

# Instructions for Form CT-32

## Franchise Tax Return for Banking Corporations

### Article 32, Tax Law

#### General Information

As a result of the enactment of Chapter 298 of the laws of 1985, Form CT-32 for 1985 is to be used only by those corporations subject to tax under Article 32 whose taxable year begins on or after January 1, 1985.

#### Who Must File

Article 32 of the Tax Law imposes a Franchise Tax on every banking corporation for the privilege of exercising its corporation franchise or doing business in New York State in a corporate or organized capacity for all or any part of its taxable year and on every bank holding company when included in a combined return.

Included as banking corporations are the following:

**A. New York State Banking Corporations —** Every corporation organized under the laws of New York State which is authorized to do or is doing a banking business is a banking corporation. Such corporations include, but are not limited to, commercial banks, trust companies, limited purpose trust companies, subsidiary trust companies, savings banks, savings and loan associations, agreement corporations, and the New York Business Development Corporation. Also included as a banking corporation is the New York State Mortgage Facilities Corporation.

**B. Banking Corporations Organized under the laws of another state or country —** Every corporation organized under the laws of another state or country which is doing a banking business is a banking corporation. Such corporations include, but are not limited to, commercial banks, trust companies, savings banks, savings and loan associations and agreement corporations.

**C. Banking Corporations Organized under the Laws of the United States —** Every national banking association, federal savings bank, federal savings and loan association and every other corporation organized under the authority of the United States (including an Edge Act corporation) which is doing a banking business, is a banking corporation. Also, every production credit association organized under the Federal Farm Credit Act of 1933 which is doing a banking business and all of whose stock held by the Federal Production Credit Corporation has been retired is a banking corporation.

**D. Corporations owned by a Bank or a Bank Holding Company —** Every corporation which is principally engaged in a business which:

- might lawfully be conducted by a corporation subject to Article 3 of the New York Banking Law or by a national banking association, or

- is so closely related to banking or managing or controlling banks as to be a proper incident thereto as defined in Section 4(c)(8) of the Federal Bank Holding Company Act of 1956, as amended,

is a banking corporation, provided such corporation's voting stock is 65% or more owned or controlled directly or indirectly by a banking corporation described above or by a bank holding company. Provided further, in no event is a 65% or more owned corporation which is principally engaged in a business described in Section 183, 184 or 186 of the Tax Law (such as a telegraph, telephone, trucking, railroad, gas or electric business) subject to Article 32 of the Tax Law if any of its business receipts from such principally engaged business are from other than a 65% or more affiliated corporation.

A 65% or more owned corporation which was subject to tax under Article 9-A for its taxable year ending in 1984 may make a one time election to continue to be taxable under Article 9-A. Such election will be in effect until revoked by the taxpayer. In no event can the election or revocation of the election be for part of the taxable year. The election is made by filing of a tax return pursuant to Article 9-A of the Tax Law and the revocation is made by the filing of a tax return pursuant to Article 32 of the Tax Law.

#### License and Maintenance Fees

A foreign bank holding company and a 65% or more owned foreign corporation which is a banking corporation as defined on page 1 of these instructions under "Who Must File" Item D, and which are subject to tax under Article 32, are liable for a license fee and maintenance fee imposed by Section 181 of the Tax Law.

#### Definition of Doing Business Within New York State

The phrase "doing business" is used in a comprehensive sense and includes all activities which occupy the time or labor of people for profit. In determining whether or not a corporation is doing business in New York State consideration is given to such factors as: the nature, continuity, frequency and regularity of the activities of the corporation in New York State; the location of the corporation's offices and other places of business; the employment in New York State of agents, officers and employees of the corporation and other relevant factors. Activities which constitute doing business in New York State include: operating a branch, loan production office, representative office or a bona fide office in New York State. Activities which do not constitute doing business in New York State include: occasionally acquiring a security interest in real or personal property located in New York State or occasionally acquiring title to property located in New York State through foreclosure of a security interest.

#### Definition of Banking Business

The phrase "banking business" means the business a corporation may be created to do under Article 3 (Banks and Trust Companies), Article 3-B (Subsidiary Trust Companies), Article 5 (Foreign Banking Corporations and National Banks), Article 5-A (New York Business Development Corporation), Article 6 (Savings Banks) or Article 10 (Savings and Loan Associations) of the New York State Banking Law or the business a corporation is authorized to do by such articles. With respect to a national banking association, federal savings bank, federal savings and loan association or production credit association, the phrase "banking business" means the business a national banking association, federal savings bank, federal savings and loan association or production credit association may be created to do or is authorized to do under the laws of the United States or the laws of New York State.

The phrase "banking business" also means such business as any corporation organized under the authority of the United States has authority to do which is substantially similar to the business which a corporation may be created to do under Article 3, 3-B, 5, 5-A, 6 or 10 of the New York State Banking Law or any business which a corporation is authorized to do by such article.

#### Definition of a Bank Holding Company

The following are bank holding companies:

- a corporation subject to Article 3-a of the New York Banking Law,
- a corporation registered under the Federal Bank Holding Company Act of 1956, as amended and
- a corporation registered as a savings and loan holding company (excluding a diversified savings and loan holding company) under the Federal National Housing Act, as amended.

#### When and Where to File

Form CT-32 is due two and one-half months after the close of the taxable year. Corporations reporting on a calendar year basis for 1985, must file on or before March 17, 1986. An extension of time to file the tax return may be requested by filing form CT-5.

Mail reports to:  
Processing Unit  
P.O. Box 1909  
Albany, NY 12201

## International Banking Facility (IBF) Election

A corporation which has an International Banking Facility (IBF) located in New York State may, in lieu of the deduction for the adjusted eligible net income of such IBF, elect on an annual basis to reflect the results of its IBF operations in its entire net income allocation percentage and in its alternative entire net income allocation percentage. Such election must be made within 45 days from the beginning of its taxable year (20 days after the close of its taxable year for taxable years beginning in 1985). Such election must be in writing and addressed to:

NYS Department of Taxation and Finance  
COAB—Corporation Tax  
W. A. Harriman Campus  
Albany, NY 12227

The election is required to be made on an annual basis and is binding for that taxable year and cannot be changed by filing an amended return.

## Allocation

A corporation which is doing business both within and without New York State is entitled to allocate its entire net income, alternative entire net income and taxable assets within and without New York State. A corporation which is not doing business without New York State must allocate its entire net income, alternative entire net income and taxable assets 100% to New York State. However, a corporation that has an International Banking Facility (IBF) located in New York State may elect to reflect the results of its IBF operations in its entire net income allocation percentage and in its alternative entire net income allocation percentage.

## Combined Return

In all cases where a combined return is permitted or required, a completed form CT-32 must be filed by each corporation included in the combined return.

## Copy of Federal Return

Attach a copy of federal Form 1120 or 1120F complete with attachments and any other returns or information requested in this return.

## Schedule A

- Line 1. Enter allocated taxable entire net income computed in Schedule B, line 46 and multiply by the tax rate of 9%.
- Line 2. Enter allocated taxable alternative entire net income computed in Schedule C, line 54 and multiply by the tax rate of 3%.
- Line 3. Enter allocated taxable assets computed in Schedule D, line 59 and multiply by the appropriate tax rate.
- Line 5. Enter the largest tax computed at lines 1 through 4.

- Line 6. Enter the amount claimed for the following tax credits:
- Eligible Business Facility Tax Credit (Sec. 1456(b)). Attach Form CT-45.
  - Tax Credit for Servicing Mortgages (Sec. 1456(a)). If you claim this credit you must submit a copy of the letter from the New York State Mortgage Agency approving the credit. This credit can reduce the tax to zero.
  - Additional Mortgage Recording Tax Credit (Sec. 1456(c)). See Form CT-43 for detailed instructions. These credits, except for the credit for servicing mortgages, may not reduce your tax below the minimum tax of \$250.00. The tax credits must be claimed in the same order as they are described.

Line 8a. Use this line if you have filed an *Application For Extension* (CT-5). Enter amount shown at line 3 of Form CT-5.

Line 8b. If the tax at line 7 exceeds \$1,000 and Form CT-5 was not filed, a mandatory first installment is required for the period following that covered by this report. Enter 25% of tax shown at line 7.

Line 10. The amount entered at this line should be the total of all prepayments of estimated tax including overpayment carryover from preceding period and payment made with Form CT-5, *Application For Extension*, if this form is filed. To insure that you have received proper credit for payments, please complete the payment reconciliation on page 7.

Line 12. Late Filing — Interest — If the tax due is not paid on or before the due date (determined without regard to any extension of time), interest must be paid on the amount of the underpayment from due date to the date paid. The interest rate should be determined in accordance with Part 603 of the Tax Regulations. Interest will be compounded daily.

- Line 13a. Late Filing — Additional Charge — Additional charges for late filing are computed on the amount of tax less any payment made on or before the prescribed due date.
- If a report is not filed when due or if the application for extension is invalid, add to the tax 5% per month up to 25% (Section 1085 (a) (1) (A)).
  - If a report is not filed within 60 days of the prescribed due date, the addition to tax cannot be less than the smaller of \$100 or 100% of the amount required to be shown as tax (Section 1085 (a) (1) (B)).

- For failure to pay the tax shown on a report, add to the tax ½% per month up to 25% (Section 1085 (a) (2)).
- 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 report explaining the delay in filing, payment, or both (Section 1085).

Line 13b. Penalty for Underpaying Estimated Tax — Every corporation whose New York State franchise tax liability can reasonably be expected to exceed \$1,000 must file a declaration of estimated tax, Form CT-400. A penalty will be imposed if a taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment payment of estimated tax, see Form CT-222, *Underpayment of Estimated Tax by Corporations*.

Line 16. Except for an alien corporation, the issuer's allocation percentage is 100% or the percentage computed on Schedule H, Part II, line 5, whichever is less. In the case of an alien corporation, the issuer's allocation percentage is computed by dividing New York State allocated alternative entire net income by worldwide net income. If your net income shows a loss in either the numerator or denominator, or both, the percentage must be computed by dividing New York gross income by worldwide gross income.

## Schedule B

Line 17. Enter federal taxable income before net operating loss and special deductions.

Corporations filing federal returns on a consolidated basis enter federal taxable income before net operating loss and special deductions that would be reported if a separate federal return had been filed.

Attach a copy of consolidated federal return with spread sheets or work papers supporting the federal consolidated return.

Line 18a. Corporations organized under the laws of a country other than the U.S. enter dividends (including the IRC Section 78 gross-up on dividends to the extent not already included in federal taxable income) and interest on any kind of stock, securities or indebtedness which is effectively connected with the conduct of a trade or business in the U.S. pursuant to Section 864 of the IRC and is excluded from federal taxable income.

- Line 18b. Corporations organized under the laws of a country other than the U.S. enter any income effectively connected with the conduct of a trade or business in the U.S. pursuant to Section 864 of the IRC which is exempt from federal taxable income under any treaty obligation of the U.S. and any income which would be treated as effectively connected with the conduct of a trade or business in the U.S. pursuant to Section 864 of the IRC were it not excluded from gross income pursuant to Section 103(a) of the IRC.
- Line 19. Corporations organized under the laws of the U.S. or any of its states enter dividends (including the IRC Section 78 gross-up on dividends to the extent not already included in federal taxable income) and interest on any kind of stock, securities or indebtedness which was excluded from federal taxable income. Include all interest on state and municipal bonds and obligations of the U.S. and its instrumentalities.
- Line 20. Enter any taxes on or measured by income or profit paid or accrued to the United States, any of its possessions or any foreign country, which was deducted in computing federal taxable income at line 17.
- Line 21. Enter all New York State franchise taxes imposed under Articles 13-A and 32 which were deducted in computing federal taxable income.
- Line 22. Enter amounts of federal depreciation from lines 62 and 64.
- Line 23. Enter amount of New York State gain or (loss) from line 66.
- Line 24a. Enter any amount claimed as a deduction in computing federal taxable income solely as a result of an election made pursuant to the provision of IRC, Section 168 (f) (8). (Safe Harbor Lease as it was in effect for agreements entered into prior to 1/1/84).
- Line 24b. Enter any amount which the taxpayer would have been required to include in the computation of its federal taxable income had it not made the election permitted pursuant to the provisions of IRC Section 168 (f)(8) (Safe Harbor Lease as it was in effect for agreements entered into prior to 1/1/84).
- Line 25. If an additional mortgage recording tax credit is being claimed, entire net income must be adjusted by adding back the additional mortgage recording tax claimed as a credit and used as a deduction in the computation of federal taxable income. The gain on the sale of real property on which the additional mortgage recording tax credit was claimed must be increased when all or any portion of the credit was also used in the basis for computing the federal gain.
- Line 29. Enter expenses not deducted on your federal return which are applicable to income from dividends or interest which is exempt from federal tax, shown at lines 18 and 19.
- Line 30. Enter amount of New York State allowable depreciation from line 65.
- Line 31. Enter amount of federal gain or (loss) from lines 67 and 69.
- Line 32. Enter any income or gain from installment sales included in federal taxable income which was previously includable in computing tax under Articles 9B or 9C.
- Line 33. Enter the amount of IRC Section 78 dividends included at lines 17, 18 and 19.
- Line 34a. Enter any amount included in federal taxable income solely as a result of an election made pursuant to the provisions of IRC, Section 168 (f)(8) (Safe Harbor Lease as it was in effect for agreements entered into prior to 1/1/84).
- Line 34b. Enter any amount which the taxpayer could have excluded from federal taxable income had it not made the election pursuant to IRC Section 168 (f)(8) (Safe Harbor Lease as it was in effect for agreements entered into prior to 1/1/84). For additional information on Safe Harbor Leases see our TSB-M-82 (15) C Memorandum.
- Line 35. A deduction may be made for the amount of wages which were disallowed in the computation of your federal taxable income for the purpose of the Jobs Credit. Attach a copy of federal Form 5884.
- Line 36. Enter any amount of money or other property (whether or not evidenced by a note or other instrument) received from the Federal Deposit Insurance Corporation under Section 13(c) of the Federal Deposit Insurance Act, as amended, or the Federal Savings and Loan Insurance Corporation under Section 406(f) (1), (2), (3) or (4) of the Federal National Housing Act, as amended.
- Line 37. Attach a rider showing interest income from subsidiary capital.  
Subsidiary means a corporation of which more than 50% of the number of the shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned by the taxpayer.
- Subsidiary capital means the total of the investment of the taxpayer in shares of stock of its subsidiaries, and the amount of indebtedness owed to the taxpayer by its subsidiaries, whether or not evidenced by written instrument on which interest is not claimed and deducted by the subsidiary for purposes of any tax imposed by Articles 9-A, 32 or 33 of the Tax Law.
- Subsidiary capital does not include accounts receivable acquired in the ordinary course of trade or business either for services rendered or for sales of property held primarily for sale to customers. Each item of subsidiary capital must be reduced by any liabilities of the taxpayer (parent) payable by their terms on demand or not more than one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year covered by the report which are attributable to that item of subsidiary capital.
- Line 38. Attach a rider showing dividend income, gains and losses from subsidiary capital. Deduct from subsidiary dividends any Section 78 dividends deducted at line 33 which are attributable to dividends from subsidiary capital. If losses from subsidiary capital exceed dividends and gains from subsidiary capital, the net loss is multiplied by 60% and the result is shown in brackets as a negative deduction.
- Line 39. Attach a rider showing a breakdown of interest income on obligations of New York State, its political subdivisions and obligations of the U.S. The term "obligation" refers to obligations incurred in the exercise of the borrowing power of New York State or any of its political subdivisions or of the United States. The term "obligation" does not include obligations held for resale in connection with regular trading activities or obligations which guarantee the debt of a third party. The following do not qualify under this provision: guaranteed student loans, industrial development bonds issued pursuant to Article 18-A of the New York State General Municipal Law, FNMA mortgage-backed securities and GNMA mortgage-backed securities.
- Line 40. Enter amount from line 93 of Schedule G if the 18F election has not been made.
- Line 45. A deduction for optional depreciation may be claimed at this line. Enter amounts from lines 63 and 68.

## Schedule C

- Line 47. Entire net income must be the same as that reported on line 43, Schedule B. Whatever election the taxpayer makes concerning the IBF modification to entire net income applies to the computation of alternative entire net income.
- Line 48. Enter the amount subtracted at line 37 of Schedule B.
- Line 49. Enter the amount subtracted (or, in the case of a loss, added) at line 38, Schedule B.
- Line 50. Enter the amount subtracted at line 39, Schedule B.
- Line 53. Enter amount from line 45.

## Schedule D

### Computation of Taxable Assets

A taxpayer is not subject to the tax on taxable assets for that portion of the taxable year in which it had outstanding net worth certificates issued to the Federal Savings and Loan Insurance Corporation (FSLIC) in accordance with Section 406 (f) (5) of the Federal National Housing Act, as amended, or outstanding net worth certificates issued to the Federal Deposit Insurance Corporation (FDIC) in accordance with Section 13 (i) of the Federal Deposit Insurance Act, as amended.

- Line 55. Compute the average total value of assets which includes money or other property received from the FSLIC or FDIC and interbank placements. The average total value of assets is computed on a quarterly basis, or at the option of the taxpayer on a more frequent basis, such as monthly, weekly or daily. Taxable assets means the average total value of those assets which are properly reflected on a balance sheet, the income or expenses of which are properly reflected (or would have been properly reflected if not fully depreciated or expensed or depreciated or expensed to a nominal amount) in the computation of the taxpayer's alternative entire net income for the taxable year or in the computation of the eligible net income of the taxpayer's IBF for the taxable year. Tangible real and personal property, such as buildings, land, machinery and equipment is to be valued at cost. Intangible property such as loans, investments, coin and currency is to be valued at book value.
- Line 56. Include any amount of money or other property (whether or not evidenced by a note or other instrument) received from or attributable to amounts received from the FDIC pursuant to Section 13 (c) of the Federal Deposit Insurance Act, as amended, or the FSLIC pursuant to Section 406 (f) (1) (2) (3) or (4) of the Federal National Housing Act, as amended.

- Line 57. For taxpayers whose taxable assets are comprised of 20% or more of interbank placements of funds, enter the amount of interbank placements up to an amount not exceeding \$500 million. To determine whether a taxpayer's taxable assets are comprised of 20% or more of interbank placements of funds, divide total interbank placements by the result determined by reducing total assets (line 55) by any money or property the taxpayer received from the FDIC or FSLIC (line 56). Taxpayers claiming this deduction must attach a rider showing this qualifying computation.

The phrase "interbank placements" means the average value of interest bearing funds, with a maturity of less than one year, placed or deposited by a taxpayer with a banking corporation (other than one described on page 1 under "Who Must File", Item D) provided such banking corporation is not 65% or more affiliated with the taxpayer. In determining the average value of interest bearing funds, the book value of such funds must be used. The average value of interest bearing funds is computed on a daily basis. Where the taxpayer's usual accounting practice does not permit the computation of the average value of interest bearing funds on a daily basis, a computation on a weekly basis will be permitted.

- Line 60. The net worth ratio is determined by dividing the average of the four quarterly balances of net worth ending within the taxable year, by the average of the four quarterly balances of all assets ending within the taxable year. Such quarterly balances shall be computed in the same manner as required by the Federal Home Loan Bank Board Quarterly Financial Report (Form 1313) whether or not such report is required. The term net worth means regulatory net worth as defined by Federal Home Loan Bank Board Regulations, 12 CFR 561.13 as in effect on 6/1/85. The term all assets means the total amount of assets of the taxpayer, net of contra-asset accounts as defined by Federal Home Loan Board Regulations, 12 CFR 572.2 (h) as in effect on 6/1/85.
- Line 61. The percentage of mortgages included in total assets is determined by dividing the average of the four quarterly balances of mortgages ending within the taxable year by the average of the four quarterly balances of all assets ending within the taxable year. Such quarterly balances shall be computed in the same manner as the Report of Condition required for FDIC or FSLIC purposes whether or not

such report is required. The term mortgages means loans secured by real property within or without New York State, participations in and securities collateralized by pools of residential mortgages, whether or not issued or guaranteed by a United States government agency, and loans secured by stock in a cooperative housing corporation.

## Schedule E

- Part I At the election of the taxpayer, up to double the amount of federal depreciation on qualified tangible property (except personal property leased to others) may be deducted in lieu of the amount of normal depreciation. The original use of such property must commence with the taxpayer and the property must be (1) depreciable tangible property as defined by Section 167 of the Internal Revenue Code; (2) constructed or acquired after December 31, 1963 and on or before December 31, 1967 and (3) have a situs in New York. The total deduction of all years, including years covered by Articles 9-B or 9-C with respect to any unit of property, may not exceed the cost of such property. Any unused optional depreciation may be carried forward to succeeding years. The amount of carryover is determined by limiting allocated entire net income (Schedule B, line 44) to zero.
- Part II Include property on which the method of depreciation under Article 9-B or 9-C was different than that used for federal purposes.

### Adjustments to Entire Net Income resulting from Accelerated Cost Recovery System (ACRS) Property

Include in Part II column *e* the following items:

- For recovery property placed in service in taxable years beginning before 1/1/85 the ACRS deduction on all such property.
- For recovery property placed in service in taxable years after 1/1/85 the ACRS deduction on such property placed in service outside New York State.
- For taxable years ending after 6/18/84 DO NOT include the ACRS deduction on recovery property subject to the provisions of Section 280F of the IRC, whether such property is located within or without New York State.
- Any adjustments on the disposition of ACRS property where New York State depreciation exceeded federal depreciation.

Include in Part II column g the following items:

- For recovery property placed in service in taxable years beginning **before 1/1/85**, the allowable New York State depreciation deduction computed under Section 167 of the IRC.
- For recovery property placed in service **OUTSIDE** New York State in taxable years beginning **on or after 1/1/85**, the allowable New York State depreciation deduction computed under Section 167 of the IRC.
- For taxable years ending **after 6/18/84** **DO NOT** include the ACRS deduction on recovery property subject to the provisions of Section 280F of the IRC, whether such property is located within or without New York State.
- Any adjustments on the disposition of ACRS property where federal depreciation exceeded New York State depreciation.

Complete and attach Form CT-399 *Schedule for New York State Depreciation Adjustment*.

### Schedule F

In computing gain, enter the higher of cost or fair market price or value at applicable date. In computing loss enter the lower of cost or fair market price or value at applicable date.

Upon sale or disposition, the net gain or loss thereon should be computed by adjusting the federal basis of such property to reflect the total deductions allowed for all years, including years covered by Article 9-B or 9-C.

### Schedule G IBF

A corporation with an IBF located in New York State may exclude the adjusted eligible net income or add the adjusted eligible net loss of such IBF in computing its entire net income and alternative entire net income, OR the corporation may elect, on an annual basis, to reflect the results of its IBF operations in its entire net income allocation percentage and in its alternative entire net income allocation percentage. For timely notification concerning the IBF election, see page 2 of these instructions. Indicate whether the election has been made by checking the appropriate box on Schedule G.

A corporation with an IBF located in New York State which **HAS NOT ELECTED** to reflect the results of its IBF operations in its entire net income allocation percentage or alternative entire net income allocation percentage deducts from entire net income (at Schedule B, line 40) the adjusted eligible net income of such IBF or adds to entire net income (at Schedule B, line 40) the adjusted eligible net loss of such IBF. A corporation using this method is required to complete all of Schedule G to determine the adjusted eligible net income or loss of its IBF.

A corporation with an IBF located in New York State which **HAS ELECTED** to reflect the results of its IBF operations in its entire net income

allocation percentage and in its alternative entire net income percentage must complete lines 70 through 77 of Schedule G.

Whatever election the corporation makes concerning the IBF modification to entire net income applies to the computation of alternative entire net income. The election is binding on the taxpayer for that taxable year and cannot be changed by filing an amended return.

### Schedule H Allocation Percentage

A corporation which is doing business both within and without New York State is entitled to allocate its entire net income, alternative entire net income and taxable assets within and without New York State. A corporation which is not doing business without New York State must allocate its entire net income, alternative entire net income and taxable assets 100% to New York State. However, a corporation that has an IBF located in New York State may elect, on an annual basis, to reflect the results of its IBF operations in its entire net income allocation percentage and in its alternative entire net income allocation percentage. For timely notification concerning the IBF election, see page 2 of these instructions.

A corporation which is not doing business without New York State and which has made the IBF election must allocate taxable assets 100% to New York State.

In determining whether a corporation is doing business without New York State consideration is given to the same factors used to determine if business is being carried on within New York State. See "Definition of Doing Business Within New York State" on page 1 of these instructions. A corporation which claims to be doing business without New York State must attach a rider describing the activities of the corporation within and without New York State.

Each allocation percentage is determined by a formula consisting of a payroll factor, receipts factor and deposits factor.

The receipts factor shall include only receipts which are included in the computation of alternative entire net income for the taxable year. The deposits and payroll factors shall include only deposits and payroll, the expenses of which are included in the computation of alternative entire net income for the taxable year. Each factor is computed on a cash or accrual basis according to the method of accounting used by the taxpayer for the taxable year in computing its alternative entire net income.

The instructions that follow contain general allocation information. Corporations with an IBF located in New York State must also follow the instructions on page 2.

#### Payroll Factor

The percentage of a corporation's payroll allocated to New York State is determined by dividing 80% (100% when computing the alternative entire net income allocation

percentage) of the wages, salaries and other personal service compensation of the corporation's employees, except general executive officers, within New York State during the period the corporation is entitled to allocate by the total amount of wages, salaries and other personal service compensation of the corporation's employees, except general executive officers, both within and without New York State during the period the corporation is entitled to allocate.

The term "employees" includes every individual, except general executive officers, where the relationship existing between the corporation and the individual is that of employer and employee. The phrase "employees within New York State" includes all employees regularly connected with or working out of an office of the corporation within New York State, irrespective of where the services of such employees were performed.

The phrase "general executive officer" includes every officer of the corporation charged with and performing general executive duties of the corporation who is elected by the shareholders, elected or appointed by the board of directors, or if initially appointed by another officer, such appointment must be ratified by the board of directors. A general executive officer must have company-wide authority with respect to his assigned functions or duties or must be responsible for an entire division of the company.

#### Receipts Factor

The percentage of the taxpayer's receipts allocated to New York State is determined by dividing 100 % of the taxpayer's receipts from loans (including the taxpayer's portion of a participation in a loan) and financing leases and all other business receipts earned within New York State during the period the taxpayer is entitled to allocate by the total amount of the taxpayer's receipts from loans (including the taxpayers' portion of a participation in a loan) and financing leases and all other business receipts earned within and without New York State during the period the taxpayer is entitled to allocate.

#### Interest Income From Loans and Financing Leases

Interest income from loans and financing leases is allocated to New York State if such income is attributable to a loan or financing lease which is located in New York State. Interest income from a loan or financing lease does not include repayments of principal. A loan or financing lease is located where the greater portion of income producing activity relating to the loan or financing lease occurred.

Except for a taxpayer which is a production credit association or a corporation described on page 1 of these instructions under "Who Must File", Item D, a loan or financing lease attributed by the taxpayer to a branch without New York State shall be presumed to be properly so attributed provided that such presumption may be rebutted if the Tax Commission demonstrates

that the greater portion of income producing activity related to the loan or financing lease did not occur at such branch. In the case of a loan or financing lease which is recorded on the books of a place without New York State which is not a branch, it shall be presumed that the greater portion of income producing activity related to such loan or financing lease occurred within New York State if the taxpayer had a branch within New York State at the time the loan or financing lease was made. The taxpayer may rebut such presumption by demonstrating that the greater portion of income producing activity related to the loan or financing lease did not occur within New York State.

In the case of a taxpayer which is a production credit association or a corporation described on page 1 of these instructions under "Who Must File", Item D, a loan or financing lease attributed by the taxpayer to a bona fide office without New York State shall be presumed to be properly so attributed provided that such presumption may be rebutted if the Tax Commission demonstrates that the greater portion of income producing activity related to the loan or financing lease did not occur without New York State.

Income producing activity includes such activities as: solicitation, investigation, negotiation, approval and administration of the loan or financing lease. A loan or financing lease is made when such loan or financing lease is approved. The term "loan" means any loan, whether the transaction is represented by a promissory note, security, acknowledgement of advance, due bill or any other form of credit transaction, if the related asset is properly recorded in the financial accounts of the taxpayer. Loans include the taxpayer's portion of a participation in a loan. The term "financing lease" means a lease where the taxpayer is not treated as the owner of the property for purposes of computing alternative entire net income.

#### **Other Income From Loans and Financing Leases**

Other income from loans and financing leases includes, but is not limited to, arrangement fees, commitment fees and management fees but does not include repayments of principal. Other income from loans and financing leases is allocated to New York State when the greater portion of income producing activity relating to such income is within New York State.

#### **Lease Transactions and Rents**

Receipts from real property and tangible personal property leased or rented from the corporation are allocated to New York State if such property is located in New York State. Receipts from rentals include all amounts received by the corporation for the use of or occupation of property, whether or not such property is owned by the taxpayer. Gross receipts received from real property and tangible personal property which is subleased must be included in the receipts factor.

#### **Interest from Bank, Credit, Travel, Entertainment and Other Card Receivables**

Interest, fees in the nature of interest and penalties in the nature of interest from bank, credit, travel, entertainment and other card receivables are allocated to New York State if the card holder's domicile is in New York State. It is presumed that the domicile of a card holder is its billing address.

#### **Service Charges and Fees From Bank, Credit, Travel, Entertainment and Other Cards**

Service charges and fees from bank, credit, travel, entertainment and other cards are allocated to New York State if the card is serviced within New York State. A card is serviced at the place where the records pertaining to such account are kept and managed.

#### **Receipts From Merchant Discounts**

Receipts from merchant discounts are allocated to New York State if the merchant is located within New York State. In the case of a merchant with locations both within and without New York State, only receipts from merchant discounts attributable to sales made from locations within New York State are allocated to New York State. It shall be presumed that the location of the merchant is the address of the merchant shown on the invoice submitted by the merchant.

#### **Income From Trading Activities and Investment Activities**

Income from trading activities and investment activities is allocated to New York State if the greater portion of income producing activity relating to the trading or investment activity occurred within New York State. Income from trading and investment activities is determined by netting the gains with the losses from such activities that are included in federal taxable income. A net loss is deemed to be zero. Trading activities include, but are not limited to, foreign exchange transactions, the purchase and sale of options and financial futures, and interbank fund transfers.

#### **Fees or Charges From Letters of Credit, Traveler's Checks and Money Orders**

Fees or charges from the issuance of letters of credit, traveler's checks and money orders are allocated to New York State if such letters of credit, traveler's checks or money orders are issued within New York State.

#### **Performance of Services**

Receipts for services performed by the taxpayer's employees regularly connected with or working out of a New York State office of the taxpayer are allocated to New York State if such services are performed within New York State.

When allocating receipts for services performed, it is immaterial where such receipts are payable or where they are actually received.

Where services are performed both within and without New York State, the portion of the receipts attributable to services performed within New York State is determined on the basis of the relative value of, or amount of time spent in performance of, such services within New York State, or by some other reasonable method. Full details must be submitted with the taxpayer's return.

#### **Royalties**

Receipts of royalties from the use of patents, copyrights and trademarks are allocated to New York State if the taxpayer's actual seat of management or control is located in New York State. Royalties include all amounts received by the taxpayer for the use of patents, copyrights or trademarks, whether or not such patents, copyrights or trademarks were issued to the taxpayer.

#### **All Other Receipts**

Income from securities used to maintain reserves against deposits to meet federal and state reserve requirements shall be allocated to New York State based upon the ratio that total deposits in New York State bears to total deposits everywhere.

All other business receipts earned by the taxpayer in New York State are allocated to New York State.

A receipt from the sale of a capital asset is not a business receipt and is not included in the receipts factor. For example, the receipt from the sale of a capital asset as scrap or at a gain is not included in the receipts factor.

#### **Deposits Factor**

The percentage of the taxpayer's deposits allocated to New York State is determined by dividing the average value of deposits maintained at branches of the taxpayer within New York State during the period the taxpayer is entitled to allocate by the average value of all deposits maintained at branches of the taxpayer both within and without New York State during the period the taxpayer is entitled to allocate.

The term "deposit" means:

- the unpaid balance of money or its equivalent received or held by a bank in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the bank, or a letter of credit or a traveler's check on which the bank is primarily liable; provided, that, without limiting the generality of the term "money or its equivalent", any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such

credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank for collection;

- trust funds received or held by such bank, whether held in the trust department or held or deposited in any other department of such bank;
- money received or held by a bank, or the credit given for money or its equivalent received or held by a bank, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the bank or others (including funds held as dealers' reserves) or for securities loaned by the bank, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes; provided, that there shall not be included funds which are received by the bank for immediate application to the reduction of an indebtedness to the receiving bank, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness;
- outstanding drafts (including advice or authorization to charge a bank's balance in another bank), cashier's checks, money orders, or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends, or purchases or other costs or expenses of the bank itself.

The term "maintained" means the branch of the taxpayer at which a deposit is properly booked.

A deposit, the value of which at all times during the taxable year was less than \$100,000, that is booked by a taxpayer at a branch without New York State is presumed to be properly booked, provided that such presumption may be rebutted if the Tax Commission demonstrates that the greater portion of contact relating to the deposit did not occur at such branch. Where such presumption has been rebutted by the Tax Commission, the deposit shall be presumed to be maintained within New York State if the taxpayer had a branch within New York State at the time the deposit was booked. However, the taxpayer may rebut such presumption by demonstrating that the greater portion of contact relating to the deposit did occur at a branch outside New York State.

A deposit, the value of which at any time during the taxable year was \$100,000 or more, is considered to be properly booked at the branch with which it has a greater portion of contact.

In determining whether a deposit has a greater portion of contact with a particular branch,

consideration is given to such activities as:

- whether the deposit account was opened at or transferred to that branch by or at the direction of the depositor or by a broker of deposits, regardless of where subsequent deposits or withdrawals may be made;
- whether employees regularly connected with that branch are primarily responsible for servicing the depositor's general banking and other financial needs;
- whether the deposit was solicited by an employee regularly connected with that branch, regardless of where such deposit was actually solicited;
- whether the terms governing the deposit were negotiated by employees regularly connected with that branch, regardless of where the negotiations were actually conducted; and
- whether essential records relating to the deposit are kept at that branch and whether the deposit is serviced at that branch.

The value of deposits maintained at branches of the taxpayer is the total of the amounts credited to depositors, including the amount of any interest so credited. The average value of deposits is to be computed on a daily basis. However, if the taxpayer's usual accounting practices do not permit the computation of average value on a daily basis, a computation on a weekly basis will be permitted. The Tax Commission will not permit the computation of average value of deposits on a basis less frequent than weekly, unless the taxpayer demonstrates that requiring it to use a weekly computation would produce an undue hardship.

#### Allocation Percentage For Taxpayers with an IBF Located in New York State

A corporation with an IBF located in New York State which has NOT made the IBF election must, when computing its entire net income allocation percentage and its alternative entire net income allocation percentage:

- Exclude from the numerator and denominator of the payroll factor, the wages, salaries, and other personal service compensation of employees the expenses of which are attributable to the production of eligible gross income of the IBF.
- Exclude from the numerator and denominator of the receipts factor those receipts which are attributable to the production of eligible gross income of the IBF.
- Exclude from the numerator and denominator of the deposits factor, deposits the expenses of which are attributable to the production of eligible gross income of the IBF.

A corporation which has an IBF located in New York State and which has made the IBF election, must, when computing the entire net income allocation percentage and the alternative entire net income allocation percentage:

- Exclude from the numerator of the payroll factor, the wages, salaries and other personal service compensation of employees the expenses of which are attributable to the production of eligible gross income of the IBF. Include in the denominator of the payroll

factor, the wages, salaries and other personal service compensation of employees, except general executive officers, the expenses of which are attributable to the production of eligible gross income of the IBF.

- Exclude from the numerator but include in the denominator of the receipts factor those receipts which are attributable to the production of eligible gross income of the IBF.
- Exclude from the numerator but include in the denominator of the deposits factor, deposits the expenses of which are attributable to the production of eligible gross income of the IBF.

Every corporation which has an IBF located in New York State (whether or not it has made the IBF election) must compute its taxable assets allocation percentage as follows:

- Include in the numerator and denominator of the payroll factor wages, salaries and personal service compensation of employees, except general executive officers, the expenses of which are attributable to the production of eligible gross income of the IBF.
- Include in the numerator and denominator of the receipts factor receipts which are attributable to the production of eligible gross income of the IBF.
- Include in the numerator and denominator of the deposits factor deposits the expenses of which are attributable to the production of eligible gross income of the IBF.

For the purpose of computing the allocation percentages, eligible gross income does not include transactions between the taxpayer's foreign branches and its IBF.

#### Article 31-B Information

Article 31-B, Section 1449-a (Tax on Gains Derived From Certain Real Property Transfers).

This article requires every corporation with an interest in real property, to 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 to enforce this article.

Controlling interest of a corporation means either 50 percent or more of the total combined voting power of all classes of stock or 50 percent or more of the capital, profits or beneficial interest in such voting stock.

All corporations must answer both questions on page 8. If the answer to both questions is yes, a rider must be attached which must provide 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.
- Indicate if the corporation is a cooperative housing corporation.