of the Internal Revenue Code (IRC). Federal S corporations subject to Article 9-A of the Tax Law may make the same election for New York State, called a New York S election, by filing Form CT-6, *Election by a Federal S Corporation to be Treated as a New York S Corporation*.

**Who Must File Form CT-3-S** — An S corporation whose shareholders have filed Form CT-6 and received approval as a New York S corporation must file Form CT-3-S or CT-4-S in place of Form CT-3 or CT-4. Form CT-4-S is a simplified form which can be used by most New York S corporations. You may use Form CT-4-S if the corporation meets all the following conditions:

- your entire net income is \$200,000 or less,
- your gross payroll is \$1,000,000 or less,
- you are not terminating your election to be a New York S corporation,
- you have no investment income,
- you do not allocate business income within and outside of New York State,
- you do not claim any tax credits or tax credit recaptures,
- you do not claim a net operating loss deduction,
- you do not have a subsidiary,
- you do not have an addition (see Form CT-3-S-I, line 7 instructions)
- you do not have subtraction S-1, S-3 or S-4 (see Form CT-3-S-I, line 14 instructions) and
- you qualify as a small business taxpayer (Tax Law, section 210.1(f)).

See Form CT-4-S-I for additional information.

**When and Where to File** — File this return within 2½ months after the end of your reporting period. If you are reporting for the 1994 calendar year, file your return on or before **March 15, 1995**. Mail returns to: NYS Corporation Tax, Processing Unit, P O Box 1909, Albany NY 12201-1909.

If you cannot meet the filing deadline, you may request a six-month extension of time by filing Form CT-5.4 and paying any tax and state tax surcharge due on or before the original due date of the return. No additional extension of time to file Form CT-3-S or CT-4-S will be granted beyond six months.

**Final Return** — Do not mark a franchise tax return **Final** unless a Certificate of Dissolution or Surrender of Authority is attached and you are going out of business. If you do not legally dissolve the corporation and liquidate all assets, you will continue to be liable for the filing of corporation franchise tax returns and the payment of tax. For more detailed information about the legal dissolution and surrender of authority, see Publication 110, *Termination of Business Corporations*.

**Combined Return** — A New York S corporation cannot file as a member of a combined group on Form CT-3-A with a New York C corporation.

**Metropolitan Transportation Business Tax (MTA Surcharge)** — A New York S corporation is not subject to the MTA surcharge (Tax Law section 209-B.1).

**Federal Changes and Amended Returns** — A New York S corporation whose income, loss or deductions are changed as a result of a final federal determination or which files an amended return with the Internal Revenue Service must file an amended return by using Form CT-3-S and writing the words *Amended Return* across the top. Additionally, every shareholder of the electing New York S corporation must file an amended return on designated New York State individual, estate or trust tax returns.

**Revocation of Election** — Shareholders who collectively own more than 50% of the outstanding shares of a New York S

corporation's stock may revoke the New York S election by filing a written statement with the Commissioner of Taxation and Finance. When the revocation is effective, the corporation will be subject to the franchise tax under Article 9-A of the tax law and must file Form CT-3 or CT-4. The revocation statement must contain:

- name, address and identification number of corporation;
- the total number of shares of stock (including nonvoting stock) outstanding at the time the revocation is made and the number of shares held by each revoking shareholder;
- name, address, social security number and signature of each revoking shareholder;
- a statement that the corporation is revoking its election to be treated as a New York S corporation under section 660(c)(2) of the New York State Tax Law; and
- the date on which the revocation is to be effective.

An officer authorized to sign the S corporation return should sign this statement. Send it to: NYS Tax Department, Corporation Tax Registration, Building 8, Room 409, W A Harriman Campus, Albany NY 12227.

The revocation is effective:

- on the first day of the tax year, if the revocation is made on or before the fifteenth day of the third month of the tax year;
- on the first day of the following tax year, if the revocation is made after the fifteenth day of the third month of the tax year; or
- on the date specified, if the revocation specifies a date on or after the date the revocation is made.

If the corporation has revoked either its federal or New York S election on a day other than the first day of its tax year, the corporation has a termination year. See *Termination year* instructions on page 11.

**Corporate Tax Rates** — The current rates are:

Entire net income (ENI) base	.09
Entire net income base for qualified small business taxpayers:	
Entire net income base of \$200,000 or less	.08
Entire net income base of more than \$200,000 but not over \$200,000	
1. \$16,000 plus	
2. 9% of amount over \$200,000 plus	
3. 5% of amount over \$250,000	

State Tax Surcharge (*does not apply to qualified small business taxpayers with ENI of \$200,000 or less*).

— for periods ending after June 30, 1990, and before July 1, 1994	.15
— for periods ending after June 30, 1994, and before July 1, 1995	.125
— for periods ending after June 30, 1995, and before July 1, 1996	.075

	The fixed dollar minimum tax is:
For a corporation with:	
Gross payroll of \$6,250,000 or more	\$1,500
Gross payroll of less than \$6,250,000 but more than \$1,000,000	\$425
Gross payroll of \$1,000,000 or less	\$325

**Gross Payroll for Short Periods** — Annualize gross payroll for tax periods of less than 12 months by dividing the amount of gross payroll by the number of months in the short period and multiplying the result by 12.

The fixed dollar minimum tax and the maintenance fee may be reduced for short periods:

- a period of not more than 6 months . . . . . 50% reduction
- a period of more than 6 months but not more than 9 months . . . . . 25% reduction
- a period of over 9 months . . . . . no reduction

**Foreign Corporation Annual Maintenance Fee** — A corporation organized outside of New York State that is authorized to do business in New York State must pay an annual maintenance fee of \$300. This fee may be claimed as a credit against the tax due under Article 9-A. Full payment of the franchise tax due will satisfy the maintenance fee requirement. It is not necessary to file a separate maintenance fee return. But if you claim nontaxability in New York State because you did not employ capital, maintain an office or otherwise do business in New York State, you must file Form CT-245 and pay the maintenance fee.

**Report of License Fee by a Foreign Corporation** — Corporations organized under the laws of any other state or country that do business in New York State must file Form CT-240 when they file their first tax return and whenever the capital stock employed in New York State has increased since their last license fee report was filed.

**Estimated Tax for Next Tax Period** — If you can reasonably expect your New York State franchise tax and state tax surcharge liability for your next tax period to exceed \$1,000, you must file a declaration of estimated tax.

If you realize your tax liability will be more than \$1,000 at any time before the 1st day of the 6th month of your tax year, file Form CT-400, *Estimated Tax for Corporations*, on or before the 15th day of the 6th month of your tax year. Include with it a payment of 1/3 of the estimated tax liability. If you made an initial payment with the preceding year's tax return or applied an overpayment of the tax from that return, deduct this amount from the estimated tax before computing the 1/3 payments. Additional 1/3 payments are due on the 15th day of the 9th and 12th months. If your return is for the calendar year, file a declaration of estimated tax on June 15, September 15, and December 15th.

If you realize you will have a tax liability of more than \$1,000 on or after the first day of the 6th month of your tax year, see 20 NYCRR 7-2.3.

A declaration of estimated tax may be amended.

A penalty will be imposed if you fail to file a declaration of estimated tax or fail to pay all or any part of an installment payment of estimated tax. (See *Interest and Penalties*, below.)

To avoid a penalty for an underpayment of estimated tax, determine your estimated tax by one of the following methods:

1. 100% of the preceding year's tax if your tax year was a full twelve months. \*
2. An amount equal to the tax computed at the current year's rate, but otherwise on the basis of the return for the preceding year. \*
3. 91% of the current year's tax figured by annualizing taxable income for the months preceding an installment date.\*\*
4. 91% of the tax for the year figured under the seasonal method for corporations with recurring seasonal income.\*\*
5. A reduction in an estimated tax payment resulting from using the annualized or seasonal income exception must be made up in the next payment which does not use either of these methods to compute the amount of the next installment.

\* Methods 1 and 2 do not apply to corporations with allocated entire net income of \$1 million or more in any of the three years immediately preceding the current tax year.

\*\*For tax years beginning on or after January 1, 1994, corporations with allocated entire net income of \$1 million or more in any one of the three preceding tax years must make payments of estimated tax (including the state tax surcharge) to equal or exceed 100% of the tax for the current year to avoid penalty for underpayment of estimated tax on Form CT-222.

**Interest and Penalties - Failure to Provide Shareholder Information** — If you don't file Form CT-3-S or CT-4-S on time, providing the shareholder information requested (all items of income, loss, deduction and other pertinent information), you will have to pay a penalty (section 685(h)(2)). The penalty is \$50 per shareholder per month or fraction of a month up to a total of \$250 per shareholder. You will also have to pay a penalty of \$50 for each shareholder whose social security number you do not

show (section 685(k)). All shareholders of the S corporation during any part of the tax year must be counted. The penalty may be waived if it is shown that the failure is due to reasonable cause and not due to willful neglect. The maximum penalty in any calendar year is \$10,000.

**Late Payment - Interest** — You must pay the entire tax and state tax surcharge due on or before the original due date of the return to avoid a late payment charge. An extension of time for filing the tax return does not extend the date for payment of tax.

If you do not pay the tax due on or before the due date you must pay interest on the amount of the underpayment from the due date to the date paid. Exclude from the interest computation any amount shown on line 3/a or 3/b, first installment of estimated tax for next tax period. Interest is **always due**, without any exceptions, on any underpayment of tax.

Interest is compounded daily. You may call the Taxpayer Assistance Bureau for the current interest rate or to have the interest computed for you. See *Need Help?* on page 16.

**Late Filing and Late Payment - Additional Charges** — Additional charges for late filing and late payment are computed on the amount of tax and state tax surcharge less any payment made on or before the due date. Exclude from the penalty computation any amount shown on line 3/a or 3/b, first installment of estimated tax for next tax period.

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

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

**Penalty for Understating Tax** — If the tax you report is understated by 10% or \$5,000, whichever is greater, you will have to 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 report or in an attached statement (see Article 27, section 1085(k)).

**Penalty for Underpaying Estimated Tax** — If you can reasonably expect your New York State franchise tax and state tax surcharge liability to exceed \$1,000, you must file a declaration of estimated tax, Form CT-400. 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 *Estimated Tax for Next Tax Period* above and Form CT-222, *Underpayment of Estimated Tax by a Corporation*.

**Omnibus Tax Equity and Enforcement Act** — The Omnibus Tax Equity and Enforcement Act has imposed strong civil and criminal penalties for negligence or fraud. For more information about this act contact the Taxpayer Assistance Bureau (address and telephone numbers on page 16).

**Whole Dollar Amounts** — Amounts may be shown in whole dollars rather than in dollars and cents. Round any amount from 50 cents through 99 cents to the next higher dollar, and round any amount less than 50 cents to the next lower dollar. If you round to the nearest dollar, round all amounts.

**Negative Amounts** — Show negative amounts, if any, in parentheses.

**Processible Forms** — Returns must be prepared in a manner that will permit their routine handling and processing. Interest will not be paid on an overpayment of taxes until the return is in a processible form. See Publication 76, *Specifications for Reproduction of New York State Corporation Tax Forms*. For information, contact the Taxpayer Assistance Bureau (address and telephone numbers on page 16).

**Use of Reproduced Forms and Computerized Returns** — Photocopies of returns are acceptable if they are of good quality and are signed in the proper place. Computer-produced corporation tax returns will be accepted if you have received permission to file them and they meet our specifications. For more information, see Publication 76, *Specifications for Reproduction of New York State Corporation Tax Forms*.

## Do You Need a Tax Packet?

If you use a paid preparer, or if you use computer software to prepare your return or if for any other reason you do not need a tax packet mailed to you for next year's taxes, please check the box above the certification and signature. When you check the box, we will send you a mailing label that you or whoever prepares your return should use on your 1995 return. By checking this box, you will help us reduce printing and mailing costs.

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

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

**Privacy Notification** — Our authority to require and maintain personal information, including identifying numbers (social security numbers, etc.), is found in sections 211, 213-a and 1096, Article 9-A in general of the Tax Law and Parts 6 and 7 of the Business Corporation Franchise Tax Regulations.

We will use this information primarily to determine New York State corporation tax liabilities under Article 9-A of the Tax Law. We will also use it for tax administration and as necessary under Tax Law section 211 and for any other purpose authorized by law, and when the taxpayer gives written authorization to this department for another department, person, agency or entity to have access, limited or otherwise, to information contained in the return.

Your failure to provide the required information may result in civil penalties under sections 217 and 1085 of the Tax Law and Part 9 of the Business Corporation Franchise Tax Regulations or criminal penalties under Article 37 of the Tax Law, or both.

This information will be maintained by the Director Data Management Services Bureau, NYS Tax Department, Building 8 Room 905, W A Harriman Campus, Albany NY 12227; telephone (from New York State only) 1 800 CALL TAX (1 800 225-5829); from areas outside New York State, call (518) 438-8581.

**Resolving Tax Problems** — The best ways to avoid tax problems are to keep accurate tax records and to stay on top of current tax requirements. We have free publications you can order and toll-free numbers you can call for answers to your specific questions.

Most tax problems can be resolved informally. If you receive a tax deficiency notice that you think is in error, call the number listed on the notice.

Only a relative handful of tax problems fail to be resolved by informal means. However, if you are issued a *Notice of Deficiency* or a refund denial and you feel that the Tax Department has made a mistake, you still have a number of options available to you:

— You can request a **conciliation conference** through the Bureau of Conciliation and Mediation Services. The conference is conducted informally by a conferee who issues an order that is binding on the Tax Department, but not on you (you can appeal by filing a petition for a formal hearing,

as explained below). To set up a conference, get a *Request for Conciliation Conference*, Form CMS-1, by calling toll free 1 800 462-8100 (from areas outside New York State, call (518) 438-8581) or by writing to the Bureau of Conciliation and Mediation Services, NYS Tax Department, W A Harriman Campus, Albany NY 12227.

- You can request a **small claims hearing** before an impartial presiding officer if the disputed amount is within certain dollar limitations set by the *Rules of Practice and Procedure*. The presiding officer's decision is final, but at any time before the end of the small claims hearing, you can request a transfer to a formal hearing before an administrative law judge. A copy of the *Rules of Practice and Procedure* will be sent to you when you request a petition form as explained below.
- You can file a petition for a **tax appeals hearing**. The hearing is held before an administrative law judge, and both you and the Tax Department may appeal the judge's decision to the Tax Appeals Tribunal. The Tax Department cannot seek a review of the Tribunal's decision, but you can by instituting an Article 78 proceeding in the Appellate Division of the State Supreme Court. You can get the petition forms by writing to the Division of Tax Appeals, 500 Federal Street, 4th Floor, Troy, NY 12180-2893.
- Regardless of which appeal option you exercise, you may appear on your own behalf or you may have an authorized representative present your case for review. An authorized representative must have Power of Attorney from you in order to appear on your behalf. Further, your representative must be in compliance with the Ethics in Government Act which restricts appearances by former department employees. A summary of these restrictions is included on the back of the Power of Attorney Form DTF-14.1.

## Mailing Label

**Use the mailing label provided by the Tax Department.**

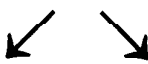
The preprinted mailing label contains the taxpayer account identification information necessary for correct and effective processing of your tax form.

Check your label to see that the information is complete and correct. If it is incorrect, make any corrections directly on the label. (You must also file Form DTF-95, *Change of Business Information*, with the Tax Department as soon as possible.) If your mailing address is incorrect, check the box next to the name and address block at the top of your corporation tax return.

Remove the peel-off label from the front cover of your packet or postcard and place it in the **name and address box** at the top of your corporation tax return.

To ensure that your corporation tax forms are processed as quickly and efficiently as possible, it is important that we have the necessary identifying information from your preprinted label. **Keep a record of the label information for future use.** Please be certain to include your employer identification number and file number on each corporation tax form mailed. This will facilitate processing of your return to the correct account. Without this information, we may not be able to process your return.

These numbers can be copied directly from the label.



Employer ID number	File number
Name	
Number and Street	
City and Town	State ZIP code

If you use a paid preparer or accounting firm, make sure they use the mailing label or label information when completing all forms prepared for you.

**Change of Business Information**

If there have been any changes in your business name, identification number, mailing address, business address, telephone number or owner/officer information and you have not previously notified us, complete Form DTF-95, *Change of Business Information*. If you don't have a form, call toll free (from New York State only) 1 800 462-8100. From areas outside New York State, call (518) 438-1073 to request one.

**Change of Address**

If your address has changed, enter your new address on the label and check the box next to the name and address block at the top of your corporation tax return. Do not check this box for any change of business information other than address. You must still attach the preprinted label with the old address to enable us to update your account.

**Specific Instructions for Form CT-3-S**

**Reporting Period** — Your tax year for New York State must be the same as your federal income tax year. If it is not a calendar year, be sure to enter the correct reporting period at the top of page 1 of your return.

**Principal Business Activity** — Enter the one activity that accounts for the largest percentage of total receipts. State the broad field of business activity as well as the specific product or service (e.g., mining copper; wholesale meat; retail men's apparel; real estate, rental). Be sure to enter the business activity code number from your federal return.

**Additional Schedules** — You may need to use additional schedules to complete your return. Schedules A through D appear on Form CT-3-S-ATT. If you use any schedules you must attach them to your return.

**Line A Payment** — After completing your return, enter the amount of your payment. This should be the full amount shown on line 52.

**Line 1** — Enter the amount of federal taxable income that you would have reported on federal Form 1120, line 28, had the New York S corporation not made the election under Subchapter S of Chapter one of the IRC and filed federal Form 1120 instead of federal Form 1120S. Attach a statement (or a pro forma federal Form 1120), showing the computation of federal taxable income required to be shown on federal Form 1120, line 28. The statement or pro forma federal Form 1120, must include the following items not reported on federal Form 1120S:

- dividend income from federal Form 1120, line 4
- interest income from federal Form 1120, line 5
- gross rental income from federal Form 1120, line 6
- gross royalty income from federal Form 1120, line 7
- capital gain net income from federal Form 1120, line 8
- contribution deductions from federal Form 1120, line 19

**Lines 2 through 7 Additions** — Use lines 2 through 7 to add items that are not included in federal income but must be included in New York State entire net income.

**Line 2** — Enter all interest received or accrued from federal, state, municipal and other obligations that was exempt from taxation on your federal income tax return and is, therefore, not included on line 1. You may deduct from this amount any expenses attributable to such interest but denied deductibility under IRC section 265. Attach a list of items included on this line.

**Lines 3 and 4 Subsidiaries** — A subsidiary is a corporation (except a DISC) of which you own more than half of the voting stock issued and outstanding. If you have a subsidiary, you will also have to complete Form CT-3-S-ATT, Schedule C. See instructions for Schedule C for the definition of subsidiary capital.

If you have a subsidiary, complete lines 3 and 4. Attach a list of all items included. If you do not have a subsidiary, enter "0" on lines 3 and 4.

**Line 3** — Enter all amounts, including interest expense, deducted on your federal tax return that are directly attributable to subsidiary capital or to income, losses or gains from subsidiary capital. Include capital losses from sales or exchanges of subsidiary capital, all other losses, bad debts and any carrying charges attributable to subsidiary capital.

**Line 4** — Enter all amounts, including interest, which are indirectly attributable to subsidiary capital or to income, gains or losses from subsidiary capital. To determine these amounts, use the following formula:

$$\begin{array}{l} \text{Total amount of} \\ \text{deductions subject to} \\ \text{indirect attribution} \end{array} \times \frac{\begin{array}{l} \text{Average value of assets included in subsidiary} \\ \text{capital (from Schedule C, line 43, column C)} \end{array}}{\begin{array}{l} \text{Average value of all assets} \\ \text{(from Schedule B, line 32, column C)} \end{array}}$$

To determine the total amount of deductions subject to indirect attribution, use the following procedure:

(a) Subtract from the amount of federal deductions included on federal Form 1120, line 27, the following:

- Those federal deductions included in the line 27 amount which are required to be added back to federal taxable income in computing entire net income, **other than the** amount of such deductions directly or indirectly attributable to subsidiary capital under section 208.9(b)(6), and
- The New York excess depreciation addback described in Tax Law, section 208.9(b)(11) (relating to the disposition of certain decoupled property) to the extent it was included in (b) below for prior tax years which began on or after January 1, 1987.

(b) Increase the amount arrived at in (a) by the following deductions which are subtracted from federal taxable income in computing entire net income.

- Interest expense attributable to interest income not includable in federal taxable income but required to be included in entire net income (e.g., municipal bond interest), to the extent the interest expense is not deducted for federal tax. (Tax Law, section 208.9(b)(2); see also Franchise Tax Regulations, 20 NYCRR 3-2.3(a)(2).)
- The portion of wages and salaries paid or incurred for the tax year for which a deduction is not allowed pursuant to section 280C of the IRC (Tax Law, section 208.9(a)(7)).
- Depreciation deductions permitted under Article 9-A with respect to "decoupled" property pursuant to Tax Law, section 208.9(a)(11) and (12).  
Deductions arising from "decoupling" from federal safe harbor lease provisions pursuant to Tax Law, section 208.9(a)(10).

(c) Reduce the amount arrived at in (b) by the deductions included therein which are directly attributable to subsidiary, investment or business capital.

For more information, see TSB-M-88(5)C.

To compute the value of an asset, real property and marketable securities should be valued at fair market value. All other property should be included at the value shown on your books in accordance with generally accepted accounting principles (GAAP).

**Line 5** — Enter the amount deducted on your federal return for taxes imposed under Article 9, sections 183, 183-a, 184, 184-a, Articles 9-A and 32. Include the amount deducted for taxes paid or accrued to other US states, their political subdivisions and the District of Columbia, if they are on or are measured by profits or income, or include profits or income as a measure of tax, including taxes expressly in lieu of the foregoing. However, **do not** include New York City franchise taxes.

**Line 6** — Before making any entry on this line, complete Form CT-399. Enter from Form CT-399, line 4, the amount of your federal accelerated cost recovery system (ACRS) and modified accelerated cost recovery system (MACRS) deduction that must be added back to federal taxable income, or if you disposed of property this year use the amount from line 12, column A, of Form CT-399. (Enter your recomputed deduction on line 13.)

**Line 7** — If you have any of the following other additions to federal taxable income, enter the total amount of those additions and attach a list.

**A-1** If your corporation has a safe harbor lease you must include:

- Any amount you claimed as a deduction in computing federal taxable income solely as a result of an election made under section 168(f)(8) of the IRC as it was in effect on December 31, 1983.
- Any amount you would have been required to include in the computation of your federal taxable income if you had not made the election permitted under section 168(f)(8) of the IRC as it was in effect on December 31, 1983.

**A-2** Any windfall profit tax (imposed by IRC section 4986(a)) deducted in the computation of federal taxable income must be included on this line.

**A-3** In general, you must include on this line up to 5% of certain interest paid by an acquiring corporation in the acquisition of another corporation, in the year of an acquisition and for the next three years. Use Form CT-244 to determine if you are liable for this addition and to compute the amount to be entered on this line.

**A-4** The amount of special additional mortgage recording tax paid in tax years beginning after 1993 under section 253(1-a) of the Tax Law allowed as a deduction in determining federal taxable income where a credit is allowed on Form CT-43 or where a refund is allowed on Form CT-43.1 for the tax year.

**A-5** The amount of special additional mortgage recording tax paid in tax years beginning after 1993 under section 253(1-a) of the Tax Law when property for which the tax was paid is sold or disposed of at a gain or loss and the basis of the property was not adjusted by the special additional mortgage recording tax credit if a credit or refund was allowed on Form CT-43 or Form CT-43.1.

**Lines 9 through 14 Subtractions** — Use lines 9 through 14 to subtract items that are included in federal taxable income but should not be included in New York entire net income.

**Line 9** — If you have a subsidiary, complete Schedule C on Form CT-3-S-ATT and enter the amount from Part II, line 49. This amount must include capital gains and any other income and gain from subsidiary capital that was included as part of federal taxable income. Do not include foreign dividends gross-up under IRC section 78. A DISC does not qualify as a subsidiary.

Include as subsidiary dividends, subpart F income received from a controlled foreign corporation in which you own more than 50% of the voting stock (see federal Form 1120, Schedule C, line 14).

Effective for periods beginning on or after January 1, 1989, if a subsidiary's stock or assets (excluding cash and assets disposed of by the subsidiary in the regular course of business) are sold within eighteen months after the date of acquisition, subsidiary capital treatment will not be allowed the parent.

**Line 10** — Enter 50% of dividends received from nonsubsidiary corporations. Include 50% of dividend income received from nonsubsidiary stock which meets the holding requirements of IRC section 246(c). Include 50% of subpart F income received from a controlled foreign corporation in which you own 50% or less of the voting stock (see federal Form 1120, Schedule C, line 14). Do not include the following: (1) "grossed-up" dividends, pursuant to section 78 of the IRC, (2) dividends from stocks not meeting the holding period requirement set forth in section 246(c) of the IRC, or (3) subsidiary dividends treated as investment income pursuant to Article 9-A, section 208.9(b)(12). For more information about item (2) dividends see TSB-M-89(14)C and for item (3) dividends see TSB-M-89(17)C.

**Line 11** — Enter foreign dividend gross-up pursuant to section 78 of the IRC (see federal Form 1120, Schedule C, line 15). Entire net income **does not include** a New York amount treated as dividends pursuant to section 78 of the IRC (section 208.9(a)(6)).

**Line 12** — A New York S corporation is allowed a net operating loss deduction which would have been allowed under section 172 of the IRC, had the corporation not made the election under Subchapter S of Chapter One of the IRC (the amount that would have been entered as net operating loss deduction on federal Form 1120, line 29a).

These rules apply:

- A New York S corporation is **not** allowed a deduction for a net operating loss sustained during a New York C year.
- A New York S corporation is **not** allowed a deduction for a net operating loss sustained during a New York S year which begins before January 1, 1990.
- IRC section 172 federal losses must be adjusted in accordance with Article 9-A, section 208.9(a) and (b).
- You may carry a net operating loss back 3 tax years and forward 15 tax years. Both a New York C year and a New York S year are counted as a tax year for determining the number of tax years for which a net operating loss may be carried back or carried forward.
- The New York State net operating loss deduction is limited to the amount required under section 172 of the IRC to reduce federal taxable income to zero.
- In general, in a highly leveraged transaction, any net operating loss of a target corporation from prior years or a loss sustained in the year of merger, acquisition or consolidation occurring after April 19, 1989, cannot be used by the acquiring corporation. For complete details see instructions for Form CT-244 and TSB-M-89(17)C.

These carryback rules apply:

- The New York State net operating loss carryback is computed as if the corporation elected under section 172 of the IRC to relinquish the carryback provisions, except for the first \$10,000 for each loss year which may be carried back to the three preceding years.
- The New York State net operating loss carryback for each loss year is limited to the lesser of:
  - \$10,000, or
  - that part of the New York State \$10,000 net operating loss which was carried back to the three preceding years, in the amount required to reduce federal taxable income to zero.
- Any portion of the New York State \$10,000 net operating loss carryback that was not carried back to the three preceding years may be carried forward to the next succeeding 15 years.

Enter the New York net operating loss deduction on line 12. Attach a separate sheet, providing details of the New York net operating losses claimed.

**Line 13** — In place of the disallowed ACRS or MACRS deduction entered on line 6, you may compute a depreciation deduction by any method permitted under IRC section 167 (as it would have applied to property placed in service on December 31, 1980). For more information see Form CT-399, *Depreciation Adjustment Schedule*. Enter the amount from Form CT-399, line 5, column I; if you have disposed of property this year, enter the amount from line 12, column B, and attach the form.

**Line 14** — If you have any of the following other subtractions from federal taxable income, enter the total amount of those subtractions and attach a list.

**S-1** Receipts from the operation of school buses: Include all receipts from the transportation of pupils, teachers and others acting in a supervisory capacity to and from school or school activities, less any deductions allowed in computing federal income that are directly or indirectly attributable to those receipts.

**S-2** Include any refund or credit of a tax imposed under sections 183, 183-a, 184 and 184-a of the Tax Law, or Article 9-A or 32 of the Tax Law for which no deduction was allowed in computing your entire net income in any prior year.

**S-3** Include the amount of wages disallowed in the computation of your federal taxable income because you claimed a federal jobs credit. Attach a copy of federal Form 5884.

**S-4** If your corporation has a safe harbor lease, include the following items:

- Any amount included in your federal taxable income solely as a result of an election made under IRC section 168(f)(8) as it was in effect on December 31, 1983.
- Any amount you could have excluded from federal taxable income if you had not made the election provided for in IRC section 168(f)(8) as it was in effect on December 31, 1983.

**Line 16** — Subtract line 15 from line 8 to determine your entire net income. Show a loss by using parentheses. If line 16 is a loss, without regard to the deduction on line 12, complete the net operating loss carryback election on Form CT-3-S, page 4.

**Lines 17 through 21 Entire Net Income Base** — The entire net income base is the portion of your entire net income allocated to New York State with certain adjustments. It may consist of both business and investment income.

Use Form CT-3-S-ATT, Schedule A, to compute your business allocation percentage.

Use Form CT-3-S-ATT, Schedule D, Parts I and II, to compute your investment capital, investment allocation percentage and investment income.

**Line 17** — Complete Schedule D, Part II, and enter the amount of your investment income from line 64. Do not enter more than the amount from line 16. If you had no investment income, enter "0" and do not use Schedule D.

**Line 20** — Multiply line 18 by your business allocation percentage from Schedule A, line 19 or 27. If your property, payroll and sales were entirely within New York State, enter the full amount from line 18 and do not use Schedule A.

**Line 22 Entire Net Income Base Tax Computation** — If the entire net income base shown on line 21 is a loss, enter "0." If the entire net income base shown on line 21 is a gain, multiply line 21 by the appropriate tax rate in effect under Article 9-A of the Tax Law.

Read the following instructions to determine the appropriate tax rate, which may vary from 8% to 9%.

To determine the appropriate tax rate, you must first determine whether or not you qualify as a small business taxpayer under section 210.1(f) of the New York State Tax Law.

A corporation qualifies as a small business taxpayer if:

- its entire net income on line 16 (before allocation) is not more than \$290,000, and
- the aggregate amount of money and property it received for stock, as a contribution to capital and as paid-in surplus is not more than \$1,000,000 on the last day of its taxable year, and
- 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.

**Note:** A New York S corporation that files Form CT-3-S for a tax year of less than 12 months must annualize entire net income on Form CT-3-S, line 16, before determining if it qualifies as a small business taxpayer. Entire net income on line 16 is annualized as follows:

$$\frac{\text{Entire net income (line 16) multiplied by 12}}{\text{divided by}} \\ \text{number of months in the short tax year}$$

Complete lines 59 and 60 if you use the small business taxpayer tax rate.

Taxpayers that do not qualify as small business taxpayers under section 210.1(f) of the New York State Tax Law multiply the entire net income base on line 21 by 9%.

Taxpayers that qualify as small business taxpayers under section 210.1(f) of the New York Tax Law (filing a 12-month tax return) multiply the entire net income base on line 21 as follows:

- 8% of any amount up to \$200,000, plus
- 9% of any amount over \$200,000, plus
- 5% of any amount over \$250,000.

Example: If entire net income on line 21 is \$265,000 the tax is computed as follows:

(8% × \$200,000)	= \$	16,000
(9% × (\$265,000 - \$200,000))	= +	5,850
(5% × (\$265,000 - \$250,000))	= +	750
<b>Total Tax</b>		<b>\$ 22,600</b>

Attach a copy of your worksheet to the tax return.

A taxpayer that qualifies as a small business taxpayer under section 210.1(f) of the New York Tax Law and is filing a tax return for a period of less than 12 months must compute the tax on the entire net income base on line 21 as follows:

1. Annualize the entire net income base by using the following method:  
Multiply the entire net income base on line 21 by twelve and divide the result by the number of months in the short period tax return.
2. Compute the tax on the annualized entire net income base using the 8% and 9% tax rates as follows:  
8% of any amount up to \$200,000, plus  
9% of any amount over \$200,000, plus  
5% of any amount over \$250,000.
3. Pro rate the tax on annualized entire net income base:  
Multiply the tax on annualized entire net income base by the number of months in the short period tax return and divide the result by twelve.

Attach a copy of your worksheet to the tax return.

**Line 23 Article 22 Tax Equivalent Reduction** — Multiply the entire net income base shown on line 21 by 7.875% (.07875). This is the highest tax rate in effect under section 601 of Article 22 of the Personal Income Tax Law which coincides with the tax period shown on Form CT-3-S, i.e., tax year beginning in 1994.

If the entire net income base shown on line 21 is a loss, enter "0."

**Line 25 Fixed dollar minimum tax before Article 22 tax equivalent reduction** — A New York S corporation's fixed dollar minimum tax is determined by its gross payroll.

*Gross payroll* is the total wages, salaries, and other personal services compensation of all employees including general executive officers, wherever located. For a period of less than 12 months, annualize gross payroll by dividing it by the number of months in the short period and multiplying the result by 12.

Use the total amounts shown on federal Form 1120S, lines 7 and 8, plus any wages included in the cost of goods sold, Form 1120S, Schedule A, line 8.

For a corporation with:	The fixed dollar minimum tax is:
Gross payroll of \$6,250,000 or more	\$1,500
Gross payroll of less than \$6,250,000 but more than \$1,000,000	\$425
Gross payroll of \$1,000,000 or less	\$325

**Short Periods — Proration of Fixed Dollar Minimum Tax** — The fixed dollar minimum tax may be reduced for short periods:  
— A period of not more than 6 months . . . . . 50% reduction  
— A period of more than 6 months but not more than 9 months . . . . . 25% reduction  
— A period of over 9 months . . . . . no reduction

**Line 27 Fixed dollar minimum tax after Article 22 Tax Equivalent Reduction** — subtract line 26 from line 25.

**The Article 22 tax equivalent reduction amount cannot reduce the fixed dollar minimum tax to less than \$325 reduced for short periods.**

**Line 29** Enter the amount of special additional mortgage recording tax credit from Form CT-43, line 7, or the amount of special additional mortgage recording tax credit shown on Form CT-43.1, line 4.

For tax years beginning on and after January 1, 1994, the special additional mortgage recording tax credit is applied against the Article 9-A franchise tax of a New York S corporation on Form CT-3-S and will not flow through to the individual shareholders of a New York S corporation under Article 22.

**Line 31** The special additional mortgage recording tax credit cannot reduce the franchise tax below the fixed dollar minimum tax on line 27. If line 30 is less than the fixed dollar minimum tax shown on line 27, enter on line 31 the fixed dollar minimum tax from line 27.

**Line 32** Computation of the state tax surcharge

The Laws of 1994 amended the state tax surcharge. The state tax surcharge rates are:

	For Tax Years Ending After and Before		Maximum number of months surcharge imposed
15%	6/30/90	7/1/94	48
12½%	6/30/94	7/1/95	12
7½%	6/30/95	7/1/96	12

Enter the appropriate rate on line 32.

For tax years ending on or before June 30, 1994, the state tax surcharge is computed on the pre-7/1/94 surcharge base. The pre-7/1/94 surcharge base is the regular tax (tax on entire net income base or fixed dollar minimum tax, whichever is larger) **before** reduction of the Article 22 tax equivalent.

For tax years ending after June 30, 1994, and before July 1, 1996, the state tax surcharge is computed on 50% of the sum of the pre-7/1/94 surcharge base and the post-6/30/96 surcharge base. The post-6/30/96 surcharge base is the regular tax (tax on entire net income base or fixed dollar minimum tax, whichever is larger) **after** reduction of the Article 22 tax equivalent.

For tax years beginning on or after January 1, 1994, the special additional mortgage recording tax credit is allowed against the tax on entire net income base in the computation of the state tax surcharge.

If your tax year ends on or before June 30, 1994, use Part I instructions below to compute your state tax surcharge.

If your tax year ends after June 30, 1994, use Part II instructions below to compute your state tax surcharge.

**Part I - For tax years ending on or before June 30, 1994**

If you do not qualify as a small business taxpayer under section 210.1(f) of the New York State Tax Law (see line 22) multiply the tax on line 22\* or line 25, whichever is larger, by 15%.

If you qualify as a small business taxpayer compute the 15% tax surcharge as follows:

- If entire net income on line 16 is \$200,000 or less, enter "0" on line 32.
- If entire net income on line 16 is more than \$200,000 but not more than \$290,000, complete the following worksheet.

Surcharge Worksheet — Small Business Taxpayer	
A. Enter tax from line 22* or line 25, (whichever is larger) \$	_____ × 15% (.15) = _____
B. Entire net income from line 16	_____
C. Less	200,000
D. Subtract line C from line B	_____
E. Divide amount on line D by \$90,000	_____ %
F. State tax surcharge - multiply line A by the percentage on line E. Enter on line 32	_____

Since the state tax surcharge is computed on the entire net income base or the fixed dollar minimum Tax (before the Article 22 tax equivalent reduction), the tax surcharge may be higher than the tax on entire net income or the fixed dollar minimum tax.

\* For tax years beginning on and after 1/1/94, the tax on line 22 may be reduced by the special additional mortgage recording tax credit from line 29. The special additional mortgage recording tax credit cannot reduce the tax on line 22 to less than the fixed dollar minimum tax on line 25.

**Prorated state tax surcharge**

If you are filing Form CT-3-S for a tax year that ends on or before June 30, 1994, you may be subject to the 15% state tax surcharge for all or part of the tax year. The 15% state tax surcharge is imposed for 48 months. If the number of months the 15% state tax surcharge is required to be paid on Form CT-3-S is less than the number of months included on Form CT-3-S, the amount of state tax surcharge must be prorated to correspond with the number of months the state tax surcharge is required to be paid.

**Example:**

*A corporation filed Form CT-3-S for the tax year 1/1/94-6/30/94. The corporation did not qualify as a small business taxpayer. The corporation paid the 15% state tax surcharge for a total of 44 months on previous tax returns. The corporation is required to pay the 15% state tax surcharge for 4 more months. The prorated state tax surcharge would be computed as follows:*

A State tax surcharge (line 22 - \$8,000 × 15%)	\$1,200
B Number of months reported on Form CT-3-S	6
C Average monthly state tax surcharge (divide line A by line B)	\$200
D Number of months state tax surcharge required to be paid	4
E Prorated state tax surcharge (multiply line C by line D; enter on line 32)	\$800

**Part II - For tax years ending after June 30, 1994**

If you qualify as a small business taxpayer under section 210.1(f) of the New York State Tax Law (see line 22) and the entire net income on line 16 is \$200,000 or less, enter "0" on line 32.

If you do not qualify as a small business taxpayer under section 210.1(f) of the New York State Tax Law (see line 22), compute your state tax surcharge on *Worksheet 1* below.

Worksheet 1	
A Enter tax from line 22* or line 25 (whichever is larger)	\$ _____ × 12½% (.125) = _____
B Enter the tax from line 24** or line 27, (whichever is larger)	\$ _____ × 12½% (.125) = _____
C Total (add lines A and B)	_____
D Average of state tax surcharge amount (multiply line C by 50% (.50)). Enter here and on line 32	_____

If you qualify as a small business taxpayer under section 210.1(f) of the New York State Tax Law (see line 22) and the entire net income on line 16 is more than \$200,000 but not more than \$290,000, complete *Worksheet 2* below.

Worksheet 2	
A Enter tax from line 22* or line 25 (whichever is larger)	\$ _____ × 12½% (.125) = _____
B Enter tax from line 24** or line 27 (whichever is larger)	\$ _____ × 12½% (.125) = _____
C Total (add lines A and B)	_____
D Average of state tax surcharge amount (multiply line C by 50% (.50)).	_____
E Entire net income from line 16	200,000
F Less	200,000
G Subtract line F from line E	_____
H Divide amount on line G by \$90,000	_____ %
I Amount of state tax surcharge; multiply line D by line H. Enter here and on line 32	_____

\*\* For tax years beginning on and after 1/1/94, the tax on line 24 may be reduced by the special additional mortgage recording tax credit from line 29. The special additional mortgage recording tax credit cannot reduce the tax on line 24 to less than the fixed dollar minimum tax on line 27.



**Prorated state tax surcharge**

The 12½% state tax surcharge is imposed for 12 months. If the number of months the 12½% state tax surcharge is required to be paid on Form CT-3-S is less than the number of months included on Form CT-3-S, the amount of the state tax surcharge must be prorated to correspond with the number of months the state tax surcharge is required to be paid (see the example in Part I on page 7).

Since a portion of the state tax surcharge is computed on the entire net income base or the fixed dollar minimum tax before the Article 22 tax equivalent reduction, the tax surcharge may be higher than the tax on entire net income or the fixed dollar minimum tax.

**Line 34** — If you claimed the investment tax credit, retail enterprise tax credit, employment incentive tax credit, research and development investment tax credit or EDZ investment tax credit during any year before you became a New York S corporation and the property on which you claimed the credit is disposed of or ceases to be in qualified use, you must recapture the credit and pay it as tax on Form CT-3-S.

Use Form CT-46, Schedule E, or Form DTF-603, Schedule E, to compute the recaptured tax credits.

**Line 37a** — If you have filed an application for extension (Form CT-5.4), enter the amount from line 4 of Form CT-5.4.

**Line 37b** — If you do not file Form CT-5.4 and the amount on line 36 is more than \$1,000, you must pay a mandatory first installment for the period following that covered by this return. Enter 25% of the tax shown on line 36.

**Lines 47 and 48** — If you are not filing this return on time, you must pay interest and additional charges. See *Interest and Penalties* on page 2.

**Line 49** — If you underpaid your estimated tax, use Form CT-222, *Underpayment of Estimated Tax by a Corporation*, to compute the penalty. Attach Form CT-222, check the box and enter the penalty on line 49. If no penalty is due, enter "0" on line 49.

**Line 51** — If you want to make a Gift to the Wildlife Fund, enter the amount of your gift on line 51. The amount you give must be in whole dollars. Your gift will increase your payment or reduce your overpayment. You may not change the amount of your gift after you file the return.

**Line 52** — Add lines 38, 47, 48, 49 and 51. If line 45 is less than the total, subtract line 45 from that total. Enter the difference on line 52. This is your balance due and should represent the total amount of tax due, interest, penalties and the gift to wildlife. Enter your payment on line A on page 1.

**Line 53** — If line 45 is more than the total of lines 38, 47, 48, 49 and 51, subtract the total from line 45. Enter the difference on line 53 as an overpayment. Complete lines 54 and 55.

**Lines 54 and 55** — You may apply an overpayment as a credit to your next state franchise tax period or you may have it refunded. Indicate on lines 54 and 55 the amounts you wish transferred as credits or refunded.

**Line 56** — Enter the amount of refundable special additional mortgage recording tax credit from Form CT-43.1, line 5 or line 9. The tax credit cannot reduce the franchise tax below the fixed dollar minimum tax on line 27. Do not include on this line any amount of special additional mortgage recording tax credit shown on Form CT-43.

**Real Property Gains Tax**

**Lines 57 and 58** — Every corporation with an interest in real property located in New York State must keep a record of the transfer of its stock and report annually every transfer of a controlling interest in its stock and any other information that may be required for the enforcement of this tax (Article 31-B, section 1449-a, Tax on Gains Derived from Certain Real Property Transfers).

Controlling interest is either 50% or more of the total combined voting power of all classes of stock or 50% or more of the capital, profits or beneficial interest in that voting stock.

Answer both questions. If you answer Yes to both questions, attach a separate sheet providing the following information:

- name, address and identification number of the new controlling stockholder (use social security number for individuals and federal employer identification number for corporations)
- date transfer was made
- location of real property
  - whothor the corporation is a cooperative housing corporation

**Small Business Taxpayer**

**Lines 59 and 60** — If you used the small business tax rate on line 22 you must complete line 60 to show that your corporation qualifies for the lower tax rate. See the instructions for line 22 for the definition of a small business taxpayer. Use the worksheet below to determine the amount to be entered on line 60. Use your balance sheet amounts for stock and other paid-in capital.

	No. of Shares	Amount
Par value stock		
No par stock		
Contributions to capital & paid-in surplus		
Total capital contributions - enter on line 60		

**Instructions for Shareholder Information**

**Shareholder Information, Part I** — Enter complete information for all individuals, estates and trusts who were shareholders of the corporation during any part of the tax year. Attach a separate sheet if necessary. Check box on return if separate sheet is attached. The total number of shareholders listed must agree with the number entered in the box on the front of the return.

**Shareholder Information, Part II — Lines 61 through 79** — Complete lines 61 through 79 for each shareholder of the electing New York S corporation showing the pro-rata share of the S Corporation's items of income, loss and deduction as shown on Schedule K-1 filed with federal Form 1120S.

Nonresident shareholders should determine the amount of business and investment income, losses and deductions derived from New York State sources by using the business allocation percentage, Form CT-3-S-AI 1, Schedule A and the investment allocation percentage, Form CT-3-S-ATT, Schedule D. Attach a separate schedule for each nonresident shareholder.

For lines 66 and 71, attach a separate schedule showing the nature and amount of each item for each shareholder.

**Line 73** — A shareholder with tax preference items may be required to file Form IT-220, *Minimum Income Tax*. See Form IT-220 and the instructions for Form IT-220 for definitions of tax preference items, filing requirements and tax computation.

**Line 78** — Attach a separate schedule showing the nature and amount of each item for each shareholder.

**Shareholder Information, Part III** — The following adjustments must be added to or subtracted from each shareholder's federal adjusted gross income or federal itemized deductions on his or her individual New York State income tax return in arriving at total New York income and New York itemized deductions, respectively.

If a New York S corporation is on a fiscal year basis, the amount of any listed adjustment for the shareholders will be their pro rata share determined as of the end of the S corporation year ending within the shareholder's tax year.



Use lines 80 through 84 to list only those changes that apply to federal adjusted gross income on the individual returns of shareholders. Use lines 85 and 86 to list those changes that apply to federal itemized deductions.

#### Additions

**Line 80** — Enter each shareholder's pro rata share of the Article 9-A corporate franchise tax, including the fixed dollar minimum tax of \$325, \$425 or \$1,500, that was deducted by the S corporation on its federal return (section 612(b)(3)). See subtraction S-15.

**Line 81 Accelerated cost recovery system (ACRS) and modified accelerated cost recovery system (MACRS) deductions** — Enter the ACRS and MACRS deductions from Form CT-399, line 12, Column A (section 612(b)(25)). Attach a copy of Form CT-399 to your Form CT-3-S.

**Line 82 Other additions** — Identify by item number on a separate schedule any of the following additions that apply to each shareholder's pro rata share of the New York S corporation income, loss and deduction and enter the total of these additions that apply to each shareholder in the proper column on line 82.

**A-1** Interest income on state and local bonds (except those of New York State and its political subdivisions) to the extent not included in federal adjusted gross income (section 612(b)(1)).

**A-2** Interest or dividend income on bonds or securities of any United States authority, commission or instrumentality that federal laws exempt from federal income tax but not from state income taxes (section 612(b)(2)).

**A-3** Amounts deducted for interest on loans used to buy bonds and securities whose interest is exempt from New York State tax, expenses relating to income exempt from New York State tax and amortization of bond premium whose bond interest is exempt from New York State tax (section 612(b)(4) and (5)).

**A-4** Any amount that has to be added to your federal adjusted gross income if you made an election under the Tax Law for tax years beginning before 1987 for additional depreciation or research and development expenditures, waste treatment facility expenditures, air pollution control equipment expenditures or acid deposition control equipment (section 612(b)(6)). See subtraction S-9.

**A-5** Any amount deducted for percentage depletion on mines, oil and gas wells and other natural deposits (section 612(b)(10)).

**A-6** Amounts required under the Tax Law relating to the distributive or pro rata share of loss included on Form CT-3-S, from an insurance business operating as a member of the New York Insurance Exchange (section 617-a).

**A-7 Safe Harbor Leases** — Any amount that was deducted in figuring your federal adjusted gross income (except for mass transit vehicles) solely because of an election made under section 168(f)(8) of the IRC, as it was in effect for agreements entered into prior to January 1, 1984 (section 612(b)(23)).

**A-8 Safe Harbor Leases** — Any amount that would have been included in federal adjusted gross income (except for mass transit vehicles) had the election under section 168(f)(8) of the IRC, as it was in effect for agreements entered into prior to January 1, 1984, not been made (section 612(b)(24)).

**A-9 Tax on Petroleum Business** — The amount of gross receipts tax imposed before June 1, 1990, on petroleum businesses under Article 13-A that was deducted in figuring each shareholder's pro rata share of S corporation income (section 612(b)(28)).

**A-10 Reduction for Taxes** — An amount equal to each shareholder's pro rata share of the S corporation's reductions for the federal tax on certain built-in gains and tax on certain passive investment income (section 612(b)(18)).

**A-11** The amount of special mortgage recording tax paid by the corporation in a tax year beginning before 1994 when the property for which the tax was paid is sold or disposed of at a

gain or loss and the basis of such property was not adjusted by the special additional mortgage recording tax credit (section 612(b)(16)).

**A-12** New business investment - deferral recognition - The amount of capital gain deferred on the sale of a capital asset if the new business investment property is sold (section 612(b)(22)).

**A-13** Five percent of the deduction for interest related to corporate acquisitions (section 612(b)(30)). If this addition applies, complete Form IT-244, *Acquisition Information Report*.

#### Subtractions

**Line 83 New York depreciation** — Enter the total New York depreciation from Form CT-399, line 12, Column B (section 612(c)(26)).

**Line 84 Other subtractions** — Identify by item number on a separate schedule any of the following subtractions that apply to each shareholder's pro rata share of the New York S corporation income and enter the total of these subtractions that apply to each shareholder in the proper column on line 84.

**S-1** Interest income on bonds or other obligations of the United States government included as income on Form CT-3-S. Include qualified dividends from regulated investment companies (mutual funds) that invest in obligations of the United States government and meet the 50% asset requirement (section 612(c)(1)).

**S-2** Interest or dividend income on bonds or securities of any United States authority, commission or instrumentality included as income on Form CT-3-S, but exempt from state income taxes under federal laws (section 612(c)(2)).

**S-3** Interest or dividend income included on Form CT-3-S on bonds or securities to the extent exempt from New York State income taxes under the laws of this state (section 612(c)(6)).

**S-4** Interest expense on money borrowed to buy or carry bonds or securities the income from which is subject to New York State income tax but exempt from federal income tax, provided this interest was a business expense for the tax year and the S corporation did not deduct the expense from income on its federal return (section 612(c)(9)).

**S-5** Ordinary and necessary business expenses paid or incurred during the tax year in connection with income, or property held to produce income, that is subject to New York State income tax but exempt from federal income tax, provided the S corporation did not deduct the expenses from income on its federal return (section 612(c)(10)).

**S-6** Amortization of bond premium attributable to the tax year on any bond whose interest income is subject to New York State income tax but exempt from federal income tax, provided this amortization was a business expense for the tax year and the S corporation did not deduct the expense from income on its federal return (section 612(c)(10)).

**S-7** The amount of wages and salaries paid or incurred during the tax year for which a salaries deduction is not allowed with regard to claiming a federal jobs credit (section 612(c)(15)).

**S-8** Cost depletion figured according to federal tax law on property where percentage depletion (addition A-5) was added on line 82 (section 612(c)(13)).

**S-9** Special depreciation expenditures or carryover of research and development expenditures incurred in tax years beginning before 1987 in connection with depreciable tangible business property located in New York State (section 612(c)(11)). For more information see Form IT-211, *Special Depreciation Schedule*, and its instructions. Also see addition A-4.

**S-10** Any amount included on Form CT-3-S that is the distributive or pro rata share of income or gain from an insurance business operating as a member of the New York Insurance Exchange (section 617-a).

**S-11** Safe Harbor Leases — Any amount that was included in federal adjusted gross income (except for mass transit vehicles) solely because of an election made under section 168(f)(8) of the

IRC, as it was in effect for agreements entered into prior to January 1, 1984 (section 612(c)(24)).

**S-12 Safe Harbor Leases** — Any amount that could have been excluded from federal adjusted gross income (except for mass transit vehicles) had the election under section 168(f)(8) of the IRC, as it was in effect for agreements entered into prior to January 1, 1984, not been made (section 612(c)(25)).

**S-13** The part of any gain (but limited to the difference in basis) included in federal adjusted gross income from the sale or other disposition of (1) property which had a higher basis for New York income tax than for federal income tax on December 31, 1959 (or on the last day of a fiscal year ending during 1960), and (2) property held in connection with mines, oil or gas wells, and other natural deposits which had a higher adjusted basis for New York State income tax (sections 612(c)(4) and 612(c)(13) of the Tax Law).

**S-14** New business investment exclusion - The amount of gain to be subtracted from the sale of a New York new business investment that was included in federal adjusted gross income (section 612(c)(20) of the Tax Law).

**S-15** The amount of any refund or credit of the tax imposed under Article 9-A of the tax law for a New York S corporation tax year ending after 1990, to the extent the tax was added to the shareholders' federal income in a prior tax year under section 612(b)(3) of the tax law.

**Lines 85 and 86** should be used only for changes that apply to federal itemized deductions on the individual returns of shareholders and should exclude any amounts properly reportable on lines 82 and 84. Attach a statement identifying by item number any of the following changes that relate to New York S corporation items of the shareholders' federal itemized deductions.

**Line 85 Additions to federal itemized deductions**

- A** Interest expense on money borrowed to buy or carry bonds or securities subject to New York State income tax, but exempt from federal income tax if this interest was not deducted on the federal return or subtracted on line 84.
- B** Ordinary and necessary expenses paid or incurred during the tax year in connection with income, or property held to produce income, that is subject to New York State income tax but exempt from federal income tax if these expenses were not deducted on the federal return or subtracted on line 84.
- C** Amortization of bond premium attributable to the tax year on any bond whose interest is subject to New York State income tax but exempt from federal income tax if this amortization was not deducted on the federal return or subtracted on line 84.

**Line 86 Subtractions from federal itemized deductions**

- A** State, local and foreign income taxes properly deductible as an itemized deduction rather than a deduction for federal adjusted gross income.
- B** Interest expense on money borrowed to buy or carry bonds or securities whose income is exempt from New York State income tax, if not added on line 82.
- C** Ordinary and necessary expenses paid or incurred in connection with income or property held to produce income that is exempt from New York State income tax, if not added on line 82.
- D** Amortization of bond premium attributable to the tax year on any bond whose interest is exempt from New York State income tax, if not added on line 82.

**Line 87 New York adjustments to federal tax preference items** — See the instructions for Form IT-220 for an explanation of the required adjustments. On an attached schedule, give details of the adjustments to the federal tax preference items for each shareholder.

**Shareholder Information, Part IV — Lines 88 through 95** — Enter each individual shareholder's pro rata share of a tax credit or recapture of a tax credit which originated in a tax year in which the corporation was a New York S corporation.

Lines 88 through 95 should **not** include an individual shareholder's pro rata share of a tax credit or recapture of a tax credit which originated in a tax year in which the corporation was a New York C corporation.

Tax credits which originate in a New York S year:

- flow through to the individual shareholders of the New York S corporation under Article 22, and
- cannot be applied against the New York State corporation franchise tax in a New York S year, and
- cannot be applied against the New York State corporation franchise tax in a New York C year.

Tax credits which originate in a New York C year:

- do not flow through to the individual shareholders of the New York C corporation under Article 22, and
- cannot be applied against the New York State corporation franchise tax in a New York S year, and
- can be applied against the New York State corporation franchise tax in a New York C year.

Both a New York C year and a New York S year will be counted as a tax year for the carryforward of tax credits.

**Lines 88 and 89** — The investment tax credit and retail enterprise investment tax credit will be allowed at a reduced rate to individuals, estates and trusts who are shareholders of an electing New York S corporation (section 606(i)(1), Article 22). The amount of the investment tax credit allowed each shareholder is his or her pro rata share of the investment tax credit as computed by the electing New York S corporation on Form CT-46, Schedules A and B, computed for each shareholder:

- at the rate of 4% on property other than research and development property, or
- at the rate of 7% on research and development property.

The additional employment incentive tax credit computed on Form CT-46, Schedules C and D, is not allowed to a New York S corporation or its shareholders under Article 22 of the Tax Law.

**Line 90** — A recapture of the investment tax credit, retail enterprise investment tax credit and research and development investment tax credit by individuals, estates and trusts who are shareholders of an electing New York S corporation may be required (section 606(i)(3), Article 22). The recapture of the tax credit is required by the shareholders who claimed the credit when property on which the tax credit was claimed under Article 22 is disposed of, or ceases to be in qualified use, or when a claiming shareholder's proportionate stock interest is reduced. The amount of the tax credit to be recaptured by the shareholder is generally his or her pro rata share of the tax credit as computed by the New York S corporation on Form CT-46, Schedule E. If the credit was computed at a reduced rate, as above, the amount of tax credit to be recaptured should be computed at the same reduced rate.

**Lines 91, 92 93 and 94** — The economic development zone (EDZ) and Zone Equivalent Area (ZEA) tax credits will be allowed to individuals, estates and trusts who are shareholders of an electing New York S corporation (section 606(i)(1), Article 22). The amount of the EDZ and ZEA wage and capital tax credits allowed each shareholder is his or her pro rata share of these tax credits as computed by the New York S corporation on Forms DTF-601, DTF-601.1 and DTF-602. The amount of the EDZ investment tax credit on Form DTF-603 allowed to each shareholder shall be recomputed at a reduced rate of 8%.

The EDZ **additional** investment tax credit computed on Form DTF-603, Schedule C, is not allowed to a New York S corporation or its shareholders under Article 22 of the Tax Law.

**Line 95** — The recapture of the EDZ investment tax credit by individuals, estates and trusts who are shareholders of an

electing New York S corporation may be required (section 606(i)(3), Article 22). The recapture of the tax credit is required by the shareholders who claimed the credit when property on which the tax credit was claimed under Article 22 is disposed of or ceases to be in qualified use, or when a claiming shareholder's proportionate stock interest is reduced. The amount of the tax credit to be recaptured by the shareholder is his or her pro rata share of the tax credit as computed by the New York S corporation on Form DTF-603, Schedule E. If the credit was computed at a reduced rate as above, the amount of tax credit to be recaptured should be computed at the same reduced rate.

Attach the following forms to Form CT-3-S if they apply: CT-46, *Claim for Investment Tax Credit and Employment Incentive Credit*; DTF-601, *Claim for EDZ Wage Tax Credit*; DTF-601.1, *Claim for ZEA Wage Tax Credit*; DTF-602, *Claim for EDZ Capital Tax Credit*; and DTF-603, *Claim for EDZ Investment Tax Credit and Additional EDZ Investment Tax Credit*.

**Federal Returns** — Indicate which type of federal return you filed and list any years during the past five for which you were audited by the IRS. Attach a copy of federal Form 1120S to this return.

**Termination year** — When both a federal and New York S election terminate 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 S short year and Form CT-3 or CT-4 for the C short year.

In the case of a small business taxpayer, both the S short year and the C short year are short periods requiring annualization. See *Entire Net Income Base* on page 6.

If the federal and New York State S short year and C short year are for the same tax periods:

- enter as federal taxable income on line 1 of Form CT-3-S for the S short year, the amount of federal taxable income that would have been reported on federal Form 1120, line 28, had the New York S corporation not made the election under subchapter S of chapter one of the IRC and filed federal Form 1120 instead of federal Form 1120S for the same New York S short year. Attach a statement or pro forma federal Form 1120 showing the computation of federal taxable income required to be shown on federal Form 1120, line 28 for the S short year, and
- when computing the entire net income base for the New York S short year on Form CT-3-S, lines 1-21, and for the subsequent New York C short year on Form CT-3, lines 1-24 (CT-4, lines 1-8), use the same method of accounting as used for federal tax (i.e., daily pro rata allocation under section 1362(e)(2) of the IRC or normal tax accounting rules under section 1362(e)(3) of the IRC).

If the federal election continues, but a New York S election terminates on a day other than the first day of a tax year, the tax year is divided into two tax periods (a New York S short year and a New York C short year). The corporation must file Form CT-3-S for the New York S short year and Form CT-3 or CT-4 for the New York C short year.

- enter as federal taxable income on line 1 of Form CT-3-S for the New York S short year, the amount of federal taxable income that would have been reported on federal Form 1120, line 28, had the New York S corporation not made the election under subchapter S of chapter one of the IRC and filed federal Form 1120 instead of federal Form 1120S for the same New York S short year. Attach a statement or pro forma federal Form 1120 showing the computation of federal taxable income required to be shown on federal Form 1120, line 28, for the New York S short year, and
- when computing entire net income base for the New York S short year on Form CT-3-S, lines 1-21, and for the subsequent New York C short year on Form CT-3, lines 1-24 (CT-4, lines 1-8) use the normal tax accounting rules under section 1362(e)(3) of the IRC if:

- all persons who are shareholders in the corporation at any time during the New York S short year and all persons who are shareholders in the corporation on the first day of the New York C short year consent to such election, or
- there is a sale or exchange of 50% or more of the stock in the corporation during the year.

Otherwise, use the daily pro rata allocation method under section 1362(e)(2) of the IRC.

Check the box on page 4 of Form CT-3-S that indicates which method of accounting the New York S corporation elected for the New York S short year and subsequent New York C short year.

In no event will the total tax for the New York S short year and New York C short year be less than the fixed dollar minimum tax determined as if the corporation were a C corporation for the entire year.

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

**Signature** — This return must be signed by an officer of the corporation. Failure to sign the return will delay the processing of any refunds and may result in penalties. (See *Signature* on page 3.)

## Instructions for Form CT-3-S-ATT, Schedules A, B, C and D

### Schedule A, Part I — Computation of Business Allocation Percentage

**Lines 1 through 5** — Enter the New York State amounts in column A and the total amounts in column B.

**Line 1** — Enter the average value of real property you owned. Do not include real property and related equipment (except inventoriable goods) that are under construction and are not occupied or used during construction. Include property or equipment under construction that is partially used in the regular course of business only to the extent used.

**Line 2** — Enter the average value of real property rented to you as lessee. The value of rented real property is generally eight times the gross rent payable during the year covered by this return. Gross rent includes any amount payable as rent or in lieu of rent (such as taxes, repairs, etc.) and amortization of leasehold improvements that revert to the lessor at the end of the lease.

**Line 3** — Enter the average value of inventories.

**Line 4** — Enter the average value of tangible personal property you owned such as machinery, tools, and implements. Do not include cash, shares of stock, bonds, notes, credits, evidences of an interest in property or evidences of credit.

**Line 5** — Enter the average value of tangible personal property rented to you as lessee. The value of rented tangible personal property is generally eight times the gross rent payable during the year covered by this return. However, if you made the one-time election in 1987 (or a fiscal year beginning in 1987) to phase in over a five-year period the value of tangible personal property rented you must include 100% of the value of each item of rented tangible property for the tax years beginning in 1991 and thereafter.

**Lines 8 and 9** — Enter receipts from the sale of tangible personal property

**Line 10** — Enter receipts for services performed, based on where they are performed. Corporations engaged in broadcasting or the publication of newspapers and periodicals must allocate to New York State receipts from the sale of advertising to the extent that the broadcasts or publications are delivered to the ultimate purchasers, subscribers, listeners or viewers in New York State.

Receipts for Services to Regulated Investment Companies - Chapter 345 of the Laws of 1988 provided a new method for the allocation of receipts received from an investment company for the sale of management, administration or distribution services. 100% of the receipts from these services must be allocated based on the domicile of the shareholders of the investment company (section 210.3(a)(6)(A)(ii)). For a full description of the amendment to the law see TSB-M-88(9)C.

Receipts for services performed by air freight forwarders acting as principal, and like indirect air carriers, are allocated to New York State as follows:

Receipts from:	Allocate Receipts
— Pickup and deliveries both made in NYS . . . . .	100% to NYS
— Pickup only made in NYS . . . . .	50% to NYS
— Delivery only made in NYS . . . . .	50% to NYS

**Line 11** — Enter receipts from all property you rented to others.

**Line 12** — Enter receipts from royalties, allocated where earned.

**Line 13** — Enter all other business receipts, allocated where earned.

**Line 16** — Enter the total amount of all wages and compensation of employees other than general executive officers.

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 inside or outside New York State is not a general executive officer. Employees within New York include all employees regularly connected with or working out of an office or other place of business you maintained within New York State, no matter where the services of the employees were performed.

**Line 19** — Divide line 18 by three or by the number of factors. This is your allocation percentage for business income and capital. Enter this amount on Form CT-3-S, line 20, and on Form CT-3-S-ATT, Schedule B, line 40. If a factor is missing, add the remaining factors and divide by the total number of factors present. If all but one factor are missing, the remaining factor is the allocation percentage. A factor is missing only if both column A and column B are zero.

**Example**

Computation of allocation percentage for entire taxable income base:

	CORP. A	CORP. B	CORP. C
Property factor (line 7)	80%	60%	60%
Receipts factor (line 15)	10%	30%	30%
Payroll factor (line 17)	60%	0%	None*
<b>Total</b>	<b>150%</b>	<b>90%</b>	<b>90%</b>
Divided by	3	3	2
<b>Allocation percentage for business income</b>	<b>50%</b>	<b>30%</b>	<b>45%</b>

\*In the example above, Corporation C has no payroll factor since it has no employees either inside or outside New York State. Corporation B has no employees in New York State but has employees outside New York State.

**Schedule A, Part II — Computation of Business Allocation Percentage for Aviation Corporations**

**Line 20 Aircraft arrivals and departures** — Enter the number of landings and takeoffs of an aircraft of an aviation corporation and the number of pickups and deliveries by the aircraft. Arrivals and departures for maintenance, repair, refueling (where no debarkation or embarkation of traffic occurs), training, emergencies, and nonrevenue flights should not be included.

**Line 22 Revenue tons handled** — Enter the weight, in tons, of revenue passengers (at 200 pounds per passenger) and revenue cargo first received as originating or connecting traffic or finally discharged at an airport.

**Line 24 Originating revenue** — Enter revenue from the transportation of revenue passengers and revenue property first received as originating or connecting traffic.

**Schedule B, Computation and Allocation of Capital**

To determine the value of your assets for the capital base computations, you must include real property and marketable securities at fair market value. All other property must be included at the value shown on your books in accordance with generally accepted accounting principles. Use lines 28 through 32 to adjust the assets you reported on your federal return.

On lines 28 through 33, 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.

**Line 28** — Enter your total assets from the balance sheet of your federal tax return.

**Line 29** — Enter the federal balance sheet value of any real property and marketable securities included on line 28.

**Line 31** — Enter the fair market value of real property and marketable securities included on line 29. 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 fair market value of marketable securities from price quotes in financial newspapers. To determine fair market value of real property, you might consider recent sales of similar property and insurance value, where fully insured, disregarding any co-insurance provisions.

A cooperative housing corporation may determine the fair market value of its real estate, when only its assessed value for real property tax is known, by dividing the assessed value by the equalization rate. The equalization rate may be obtained from the State Board of Equalization and Assessment. Once a method of determining average fair market value is adopted by the taxpayer and is accepted by the Commissioner of Taxation and Finance, the method may not be changed on any subsequent return without the prior consent of the commissioner. For more information see TSB-M-85(18)C.

**Line 33** — Enter the amount of all liabilities (both long and short term) when computing the capital base. Use the same method of averaging used to determine average value of assets.

**Schedule C** — Complete Schedule C if you have any subsidiaries. A subsidiary is a corporation which is controlled by the taxpayer, because the taxpayer owns more than 50% of the total number of shares of the corporation's voting capital stock, issued and outstanding. A DISC is not a subsidiary.

**Schedule C, Part I — Computation and Allocation of Subsidiary Capital**

Subsidiary capital is the taxpayer's total investment in shares of capital stock of its subsidiaries and the amount of indebtedness owed to the taxpayer by its subsidiaries (whether or not evidenced by written instruments) on which interest is not claimed and deducted by the subsidiary against any tax imposed by Article 9-A, 32 or 33, less liabilities directly or indirectly attributable to subsidiary capital.

Loans and advances from the subsidiary to the parent may not: — offset the parent's investment in the stock of the subsidiary, or — offset loans and advances from the parent to the subsidiary.

Subsidiary capital does not include accounts receivable acquired in the ordinary course of trade or business either for services rendered or for the sale of property primarily held for sale to customers. Each item of subsidiary capital must be reduced by any of the parent's liabilities which are directly or indirectly attributable to that item of subsidiary capital.

**Column A.** Enter the full name and federal employer identification number of each subsidiary.

**Column C.** Enter the average value of each item of your investment in subsidiaries. Average value is generally computed quarterly if your usual accounting practice permits. However, you may use a more frequent basis such as a monthly, weekly or daily average. If your usual accounting practice does not permit a quarterly or more frequent computation of average value, you may use a semiannual or annual computation if no distortion of average value results. Value marketable securities at fair market value and other property using generally accepted accounting principles.

**Column D.** Deduct all liabilities both long-term and short-term, directly or indirectly attributable to subsidiary capital. Use the same method of averaging used to determine the average value of assets in column C. Enter for each item of subsidiary capital listed in column A the liabilities directly or indirectly attributable to it. Liabilities directly attributable to an asset (stock or debt) are those that were incurred to acquire that asset.

Use the following worksheet to determine the amount of liabilities indirectly attributable to a particular asset.

Worksheet	
Total liabilities	A _____
Liabilities directly attributable to:	
Subsidiary capital	B _____
Investment capital	C _____
Business capital	D _____
Add lines B, C and D	E _____
Subtract line E from line A	F _____
Enter amount from Schedule C, Part I, line 43, column C	G _____
Enter amount from Schedule B, line 32, column C	H _____
Divide line G by line H	I _____%
Multiply line F by line I	J _____
Value of the particular asset shown in Schedule C, Part I, column C	K _____
Enter amount from line G	L _____
Divide line K by line L	M _____%
Enter amount from line J	N _____
Multiply line M by line N	O _____

In column D, on the line for the asset in question, include the sum of the amount from line O of this worksheet and the amount of liabilities directly attributable to that asset.

**Column E.** Determine the net average value of each item listed in column A by subtracting column D from column C. The net average value of any item cannot be less than zero.

**Column F.** Enter the issuer's allocation percentage for each item listed in column A. The issuer's allocation percentage is used to compute the amount of subsidiary capital allocated to New York State. The issuer's allocation percentage is obtained from the New York State corporation franchise tax return filed by the corporation which issued the stock, bond or other security and represents that corporation's amount of capital employed in New York State as compared to total capital employed everywhere. Issuer's allocation percentages can be obtained from tax service publications or by written request (in duplicate) to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227

For information, see *Need Help?* on page 16.

If the corporation which issued the stock, bond or other security is not required to file a New York State corporation franchise tax return its issuer's allocation percentage is zero.

Always enter the issuer's allocation percentage from the first year preceding the current tax year. *Example: If the S corporation is computing Schedule C for 1994, enter the issuer's allocation percentage obtained from the issuer's 1993 tax return.*

**Column G.** Multiply net average value, column E, of each item listed in column A by its issuer's allocation percentage in column F. This is the value of subsidiary capital allocated to New York State.

**Schedule C, Part II — Income Attributable to Subsidiary Capital**

**Lines 46 through 48** — Enter the amount of interest, dividends and capital gains attributable to subsidiary capital. In addition, include on line 48 items such as collapsible corporation gain and gain on the sale of subsidiary capital which is not a capital asset for federal tax.

**Schedule D, Part I — Computation of Investment Capital and Investment Allocation Percentage**

The term *investment capital* means the value of the taxpayer's investments in stocks, bonds and other corporate or government securities, reduced by directly and indirectly attributable liabilities.

Include in investment capital only those stocks, bonds or other securities that are:

- (1) stocks and similar corporate equity instruments such as business trust certificates, and units in a publicly traded partnership taxable as a corporation pursuant to section 208.1 of the Tax Law;
- (2) debt instruments (such as bonds) issued by the United States, the District of Columbia, and any state, territory or possession of the United States, any foreign country or any political subdivision or governmental instrumentality of the foregoing;
- (3) qualifying corporate debt instruments (see Section 1);
- (4) options on any item described in (1), (2) or (3) above and not excluded from investment capital nor deemed to be cash (see *Instruments Deemed Cash* on page 14), or on a stock or bond index or on a futures contract on such an index, unless the options are purchased primarily to diminish the taxpayer's risk of loss from holding one or more positions in assets that constitute business or subsidiary capital; or
- (5) stock rights and stock warrants not in the possession of the issuer.

The term *instrument* includes stock and debt held in book entry form.

Investment capital does not include:

- (1) stock issued by the taxpayer;
- (2) stocks, bonds or other securities constituting subsidiary capital. Stock of a subsidiary is not subsidiary capital in the case of a target corporation in certain corporate acquisitions (see Tax Law section 208.4). Debt instruments issued by a subsidiary are also not subsidiary capital if the subsidiary claimed and deducted interest on the instruments under Article 9-A, 32 or 33 of the Tax Law;
- (3) securities of an individual, partnership, trust or other nongovernmental entity that is not a corporation pursuant to section 208.1 of the Tax Law (such as FNMA and GNMA pass-through certificates);
- (4) stocks, bonds and other securities of a DISC, or any indebtedness from a DISC;
- (5) regular and residual interests in a real estate mortgage investment conduit (REMIC) as defined in section 860D of the IRC;
- (6) futures and forward contracts; and
- (7) stocks, bonds and other securities held by the taxpayer for sale to customers in the regular course of business.

If you own a stock, bond or other security that is subject to a repurchase agreement, include this instrument as investment capital. Do not include if it is held as collateral. See regulation section 3-4.2(f) for a full discussion of securities held subject to a repurchase agreement.

Column A categorizes investment capital into two sections:

Section I - Corporate and governmental debt instruments

Section II - Corporate stock, stock rights, stock warrants and options

**Section I**

**Column A** - List investments in governmental and qualifying corporate debt instruments (including certificates of deposit), debt instruments issued by the US, any state, territory or possession of the US, the District of Columbia, or any foreign country or any political subdivision or government instrumentality of any of the foregoing. Do not include instruments deemed to be cash. See *Instruments Deemed Cash* below.

The term *qualifying corporate debt instrument* means all debt instruments issued by a corporation other than the following:

- instruments issued by the taxpayer or a DISC;
- instruments which constitute subsidiary capital in the hands of the taxpayer;
- instruments acquired by the taxpayer for services rendered or for the sale, rental or other transfer of property if the obligor is the recipient of the services or property. However, when a taxpayer sells or otherwise transfers property which is investment capital in the taxpayer's hands and receives in return a corporate obligation issued by the recipient of the property, the corporate obligation, if it is not otherwise excluded from investment capital, would constitute investment capital in the hands of the taxpayer;
- instruments acquired for funds if (i) the obligor is the recipient of the funds, (ii) the taxpayer is principally engaged in the business of lending funds, and (iii) the obligation is acquired in the regular course of the taxpayer's business of lending funds. A taxpayer is principally engaged in the business of lending funds if, during the tax year, more than 50% of its gross receipts consist of interest income from loans or net gain from the sale or redemption of notes or other evidences of indebtedness arising from loans made by the taxpayer. Receipts do not include return of principal or nonrecurring, extraordinary items;
- accepted drafts (such as banker's acceptances and trade acceptances) if the taxpayer is the drawer of the draft;
- instruments issued by a corporation that is a member of an affiliated group which includes the taxpayer. An *affiliated group* is a corporation or corporations and the common parent thereof. A *common parent* means an individual, corporation, partnership, trust or estate that owns or controls, either directly or indirectly, at least 80% of the voting stock of the corporation or corporations. An affiliated group also includes all other corporations at least 80% of the voting stock of which is owned or controlled, either directly or indirectly, by one or more of the corporations included in the affiliated group or by the common parent and one or more of the corporations included in the affiliated group;
- accounts receivable, including those held by a factor.

**Instruments Deemed Cash** — A debt instrument described above or included in investment capital must be treated as cash if:

- 1) payable on demand;
- 2) payable by its terms within 6 months and 1 day from the date the debt was incurred; or
- 3) payable by its terms more than 6 months and 1 day from the date the debt was incurred, on each day in the tax year on and after the first day in the tax year which is not more than 6 months and 1 day prior to the maturity date (see *Examples*).

Cash, under some circumstances, may be treated as investment capital. See the instructions for line 52.

**Examples**

1. A calendar year taxpayer owns a municipal bond with a maturity date of 1/31/95. As of 7/30/94, the first day not more than six months and one day before the maturity date, and on each day thereafter, the bond is deemed to be cash. The bond should be included in Section I, but in computing the average value of the bond and attributable liabilities, the taxpayer should be treated as no longer owning the bond on any date on or after 7/30/94. The value of the bond should then be treated as cash for each day the taxpayer continues to own the bond after 7/29/94.

2. A taxpayer purchased a four-month qualifying corporate debt instrument on the day it was issued, and on the maturity date renewed it for an additional four-month term. The two four-month debt instruments are deemed to be cash. The renewal of the first four-month debt instrument is treated as the creation of a second, separate debt instrument, each of the two instruments being due within six months and one day of the date on which the debt was incurred.
3. A calendar-year taxpayer owns a five year qualifying marketable corporate bond with a maturity date of 1/2/95. The taxpayer also owns corporate stock, but has no cash at any point during the 1994 tax year. The bond is deemed to be cash as of 7/1/94, the date six months and one day prior to maturity. The fair market value of the bond is \$95,000 on 3/31/94, \$90,000 on 6/30/94, \$98,000 on 9/30/94 and \$100,000 on 12/31/94. The bond should be listed in Section I, Column A, because it qualifies as investment capital. Its average value, to be stated in Column C of Section I, is computed as  $(\$95,000 + \$90,000 + 0 + 0)/4 = \$46,250$ . The use of the zeros represents the fact that the taxpayer is deemed to own cash, and not a bond, on 9/30 and 12/31. The average value of the bond insofar as it is deemed to be cash is computed as  $(0 + 0 + \$98,000 + \$100,000)/4 = \$49,500$ . The use of the zeros represents the fact that the taxpayer owned no cash on 3/31 or 6/30. The figures \$98,000 and \$100,000 represent the fact that the taxpayer is deemed to own cash in these amounts on 9/30 and 12/31, respectively. The taxpayer had liabilities attributable to the bond. The amount of the liabilities should be treated in conformity with the above treatment of the value of the bond itself. Thus, the liabilities, which were in the amount of \$10,000, \$12,000, \$8,000 and \$6,000 on the four test dates yield an average liability of \$5,500 attributable to the listed bond  $[(\$10,000 + \$12,000 + 0 + 0)/4 = \$5,500]$ , to be entered in Column D of Section I, and an average liability of \$3,500  $[(0 + 0 + \$8,000 + \$6,000)/4 = \$3,500]$  to be applied to determine the net average value of the taxpayer's cash. If the taxpayer elects to treat the deemed cash as investment capital, it would include \$49,500 on line 52, Column C and \$3,500 on line 52, Column D. If the cash election is not made, the \$49,500, reduced by \$3,500, would constitute business capital.
4. A taxpayer purchased a debt instrument includable in Section I with a maturity debt of 12/15/94. Any such investment will be deemed cash on the same numerical date as the maturity date, less one day, six months prior. Thus the date on which this debt instrument becomes cash is 6/14/94.

**Section II**

**Column A** — List investments in the following:

- stock issued by a corporation;
- options as described in item (4) of the definition of investment capital listed above;
- units in a publicly traded partnership treated as a corporation for purposes of Article 9-A of the Tax Law;
- business trust certificates;
- stock rights and stock warrants not in the possession of the issuer; and
- other corporate equity instruments similar to stock.

**Sections I and II - Columns C through G**

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

When a debt instrument ceases to be treated as investment capital in Section I and is treated as cash because of the six month and one day rule, compute the column C average value of the debt instrument and the column C average value of cash as shown in *Example 3* on page 14.

**Column D** — Deduct all liabilities, both long-term and short-term, directly or indirectly attributable to investment capital. Use the same method of averaging used to determine the average value of assets in column C. Enter for each item of investment capital listed in column A the sum of the liabilities directly or indirectly attributable to it. Liabilities directly attributable to an asset are those that were incurred to acquire that asset.

When a debt instrument ceases to be treated as investment capital in Section I and is treated as cash because of the six month and one day rule, compute the column D liabilities of the debt instrument and the column D liabilities of cash as shown in *Example 3* on page 14.

Use the following worksheet to determine the amount of liabilities indirectly attributable to a particular asset.

Worksheet	
Total liabilities	A _____
Liabilities directly attributable to:	
Subsidiary capital	B _____
Investment capital	C _____
Business capital	D _____
Add lines B, C and D	E _____
Subtract line E from line A	F _____
Enter amount from Schedule D, Part I, line 53, column C	G _____
Enter amount from Schedule B, line 32, column C	H _____
Divide line G by line H	I _____ %
Multiply line F by line I	J _____
Value of the particular asset shown in Schedule D, Part I, column C	K _____
Enter amount from line G	L _____
Divide line K by line L	M _____ %
Enter amount from line J	N _____
Multiply line M by line N	O _____

In column D, on the line for the asset in question, include the sum of the amount from line O of this worksheet and the amount of liabilities directly attributable to that asset.

**Column E** — Determine the net average value of each item listed in column A by subtracting column D from column C. The net average value of any item cannot be less than zero.

**Column F** — Enter the issuer's allocation percentage for each investment listed in column A. The issuer's allocation percentage is used to compute the amount of investment capital allocated to New York State. The issuer's allocation percentage is obtained from the New York State corporation franchise tax return filed by the corporation which issued the stock, bond or other security and represents that corporation's amount of capital employed in New York State as compared to total capital employed everywhere. Issuer's allocation percentages can be obtained from tax service publications or by written request (in duplicate) to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.

If the corporation which issued the stock, bond or other security is not required to file a New York State corporation franchise tax return, its issuer's allocation percentage is zero.

Always enter the issuer's allocation percentage from the first year preceding the current tax year. *Example: If the New York S corporation is computing Schedule D for 1994, enter the issuer's allocation percentage obtained from the issuer's 1993 tax return.*

Issuer's allocation percentages are available on some electronic and print tax services

**Column G** — Determine the value of each investment in column A by multiplying each item in column E by the issuer's allocation percentage listed in column F. The issuer's allocation percentage for all governmental securities is 0%.

**Line 51** — The investment allocation percentage is computed without the addition of cash on line 52.

**Line 52 - Cash Election** — At the election of the taxpayer, cash on hand and cash on deposit may be treated as either investment capital or business capital. However, no election to treat cash as investment capital may be made when the taxpayer has no other investment capital.

Cash includes shares in a money market mutual fund. A money market mutual fund is a no-load, open-end investment company registered under the Federal Investment Company Act of 1940 that attempts to maintain a constant net asset value per share (i.e., a "money market" fund.) Also see *Instruments Deemed Cash* on page 14.

Cash cannot be split between business capital and investment capital. It must be treated as all business capital or all investment capital.

**Schedule D, Part II — Computation of Investment Income for Allocation** — Complete this schedule if you are allocating part of your entire net income by using an investment allocation percentage from Schedule D, Part I. Investment income is income from investment capital to the extent it is included in entire net income, less any deductions allowable in computing entire net income that are attributable to investment capital or investment income, and less a portion of any net operating loss deduction allowable in computing entire net income.

Income from investment capital includes dividends (other than from a subsidiary or a DISC), interest and capital gains and losses from sales or exchanges of investment capital that are included in the computation of entire net income. Professional service corporations (Article 15 or 15-A BCL) must use an investment allocation percentage of 100% (section 210.3(b)(3)).

**Line 54** — Enter interest income received from investment capital listed in Schedule D, Part I, Section I, Column A, to the extent included in entire net income.

**Line 55** — Enter interest income received from bank accounts (cash) if included on line 52. Include interest income received from a savings account, checking account, time deposit account (i.e., certificate of deposit) or similar accounts, which are usually evidenced by a passbook. Enter "0" on this line if the investment allocation percentage on line 51 is zero. This interest income will be allocated by the business allocation percentage as business income.

**Line 56** — Enter interest income from money market mutual funds and debt instruments deemed cash, if included on line 52.

**Line 57** — Enter dividend income received from investment capital listed in Schedule D, Part I, Section II, Column A, to the extent included in entire net income. Include the following:

- 50% of dividends received from nonsubsidiary stock which meets the holding requirements of IRC section 246(c). 50% of these dividends were deducted on Form CT-3-S, line 10;
- 50% of subpart F income constituting dividends received from a controlled foreign corporation in which you own 50% or less of the voting stock (see federal Form 1120, Schedule C, line 14). See TSB-A-87 (23.1)c for additional information. 50% of these dividends were deducted on Form CT-3-S, line 10;
- 100% of dividends received from nonsubsidiary stock which did not meet the holding requirements of IRC section 246(c); and
- 100% of dividends received from the stock of a target corporation (if you were required to file Form CT-244, check the acquisition box and answer Yes on line 15 or 16). See Tax Law sections 208.4, 208.9(b)(12) and (14).



**Line 58** — Enter any net capital gains or losses from the sales and exchanges of securities constituting investment capital, that were used in computing federal taxable income.

**Line 59** — Other items of investment income include but are not limited to the following:

- premium income from an unexercised covered call option if the item which covers the call is an item constituting investment capital;
- interest income from a target corporation or capital gain or loss of a target corporation (if you were required to file Form CT-244, you checked the acquisition box and answered Yes on line 15 or 16). See Tax Law sections 208.4 and 208.9(b)(13).

**Line 61** — Enter deductions directly or indirectly attributable to investment income or investment capital. To determine the amount of deductions indirectly attributable, use the following formula:

$$\begin{array}{r} \text{Total amount} \\ \text{of deductions} \\ \text{subject to} \\ \text{indirect attribution} \end{array} \times \frac{\text{Average value of assets included in investment} \\ \text{capital (from Schedule D, line 53, column C)}}{\text{Average value of all assets} \\ \text{(from Schedule B, line 32, column C)}}$$

To determine the total amount of deductions subject to indirect attribution, use the following procedure:

(a) Subtract from the amount of federal deductions included on federal Form 1120, line 27 the following under section 208.9(b)(6) of the Tax Law:

- Those federal deductions included in the line 27 amount which are required to be added back to federal taxable income in computing entire net income, other than the amount of the deductions, directly or indirectly attributable to subsidiary capital under section 208.9(b)(6); and
- the New York excess depreciation add-back described at Tax Law, section 208.9(b)(11) (relating to the disposition of certain decoupled property) to the extent that this amount was included in (b) below, for prior tax years which began on or after January 1, 1987.

(b) Increase the amount arrived at in (a) by the following deductions which are subtracted from federal taxable income in computing entire net income:

- Interest expense attributable to interest income not includable in federal taxable income but required to be included in entire net income (e.g., municipal bond interest), to the extent the interest expense is not deducted for federal taxes. (Tax Law, section 208.9(b)(2); see also Franchise Tax Regulations, 20 NYCRR 3-2.3(a)(2).)
- In the case of a taxpayer organized outside the United States, deductions attributable to income which is not included in federal taxable income but is required to be included in entire net income (e.g., foreign source income). (Tax Law, section 208.9(c); see also Franchise Tax Regulations, 20 NYCRR 3-2.3(a)(9).)

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

(c) Reduce the amount arrived at in (b) by the deductions included therein which are directly attributable to subsidiary, investment or business capital.

For more information see TSB-M-88(5)C.

**Line 63** — Apportion any net operating loss deduction claimed on Form CT-3-S, line 12, between business income and investment income. Divide investment income before deduction of any net operating loss (Schedule D, Part 11, line 62) by entire net income before deduction of any net operating loss (Form CT-3-S, line 16 plus line 12). Multiply the result by the net operating loss deduction. Enter this amount on line 63

### Need Help?

**For forms or publications**, call toll free (from New York State only) 1 800 462-8100. From areas outside New York State, call (518) 438-1073.

**For information**, call toll free (from New York State only) 1 800 CALL TAX (1 800 225-5829). From areas outside New York State, call (518) 438-8581.

**Telephone assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday.**

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

**Hotline for the Hearing and Speech Impaired** - If you have a hearing or speech impairment and have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free (within the continental U.S.) 1 800 634-2110. Hours of operation are from 8:30 a.m. to 4:15 p.m., Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

**If you need to write**, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.

Imagine hundreds of creatures that sprint, swim, fly or slither. That is exactly how diverse New York's fish and wildlife species are. You too, can take an active part in ensuring the fish and wildlife diversity in New York State.

Picture yourself involved in learning about the wildlife in New York State, observing various fish and wildlife resources and helping to restore and manage them to benefit both wildlife and people.

This can be done when you **Return a Gift to Wildlife** on your New York State tax form. Also, remind your tax preparer that you wish to contribute to this worthwhile program. Remember to **Return a Gift to Wildlife**, the program dedicated to conserving New York's fish and wildlife diversity.

For additional program information or to donate directly, please write to:

**Return a Gift to Wildlife, NYS DEC, Room 122, Program 5, 50 Wolf Road, Albany NY 12233-4830.**

