New York State
Department of
Taxation
and Finance

Franchise Tax On Banking Corporations

Analysis of Tax Return and Audit Data

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Michael H. Urbach
Commissioner

Office of
Tax Policy Analysis

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I. INTRODUCTION

In 1985, the executive and legislative branches of New York State, the government of the City of New York and the State's banking community joined together to reform New York's corporate franchise tax on banking corporations. The resulting legislation, Chapter 298 of the Laws of 1985, essentially restructured the New York State and New York City taxes imposed on banking corporations.

In recognition of the extensive nature of the reform and the uncertain effect of the changes, numerous provisions of the legislation were scheduled to expire for taxable years beginning on or after January 1, 1990. Subsequent legislation extended the expiration date, most recently through taxable years beginning before January 1, 1995.

The 1985 legislation also provided for a Temporary Commission to Review the Bank Tax. The Commission was to recommend whether to continue certain provisions beyond their scheduled expiration date or whether, and in what manner, to further amend the bank tax.

In December of 1988, the Temporary Commission submitted an interim report to the Governor, the Legislature and the Mayor of New York City. When the report was issued, statistical information regarding the reformed bank tax was available only for the 1985 tax year. This represented the first year that the reformed law was in effect. In addition, the Department of Taxation and Finance (the Department) had not yet completed audits of banks for post-reform tax years. The Commission viewed audit collection statistics as essential to the evaluation. These statistics could indicate the effectiveness of the legislation in making the tax more predictable and less likely to require adjustments during audits.

In September of 1991, the Department prepared and published a statistical report providing data from bank tax returns. This report provided tax return data for tax years from 1981 through 1987. It included the first three years of the reformed law. However, sufficient data regarding the effect of the reforms on audit revenue was still not available.

The Governor’s 1995-96 fiscal year budget calls for a four-year extension of the current bank tax law. This extension will allow for the study of the effectiveness of the 1985 reforms. Hopefully, the data provided in this report will provide policymakers with the information they need for that evaluation.

With this publication, the Department provides to policymakers bank tax return data from four tax years prior to the reform (1981-1984) and eight tax years after the reform (1985-1992). The report also provides statistics regarding the more than 1,200 bank tax audits completed since the beginning of the 1979-80 State fiscal year.

The historical tax data provides background information regarding trends in the bank tax before and after the reform. This will assist in analysis of whether the 1985 reforms brought about significant changes in tax liability. The audit data provides the information needed for analysis of the effectiveness of the reforms in improving voluntary compliance.

The report consists of four sections. The next section provides a brief overview of the intent and major provisions of the 1985 bank tax reform legislation. Section Three provides and discusses the tax return statistics. Section Four examines the bank tax audit data.

The report contains three Appendices. Appendix A provides a description of the corporate franchise tax on banking corporations. Appendix B provides a description of the data base upon which the statistics in this report are based. Appendix C contains definitions of the terms used throughout the report.

II. OVERVIEW OF THE 1985 REFORM LEGISLATION

Chapter 298 of the Laws of 1985 restructured the corporate franchise tax on banking corporations imposed under Article 32 of the Tax Law.[1] The 1985 legislation was intended to:

- Tax banks more like general business corporations;
- Make the treatment among and between commercial banks and thrifts more similar;
- Make the calculation of the tax more predictable and less likely to be adjusted upon audit; and
- Maintain New York City as a financial center.

Toward achieving these goals, the legislation provided for several major changes in the calculation of the tax on banking corporations.[2] Among other changes, the legislation provided for the following major reforms:

- Redefining the corporations subject to the bank tax;
- Redefining the subsidiaries to be included in an affiliated group return;
- Providing that a group of affiliated corporations compute its tax on a combined basis[3];
- Reforming the calculation of entire net income, including:
  - introduction of a new deduction for 17 percent of interest income from subsidiary capital;
  - introduction of a new deduction for 60 percent of dividend income and gains or losses from subsidiary capital;
  - introduction of a new deduction for 22.5 percent of interest income from obligations of New York State or its political subdivisions or of the United States Government; and

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[1] For a description of the current Article 32 structure see Appendix A.

[2] For a more detailed discussion of the 1985 changes see Kaltenborn, Marilyn M., "Is New York's Bank Tax Ready for the 1990s?", Journal of State Taxation, Fall 1985, Pages 225-235.

[3] Previously, a group of affiliated corporations computed its tax on a consolidated basis and savings banks and savings and loan associations were not allowed to file on a combined or consolidated basis. For descriptions of consolidated and combined reporting see Appendix C.

- introduction of a new deduction for the amount of cash or assistance received from the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation pursuant to the Garn - St. Germain Depository Institutions Act of 1982;

- Introducing formula allocation for determining the portion of income or alternative tax base attributable to New York State (previously the amount of income or alternative tax base attributable to New York State was generally determined through separate accounting);

- Eliminating the alternative tax measured by capital stock;

- Eliminating the alternative tax based on interest or dividends;

- Introducing an alternative tax on the amount of alternative entire net income allocated to New York;

- Introducing an alternative tax on the amount of taxable assets allocated to New York; and

- Introducing an election to treat an international banking facility as if it were located outside of New York State when computing its entire net income allocation percentage.

The 1985 bank tax reforms took effect for taxable years beginning on or after January 1, 1985. However, all amendments, with two exceptions, were scheduled to sunset for taxable years beginning on or after January 1, 1990. The exceptions relate to provisions affecting savings banks and savings and loan associations and the alternative minimum tax measured by assets. Subsequent legislation extended the reform provisions several times. The law currently provides that these provisions expire for tax years beginning on or after January 1, 1995.

III. TAX RETURN STATISTICS

This section provides an overview of tax return data for the tax years 1981 through 1992.[4] In addition, it provides statistics regarding some of the more notable changes provided for by the 1985 legislation. Unless otherwise noted, all references to "years" in this section refer to tax years.

Wherever possible, this section presents the data for five categories of banks and for all banks. However, where necessary to maintain confidentiality, the tables aggregate data for certain categories of banks. The five categories of banks discussed in this report include clearinghouse banks, foreign banks, commercial banks, savings banks and savings and loan associations.[5] Where aggregation was required to maintain confidentiality, clearinghouse data is aggregated with commercial bank data and savings bank data is aggregated with savings and loan association data. Where aggregation of two types of banks conceals a trend that would be apparent if the data were not aggregated, the trend is discussed in the narrative.

Two types of factors contributed to the year-to-year changes described in this section. The first type includes law changes.[6] The second type includes external factors. External factors include changes in the state or national economies, competition within the financial services industry and the formation or dissolution of banks. These factors may have occurred largely independent of changes in the tax law.[7]

The liability figures contained in this report are "as reported" on original returns. They do not reflect adjustments made as a result of audits. As discussed later in this report, in State fiscal years 1979-80 through 1993-94, audit revenue, on average, accounted for approximately 27 percent of bank tax collections.

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[4] Tax return statistics for the 1981 through the 1987 tax years were previously published in a 1991 Department of Taxation and Finance publication entitled: Franchise Tax on Banking Corporations: Statistical Analysis of the 1985 Reform Act. Those statistics are repeated in this publication so as to provide data regarding trends in tax liability before and after the 1985 reform.

[5] Though each of these terms is defined in Appendix C, two terms warrant discussion here. The term “foreign bank”, as used in this report, refers to commercial banks headquartered outside of the United States or its possessions. “Thrifts” refers to both savings banks and savings and loan associations.

[6] In addition to the 1985 reforms, several minor legislative changes have affected the bank tax since 1985. For example, the Business Tax Reform and Rate Reduction Act (BTRRRA) decoupled from federal treatment of bad debts by large commercial banks.

[7] It may be the case that economic and tax structure factors are not independent. Changes in tax structure may have had economic impacts. This study does not attempt to differentiate the effects of the tax changes from the effects of economic considerations.

HISTORICAL PROFILES BY TYPE OF BANK

Tables 1 through 8 provide income and tax liability statistics by type of bank for the 1981 through 1992 tax years. The tables are followed by a discussion of some trends that are evident from the historical data.

Some highlights of the statistics presented in these tables include:

- Between 1981 and 1992, the number of Article 32 taxpayers grew over 39 percent from 582 banks to 814 banks. Overall, most of the growth was attributable to foreign banks (127 percent increase) and commercial banks (70 percent increase).

- The portion of the total bank tax paid by foreign banks grew from 13.5 percent in 1981 to 39.3 percent in 1992. In contrast, the portion paid by clearinghouse banks declined from over 36 percent to 14.8 percent during the same period.

- There has been a steady decline in the portion of the bank tax paid by thrift institutions. In 1986, savings banks and savings and loan institutions together paid over 34 percent of the total bank tax. By 1992, they paid only 17.9 percent of the total tax.

- Alternative-based liability represented over 33 percent of the total tax liability in 1981. In 1992, alternative-based taxes represented less than 13 percent of the total tax liability.

- Most of the alternative-based liability under the bank tax is attributable to the asset base introduced in 1985. Very few banks pay taxes based on the alternative income base.

- Overall, the total amount of positive allocated entire net income grew significantly between 1983 and 1992. Positive entire net income grew from just over $1.1 billion in 1983 to more than $4.3 billion in 1992. The total losses reported by all banks increased from $1.6 billion in 1983 to $2.3 billion in 1992.

- Most of the increase in positive allocated entire net income was attributable to foreign banks and commercial banks.

Table 1
HISTORICAL LIABILITY OF ALL BANKS,
1981 - 1992

Tax Year	Number of Taxpayers	Total Tax Liability	Average Tax Liability
1981	582	$189,964,399	$326,399
1982	560	133,407,639	238,228
1983	560	142,979,531	255,321
1984	581	128,978,191	221,993
1985	718	180,643,009	251,592
1986	788	253,682,459	321,932
1987	806	285,931,425	354,754
1988	826	301,582,420	365,112
1989	829	250,430,833	302,088
1990	821	247,768,791	301,789
1991	831	343,889,789	413,826
1992	814	411,665,920	505,732

Table 2
HISTORICAL PROFILE OF ALL BANKS,
1981 - 1992

Tax Year	INCOME BASE Number of Taxpayers	INCOME BASE Liability	ALTERNATIVE BASE Number of Taxpayers	ALTERNATIVE BASE Liability	MINIMUM TAX Number of Taxpayers	MINIMUM TAX Liability
1981	240	$126,482,083	338	$63,481,316	4	$1,000
1982	231	93,091,548	324	40,314,841	5	1,250
1983	263	118,131,120	259	24,838,911	38	9,500
1984	269	102,012,717	277	26,956,724	35	8,750
1985	350	152,960,231	227	27,647,528	141	35,250
1986	428	234,801,670	208	18,842,789	152	38,000
1987	436	257,369,637	235	28,528,038	135	33,750
1988	422	264,428,480	242	37,113,440	162	40,500
1989	426	183,290,268	259	67,104,565	144	36,000
1990	382	176,942,931	302	70,791,610	137	34,250
1991	409	283,407,858	284	60,447,431	138	34,500
1992	426	360,452,680	243	51,176,990	145	36,250

Tax Year	POSITIVE ALLOCATED ENTIRE NET INCOME Number of Taxpayers	POSITIVE ALLOCATED ENTIRE NET INCOME Total ($ 000)	POSITIVE ALLOCATED ENTIRE NET INCOME Average ($ 000)	NEGATIVE ALLOCATED ENTIRE NET INCOME Number of Taxpayers	NEGATIVE ALLOCATED ENTIRE NET INCOME Total ($ 000)	NEGATIVE ALLOCATED ENTIRE NET INCOME Average ($ 000)
1981	NA	NA	NA	NA	NA	NA
1982	NA	NA	NA	NA	NA	NA
1983	311	$1,109,369	$3,567	241	-$1,639,035	-$6,801
1984	318	1,054,889	3,317	260	-2,509,642	-9,652
1985	413	2,049,759	4,963	305	-1,126,439	-3,693
1986	483	3,269,569	6,769	305	-798,204	-2,617
1987	489	3,310,734	6,770	317	-929,972	-2,934
1988	584	3,294,791	5,642	242	-1,207,937	-4,991
1989	566	2,352,720	4,157	263	-2,348,537	-8,930
1990	532	2,170,186	4,079	289	-4,203,410	-14,545
1991	557	3,454,711	6,202	274	-3,526,097	-12,869
1992	568	4,302,014	7,574	246	-2,289,003	-9,305

NA = Not available.

Table 3

HISTORICAL LIABILITY OF COMMERCIAL AND CLEARINGHOUSE BANKS,

1981 - 1992

Tax Year	Number of Taxpayers	Total Tax Liability	Share of Total Bank Tax Paid	Average Tax Liability
1981	199	$103,321,880	54.4%	$519,205
1982	198	76,916,681	57.7%	388,468
1983	202	87,469,126	61.2%	433,015
1984	204	80,236,733	62.2%	393,317
1985	283	100,110,825	55.4%	353,748
1986	338	109,860,968	43.3%	325,032
1987	322	126,430,048	44.2%	392,640
1988	324	133,785,118	44.4%	412,917
1989	317	100,175,286	40.0%	316,010
1990	325	96,638,478	39.0%	297,349
1991	332	146,108,272	42.5%	440,085
1992	328	176,106,561	42.8%	536,910

Table 4
HISTORICAL PROFILE OF COMMERCIAL AND CLEARINGHOUSE BANKS, 1981 - 1992

Tax Year	INCOME BASE Number of Taxpayers	INCOME BASE Liability	ALTERNATIVE BASE Number of Taxpayers	ALTERNATIVE BASE Liability	MINIMUM TAX Number of Taxpayers	MINIMUM TAX Liability
1981	180	$101,676,748	15	$1,644,132	4	$1,000
1982	163	71,530,787	35	5,385,894 [1]	0	0
1983	160	83,370,654	37	4,097,222	5	1,250
1984	161	74,540,825	40	5,695,158	3	750
1985	178	85,318,217	55	14,780,108	50	12,500
1986	213	100,885,995	58	8,958,223	67	16,750
1987	217	115,112,990	59	11,305,558	46	11,500
1988	203	116,810,943	60	16,958,925	61	15,250
1989	217	66,495,556	61	33,669,980	39	9,750
1990	196	62,113,798	84	34,513,430	45	11,250
1991	199	111,248,270	87	34,848,502	46	11,500
1992	207	153,780,920	64	22,311,391	57	14,250

Tax Year	POSITIVE ALLOCATED ENTIRE NET INCOME Number of Taxpayers	POSITIVE Total ($ 000)	POSITIVE Average ($ 000)	NEGATIVE ALLOCATED ENTIRE NET INCOME Number of Taxpayers	NEGATIVE Total ($ 000)	NEGATIVE Average ($ 000)
1981	NA	NA	NA	NA	NA	NA
1982	NA	NA	NA	NA	NA	NA
1983	165	$754,347	$4,572	35	-$249,926	-$7,141
1984	170	738,593	4,345	34	-394,195	-11,594
1985	201	1,091,367	5,430	82	-206,789	-2,522
1986	234	1,328,499	5,677	104	-202,405	-1,946
1987	240	1,504,842	6,270	82	-314,279	-3,833
1988	257	1,466,622	5,707	67	-386,781	-5,773
1989	250	952,618	3,810	67	-665,185	-9,928
1990	239	808,876	3,384	86	-2,487,279	-28,922
1991	240	1,415,846	5,899	92	-2,388,632	-25,963
1992	251	1,869,436	7,448	77	-802,407	-10,421

NA = Not available.
(1) In order to maintain confidentiality, minimum tax filers have been aggregated with alternative based taxpayers for the 1982 tax year.

Table 5
HISTORICAL LIABILITY OF FOREIGN BANKS[1],
1981 - 1992

Tax Year	Number of Taxpayers	Total Tax Liability	Share of Total Bank Tax Paid	Average Tax Liability
1981	161	$25,675,172	13.5%	$159,473
1982	168	18,216,950	13.7%	108,434
1983	178	26,348,461	18.4%	148,025
1984	202	20,740,869	16.1%	102,678
1985	264	37,335,768	20.7%	141,423
1986	282	57,205,490	22.6%	202,856
1987	317	62,845,546	22.0%	198,251
1988	340	86,386,437	28.6%	254,078
1989	363	95,946,055	38.3%	264,314
1990	360	98,623,474	39.8%	273,954
1991	377	145,898,771	42.4%	386,999
1992	365	161,702,101	39.3%	443,019

(1) Foreign banks are commercial banks that are headquartered outside of the United States.

Table 6
HISTORICAL PROFILE OF FOREIGN BANKS[1], 1981 - 1992

	INCOME BASE		ALTERNATIVE BASE		MINIMUM TAX	
Tax Year	Number of Taxpayers	Liability	Number of Taxpayers	Liability	Number of Taxpayers	Liability
1981	55	$24,121,288	106	$1,553,884	0	0
1982	56	16,717,279	112	1,499,671	0	0
1983	55	25,127,593	123	1,220,868	0	0
1984	59	18,690,647	143	2,050,220 [2]	0	0
1985	60	24,820,743	161	12,504,275	43	$10,750
1986	74	47,486,114	144	9,703,376	64	16,000
1987	75	46,034,043	169	16,793,253	73	18,250
1988	83	67,269,769	175	19,096,168	82	20,500
1989	93	64,376,982	182	31,547,073	88	22,000
1990	85	65,126,767	197	33,477,207	78	19,500
1991	116	121,931,414	181	23,947,357	80	20,000
1992	124	133,745,321	171	27,939,280	70	17,500

	POSITIVE ALLOCATED ENTIRE NET INCOME			NEGATIVE ALLOCATED ENTIRE NET INCOME		
Tax Year	Number of Taxpayers	Total ($ 000)	Average ($ 000)	Number of Taxpayers	Total ($ 000)	Average ($ 000)
1981	NA	NA	NA	NA	NA	NA
1982	NA	NA	NA	NA	NA	NA
1983	58	$229,549	$3,958	119	-$469,399	-$3,945
1984	61	170,976	2,803	140	-635,299	-4,538
1985	78	307,773	3,946	186	-642,088	-3,452
1986	93	561,463	6,037	189	-442,286	-2,340
1987	98	545,130	5,563	219	-545,598	-2,491
1988	180	865,559	4,809	160	-624,066	-3,900
1989	189	772,652	4,088	174	-1,386,334	-7,967
1990	185	768,652	4,155	175	-1,323,780	-7,564
1991	215	1,433,865	6,669	162	-698,133	-4,309
1992	210	1,565,079	7,453	155	-1,032,724	-6,663

NA = Not available.
(1) Foreign banks are commercial banks that are headquartered outside of the United States.
(2) In order to maintain confidentiality, minimum tax filers have been aggregated with alternative based taxpayers for the 1984 tax year.

Table 7
HISTORICAL LIABILITY OF SAVINGS BANKS AND SAVINGS & LOAN ASSOCIATIONS, 1981 - 1992

Tax Year	Number of Taxpayers	Total Tax Liability	Share of Total Bank Tax Paid	Average Tax Liability
1981	222	$60,967,347	32.1%	$274,628
1982	194	38,274,008	28.7%	197,289
1983	180	29,161,944	20.4%	162,011
1984	175	28,000,591	21.7%	160,003
1985	171	43,196,416	23.9%	252,611
1986	168	86,616,001	34.1%	515,571
1987	167	96,655,831	33.8%	578,777
1988	162	81,410,865	27.0%	502,536
1989	149	54,309,492	21.7%	364,493
1990	136	52,506,839	21.20%	386,080
1991	122	51,882,746	15.1%	425,268
1992	121	73,857,258	17.9%	610,391

Table 8
HISTORICAL PROFILE OF SAVINGS BANKS AND SAVINGS & LOAN ASSOCIATIONS, 1981 - 1992

	INCOME BASE		ALTERNATIVE BASE		MINIMUM TAX	
Tax Year	Number of Taxpayers	Liability	Number of Taxpayers	Liability	Number of Taxpayers	Liability
1981	5	$684,047	217	$60,283,300	0	0
1982	12	4,843,482	177	33,429,276	5	$1,250
1983	48	9,632,873	99	19,520,812	33	8,250
1984	49	8,781,245	94	19,211,346	32	8,000
1985	112	42,821,271	11	363,154	48	12,000
1986	141	86,429,561	6	181,190	21	5,250
1987	144	96,222,604	7	429,227	16	4,000
1988	136	80,347,768	7	1,058,347	19	4,750
1989	116	52,417,730	16	1,887,512	17	4,250
1990	101	49,702,366	21	2,800,973	14	3,500
1991	94	50,228,174	16	1,651,572	12	3,000
1992	95	72,926,439	8	926,319	18	4,500

	POSITIVE ALLOCATED ENTIRE NET INCOME			NEGATIVE ALLOCATED ENTIRE NET INCOME		
Tax Year	Number of Taxpayers	Total ($ 000)	Average ($ 000)	Number of Taxpayers	Total ($ 000)	Average ($ 000)
1981	NA	NA	NA	NA	NA	NA
1982	NA	NA	NA	NA	NA	NA
1983	88	$125,473	$1,426	87	-$919,710	-$10,571
1984	87	145,320	1,670	86	-1,480,148	-17,211
1985	134	650,619	4,855	37	-277,562	-7,502
1986	156	1,379,617	8,844	12	-153,513	-12,793
1987	151	1,260,762	8,349	16	-70,095	-4,381
1988	147	962,610	6,548	15	-197,090	-13,139
1989	127	627,450	4,941	22	-297,018	-13,501
1990	108	592,658	5,488	28	-392,351	-14,013
1991	102	605,000	5,931	20	-439,332	-21,967
1992	107	867,499	8,107	14	-453,872	-32,419

NA = Not available.

Number of Banks

The 1985 legislation changed the law regarding who is subject to tax under Article 32. Prior to the enactment of Chapter 298, the franchise tax on banking corporations applied only to banking corporations doing a banking business in New York. The 1985 legislation expanded the universe of Article 32 taxpayers. It did so by imposing the franchise tax on out-of-state corporations doing a non-banking business in New York while doing a banking business outside of New York. As a result, the bank tax now applies to out-of-state banks with nonbank offices (i.e., loan production or representative offices) in New York.

As shown in Chart 1, between 1981 and 1992, the number of banks subject to Article 32 grew nearly 40 percent from 582 banks to 814 banks. All of the growth was attributable to foreign banks (127 percent increase) and commercial banks (70 percent increase). The number of thrift institutions, in contrast, decreased from 222 to 121 over the 12-year period. This decrease was largely attributable to mergers within the thrift industry.

For the categories of banks exhibiting growth in the number of taxpayers, much of the growth took place in the 1985 tax year.[8] This suggests that much of the growth in the number of banks may relate to the 1985 law change. As shown in Chart 1, this growth in 1985 is particularly evident in the commercial bank category.

For foreign banks, the largest increase in the number of taxpayers also took place in the 1985 tax year. However, in this category, an upward trend in the number of foreign banks is evident prior to and after the 1985 legislation. In fact, the number of foreign banks appears to have grown fairly steadily over the period from 1981 through 1989. This pattern suggests that the growth in foreign banks, evident in Chart 1, may relate to a combination of the law change and external factors.[9]

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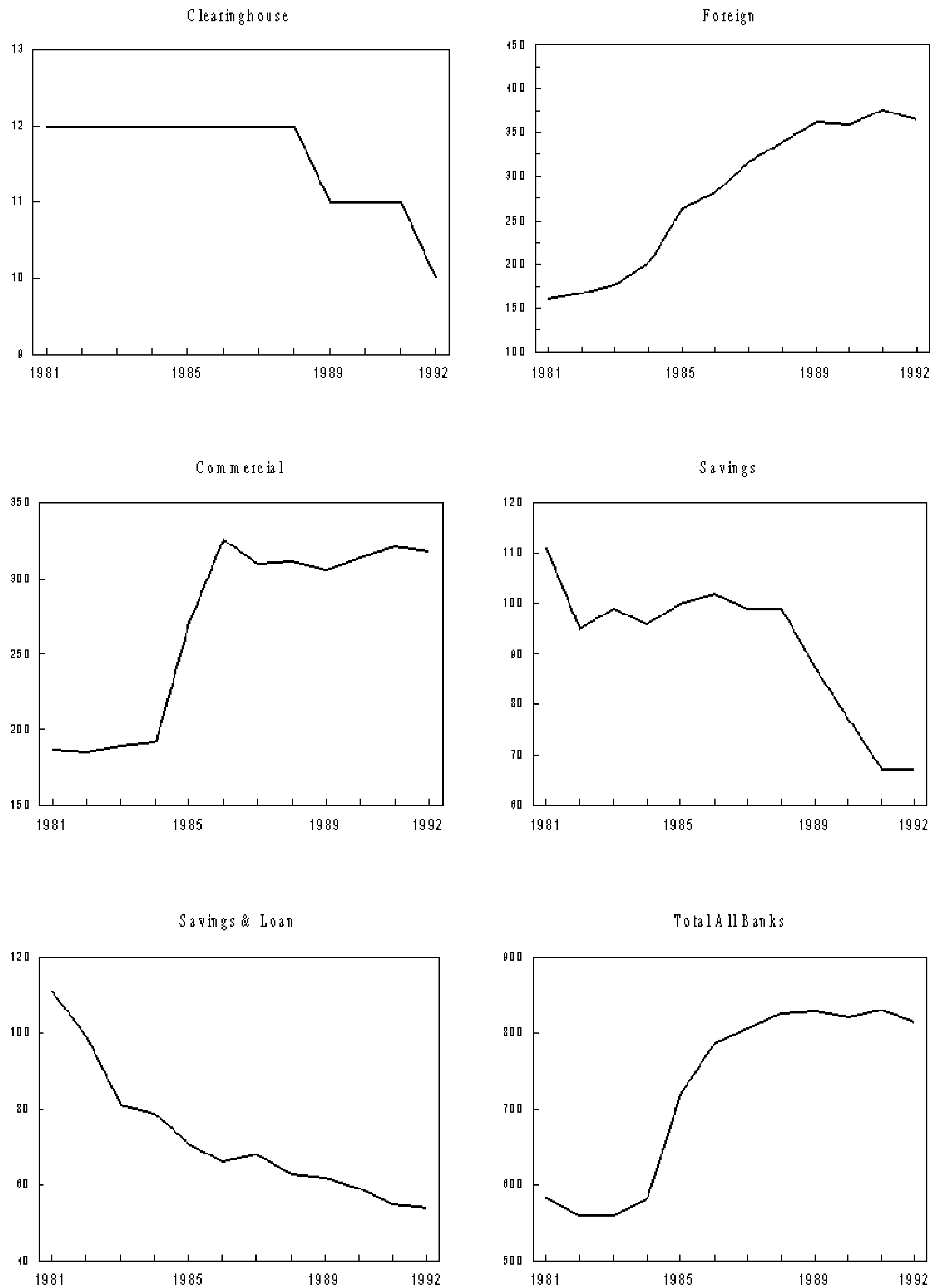
[8] The increase of 137 taxpayers between the 1984 and the 1985 tax years actually represents a net change resulting from the loss of 64 taxpayers that filed under Article 32 in 1984 but not in 1985 and the addition of 201 taxpayers that filed under Article 32 in 1985 but not in the previous year.

[9] Nationally, the number of foreign bank offices grew steadily throughout the 1980s. In 1981 there were 384 foreign bank offices in the United States. By the beginning of 1991 the number of foreign bank offices in the United States reached 727. Source: U.S. Industrial Outlook 1981 and 1992.

Chart 1
NUMBERS OF EACH TYPE OF BANK,
1981 - 1992



Tax Liability

From 1981 through 1992, total tax liability under Article 32 has ranged from a low of $129 million in the 1984 tax year to a high of $411 million in the 1992 tax year.

As shown in Chart 2, the "all bank" category exhibited a trend of increasing liability in the period from 1984 through 1988.[10] This was followed by two consecutive years of decreases in tax liability and then sharp increases in liability through the 1992 tax year. Generally, the trends in total liability for the commercial and foreign categories of banks were similar to the overall trend for the "all banks" category.

The clearinghouse and thrift categories were the most notable exceptions to the overall trend in tax liability. Between the 1988 and 1989 tax years, the total liability of clearinghouse banks decreased much more sharply than the overall trend. In fact, during the same period, the tax liability of both commercial banks and foreign banks was increasing.

Thrifts were the other notable exception to the overall trend. Thrifts showed a steady decline in tax liability from the mid-1980's to 1991. This is consistent with the decline in the number of these institutions discussed earlier.

Chart 3 shows the trends in average tax liability by type of bank from 1981 through 1992. The exhibit shows that the trends in total and average tax liability, for each type of bank, were very similar.

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[10] Interestingly, very little of the increase in tax liability between the 1984 and the 1985 tax years was attributable to the change in the number of taxpayers. That change accounted for approximately $2.0 million, or 4%, of the difference between 1984 and 1985 bank tax liability.

Chart 2
TOTAL TAX LIABILITY BY TYPE OF BANK,
1981 - 1992

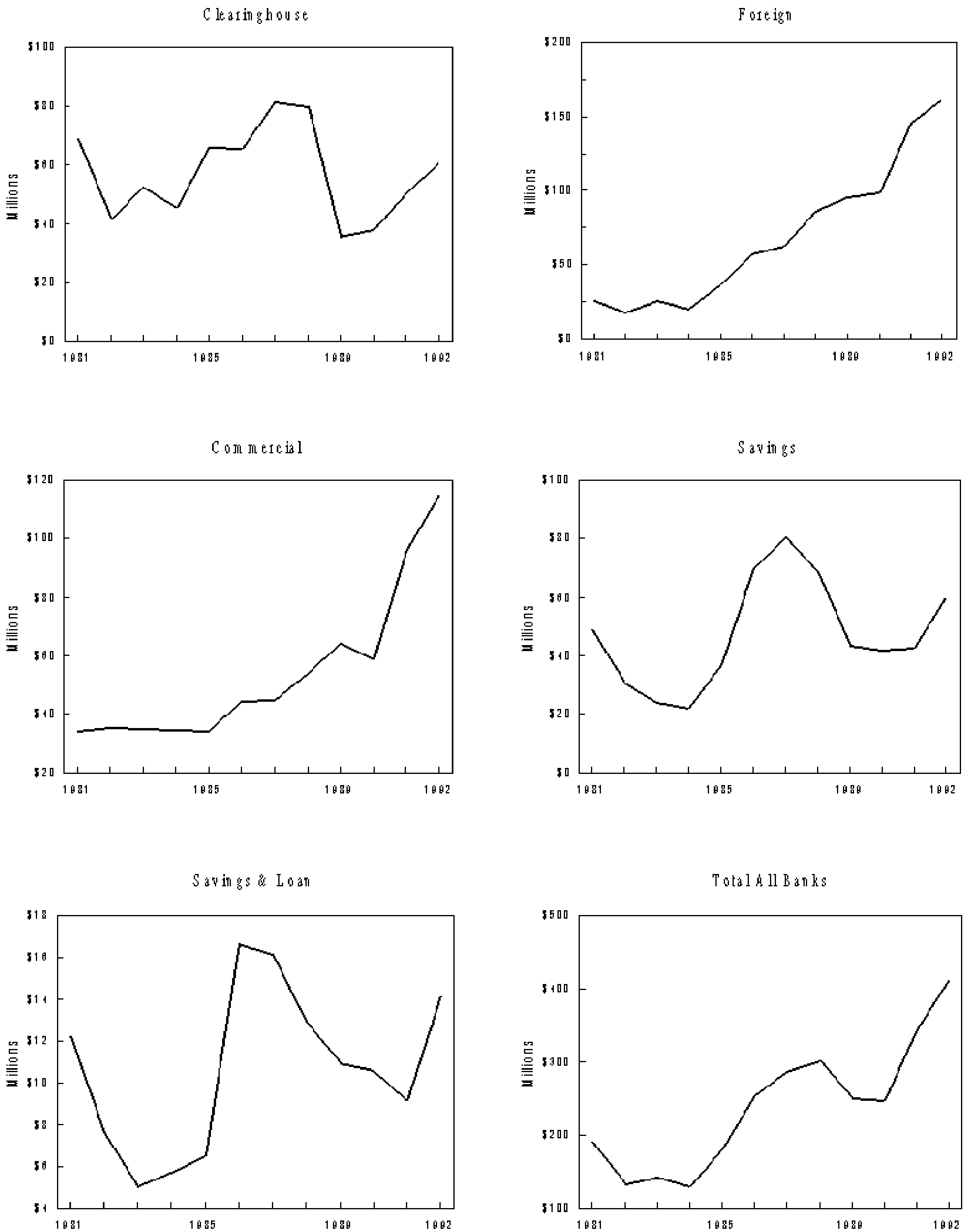
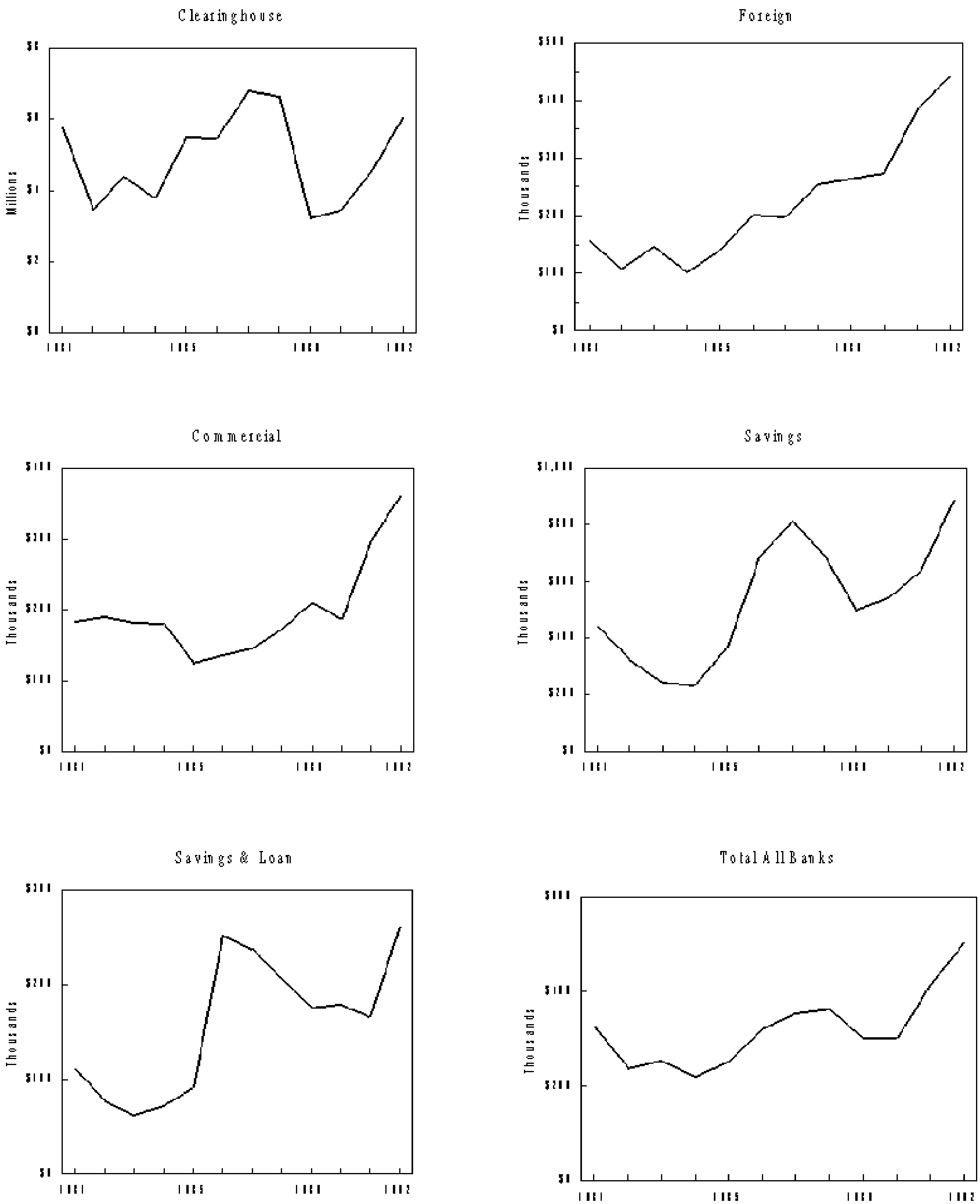


Chart 3
AVERAGE TAX LIABILITY BY TYPE OF BANK,
1981 - 1992



Generally, the trends in tax liability for the "all banks" category followed national trends in bank profits.[11] Charts 4 and 5 compare national trends in corporate profits before taxes to New York bank tax liability for the "all banks" category. Chart 4 shows that, like total bank tax liability, corporate profits increased from 1982 to 1983 then decreased in 1984. With the exception of the period between 1987 and 1988, bank tax profits increased each year from 1984 to 1991. Generally bank tax liability exhibited a similar trend.[12] However, in the period from 1988 to 1990, New York tax liability decreased while bank profits nationally were increasing. The decrease in the tax liability of clearinghouse banks during the late 1980's was, in all likelihood, the result of particular economic conditions.

Chart 4
BANK TAX LIABILITY AND NATIONAL PRE-TAX CORPORATE PROFITS
1981 - 1991

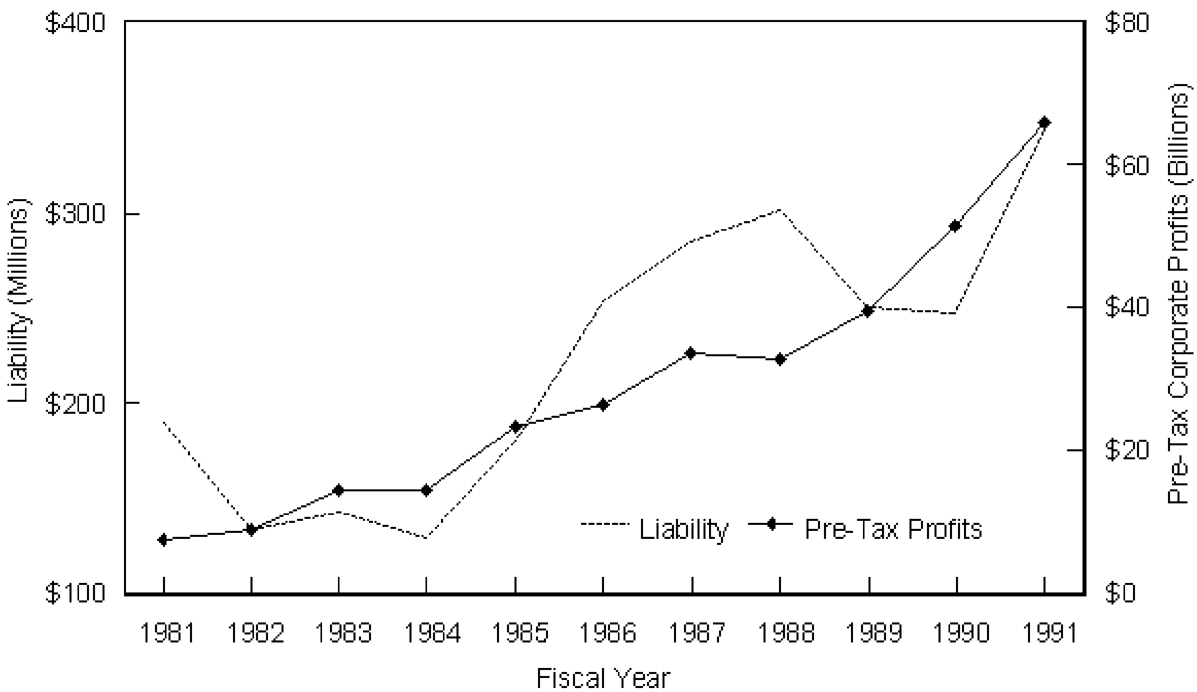


Chart 5 shows the annual percentage change in bank tax liability and pre-tax bank profits from 1981 through 1991. There is substantial variability in the growth rate for both profits and liability, but they generally move in tandem.

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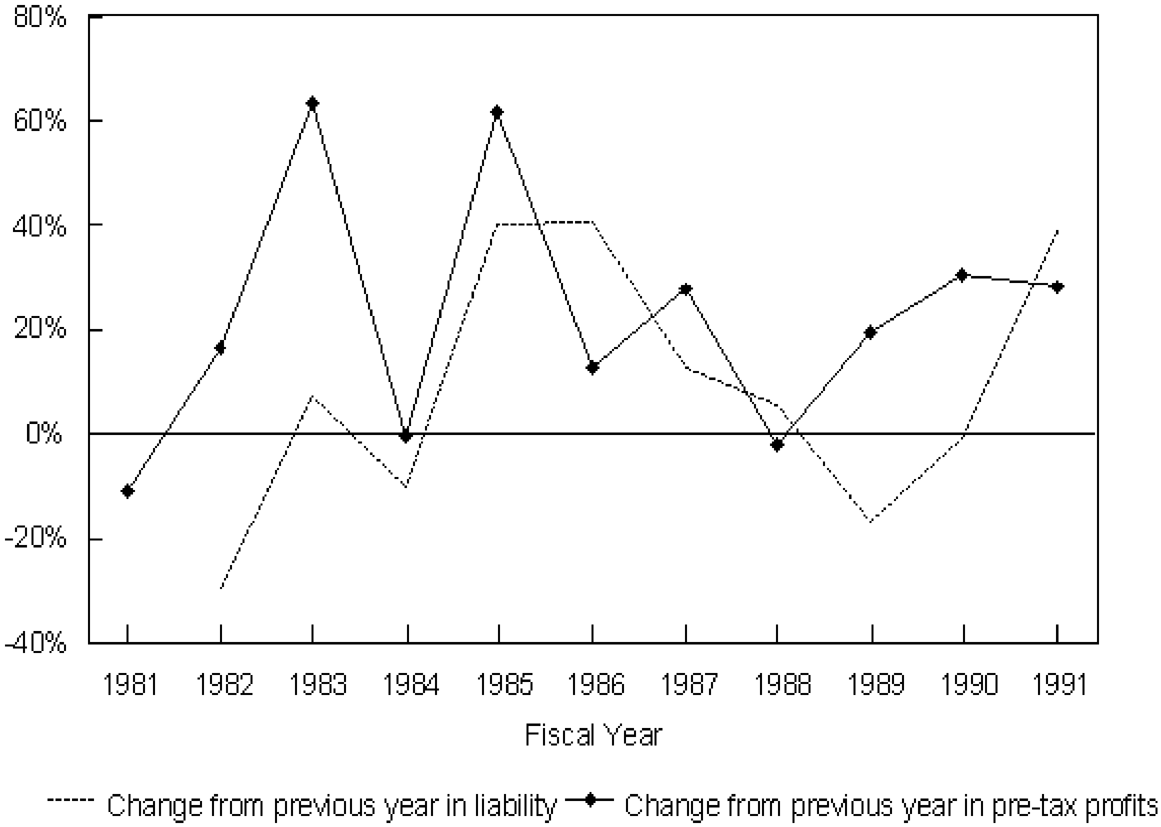
[11] Bank profits are corporate profits before taxes for all banking corporations except federal reserve banks. Source: Data Resources Incorporated

[12] Overall, the correlation coefficient for New York bank tax liability and bank profits nationally equaled .8330. That indicates that tax liability and bank profits are related. There is little indication from this limited data that the relationship between overall banking profitability and changes in New York liability was impacted by the 1985 law change. This relationship is of limited value, however, because it covers a short time period and does not isolate profitability of New York banks.

Chart 5
PERCENT CHANGE IN BANK TAX LIABILITY
AND CHANGE IN NATIONAL PRE-TAX CORPORATE PROFITS,
1981 - 1991



Percentage of Total Tax by Category

Chart 6 shows the percentage of the total bank tax paid by each category from 1981 to 1992. It reveals several notable trends. First, the portion of the total bank tax paid by foreign banks grew steadily. In 1981, foreign banks paid approximately 13.5 percent of the total bank tax. By 1992, the portion of the tax paid by foreign banks grew to 39.3 percent. The portion of the bank tax paid by commercial banks also grew. In 1981, commercial banks paid just over 18 percent of total bank tax. In 1992, commercial banks paid 28 percent of the tax. Both of these trends are consistent with the increases in the number of taxpayers in each of those categories.

Chart 6
COMPOSITION OF BANK TAX LIABILITY BY TYPE OF BANK,
1981 - 1992

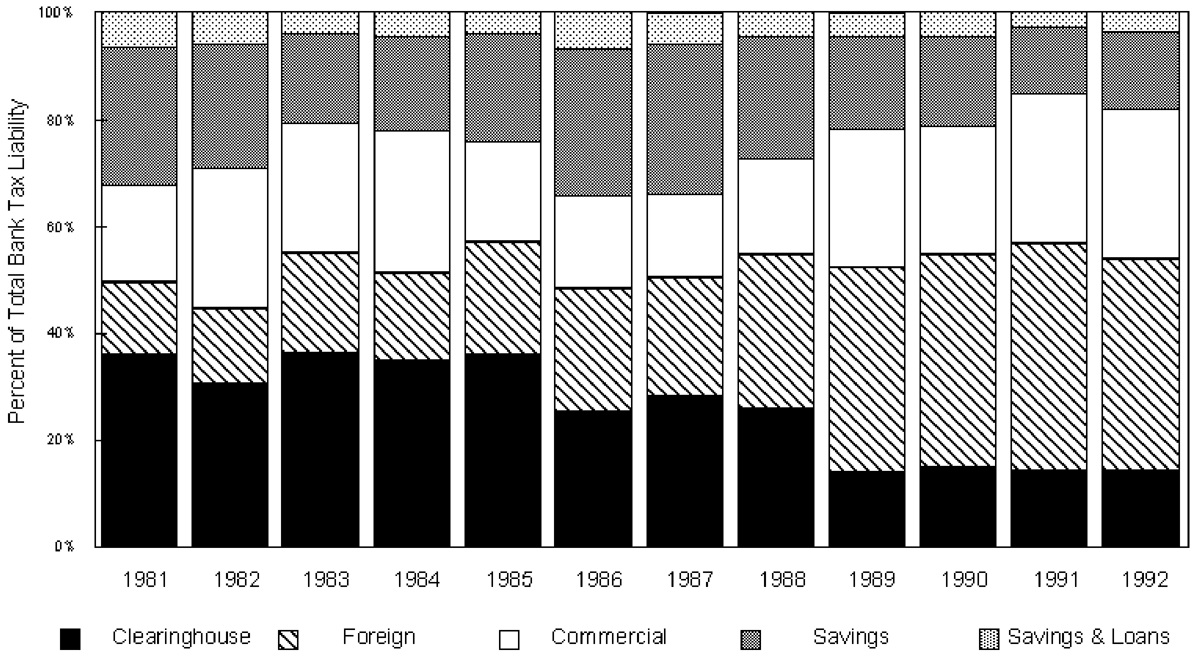


Chart 6 also shows that the portion paid by the clearinghouse category has decreased significantly. In the 1981 tax year, clearinghouse banks paid over 36 percent of the total bank tax. By 1992, the percentage of the tax paid by the clearinghouse category dropped to 14.8 percent. Most of the decrease in clearinghouse liability as a percentage of total tax liability relates to the increasing tax liability of the foreign and commercial bank categories.

Chart 6 also shows a steady decline in the portion of the bank tax paid by thrift institutions. In 1986, savings banks and savings and loan institutions together paid over 34 percent of the total bank tax. By 1992, this percentage dropped to just under 18 percent. This decline is consistent with the drop in the number of thrift institutions.

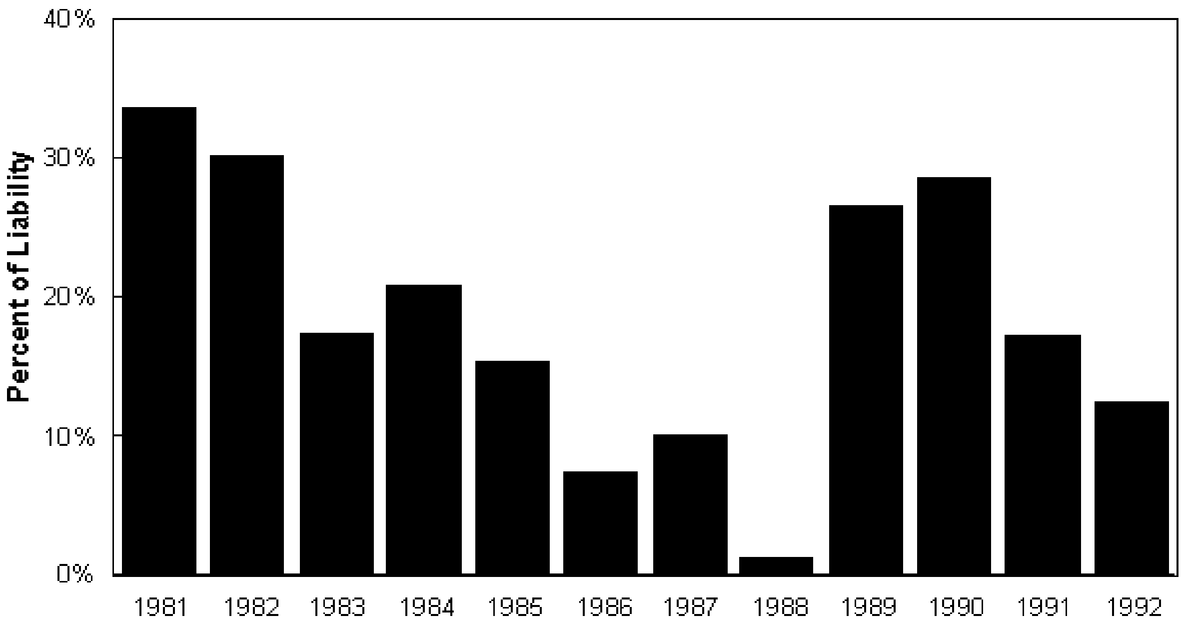
Basis of Tax

A change in the basis of the alternative taxes imposed under Article 32 was among the changes provided for by the 1985 legislation. Prior to the legislation, the alternative tax base for clearinghouse, foreign and commercial banks was capital stock. For thrifts, the base of the alternative tax, through the 1984 tax year, was interest or dividends credited to depositors or shareholders. Beginning in the 1985 tax year, two alternative tax bases, taxable assets and alternative entire net income, were introduced. These alternative bases now apply to all types of banking corporations.

The share of the tax attributable to the alternative bases varies from year to year, depending on the income or losses of taxpayers. For example, in 1987 and 1988, when income was high and losses were low, relatively few banks paid on alternative bases. However, when income decreased and reported losses increased in 1989 and 1990, an increasing percentage of liability was attributable to alternative bases.

Chart 7 shows the percentage of the total bank tax accounted for by the alternative bases from 1981 to 1992. In 1981, taxpayers paid $63.5 million in taxes based on capital stock or interest and dividends. This represented over 33 percent of the total bank tax liability. In 1992, taxpayers paid a total of $51.2 million in alternative-based taxes. This represented just over 12 percent of the total 1992 tax liability.

Chart 7
PERCENTAGE OF TAX PAID ON ALTERNATIVE BASES,
ALL BANKS,
1981 - 1992



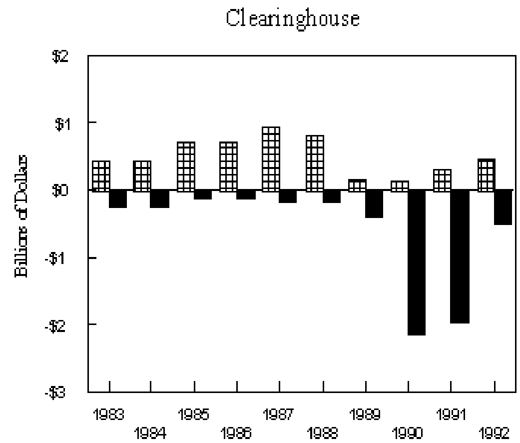
The asset base represented the largest share of alternative-based liability. In 1992, the alternative income base represented less than $1 million of the over $51 million in alternative-based tax liability.

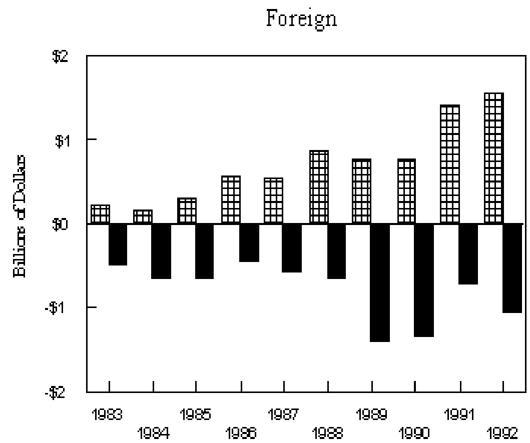
The 1985 legislation provided for rates of one-tenth, one twenty-fifth or one-fiftieth of a mill to be applied to the asset base. The asset-based tax rate is determined by the taxpayer's net-worth to assets ratio and the percentage of its loans secured by certain types of mortgages. Most banks that paid on the asset base in the 1985 through 1992 tax years paid based on the highest rate of one-tenth of a mill.

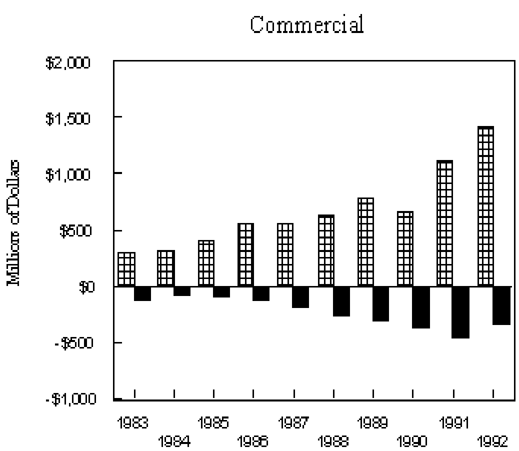
Net Income and Losses

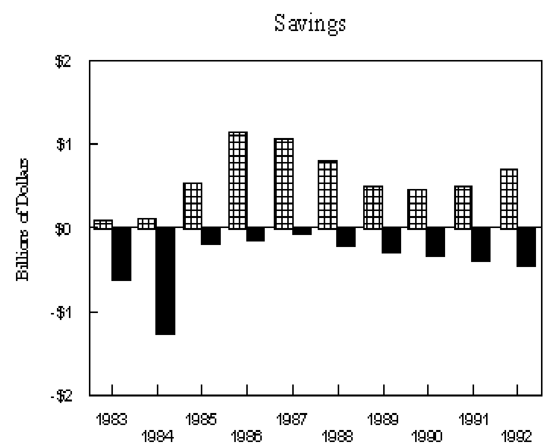
Chart 8 shows the amount of allocated income and losses reported by each category of bank and by all banks from 1983 through 1992. Overall, the amount of allocated entire net income grew significantly from 1983 through 1992. In 1983, 311 banks reported positive allocated entire net income totaling just over $1.1 billion. By 1992, positive allocated entire net income totaled more than $4.3 billion as reported by 568 taxpayers. The total allocated losses reported by all banks also grew in the same period. In 1983, 241 banks reported just over $1.6 billion in allocated losses. By 1992, 246 banks reported nearly $2.3 billion in allocated losses.

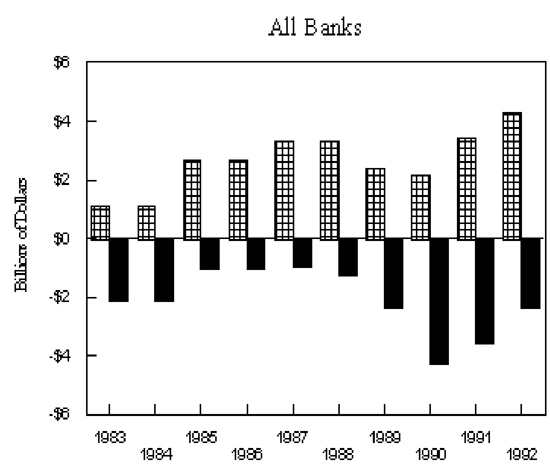
Chart 8
POSITIVE AND NEGATIVE ALLOCATED ENTIRE NET INCOME, BY TYPE OF BANK, 1983 - 1992











Foreign and commercial banks accounted for most of the increase in positive allocated entire net income. In contrast, the largest share of the increase in allocated losses was attributable to clearinghouse banks. This is most notable in the 1990 and 1991 tax years. In each of those years, eight clearinghouse banks reported allocated losses totaling approximately $2 billion.

This income and loss data may explain many of the other trends discussed earlier in this section. For example, in the clearinghouse category, the large amount of losses in the 1990 and 1991 tax years explains the shift to alternative-based tax liability in those years. Moreover, comparison of the clearinghouse losses in those years to the positive income realized by foreign and commercial banks may explain the increasing percentage of total bank tax paid by foreign and commercial banks.

FEATURES OF 1985 REFORM LEGISLATION

The balance of this section discusses statistics specifically related to the changes provided for by the 1985 legislation. Some of the more notable statistics discussed in this sub-section include the following:

- Among all banks, in the 1992 tax year, 36.9 percent of entire net income was attributed to New York using the income apportionment formula introduced by the 1985 legislation.

- The amount of the deduction for 60 percent of dividend income and gains or losses from subsidiary capital grew from $203.5 million in 1985 to over $1.8 billion in 1992. More than $1 billion of the total $1.8 billion was claimed by 24 commercial banks.

- The total amount of the deduction for 17 percent of interest income from subsidiary capital was nearly $222 million in 1985 and over $335 million in 1992. Through this period, clearinghouse banks claimed over 67 percent of the total deduction.

- The deduction for 22.5 percent of interest income on New York or United States obligations has been, by far, the most widely used of the deductions provided for by the 1985 legislation. In the 1992 tax year, 408 banks claimed the deduction. The total amount of the deduction in that year exceeded $782 million.

- Since 1985, the number of banks deducting International Banking Facility (IBF) income has dropped steadily, as has the amount of the deductions. Most of the decrease in the IBF deduction relates to the increased use of the election to use the IBF allocation benefit.

Entire Net Income Allocation Percentage

One of the changes provided for by the 1985 legislation was the introduction of formula apportionment. Prior to 1985, entire net income was attributed to New York State based on separate accounting or a gross income apportionment formula. Currently, banking corporations use a three-factor income allocation percentage. The factors include wages, salaries and other employee renumeration (with the exception of general executive officers); receipts; and deposits. The receipts and deposits factors receive double weight and the numerator of the wage factor is discounted by 20 percent.

Table 9 shows the average entire net income allocation percentage in the 1992 tax year for each category of bank. Overall, in the 1992 tax year, 41.7 percent of entire net income was attributed to New York using the income apportionment formula. On average, in the 1992 tax year, savings and loan associations had the highest income allocation percentage, averaging 99 percent. Commercial banks had the lowest allocation percentage, averaging 22.8 percent.[13]

Table 9
AVERAGE ENTIRE NET INCOME ALLOCATION PERCENTAGE, BY TYPE OF BANK, 1992 TAX YEAR

	Number of Banks with Negative Allocated Income	Total Negative Entire Net Income ($ Thousands)	Total Negative Allocated Entire Net Income ($ Thousands)	Number of Banks with Positive Allocated Income	Total Positive Entire Net Income ($ Thousands)	Total Positive Allocated Entire Net Income ($ Thousands)	Average Entire Net Income Allocated Percentage
Clearinghouse	7	-$734,077	-$483,043	3	$1,228,830	$455,824	47.8%
Foreign	155	-1,663,145	-1,032,724	210	3,011,450	1,565,079	55.6%
Commercial	70	-1,200,335	-319,364	248	6,387,649	1,413,612	22.8%
Savings	8	-529,859	-429,583	59	868,594	700,296	80.8%
Savings & Loan	6	-24,723	-24,289	48	168,738	167,203	99.0%
All Banks	246	-4,152,139	-2,289,003	568	11,665,261	4,302,014	41.7%

[13] A large number of banks failed to provide complete information on state tax returns filed through the 1984 tax year. This lack of data makes it impossible to provide statistics comparing the results of separate accounting in the pre-reform tax years and formula apportionment as introduced in 1985.

Deductions for Certain Dividend and Interest Income

The 1985 legislation provided that, in calculating entire net income, banking corporations can subtract three new deductions. These include a deduction for 60 percent of dividend income, gains and losses from subsidiary capital; a deduction for 17 percent of interest income from subsidiary capital; and a deduction for 22.5 percent of interest income from certain government obligations. Table 10 and Charts 9 through 11 show the amounts of these deductions in the 1985 through the 1992 tax years.

Table 10
CLAIMS FOR INTEREST AND DIVIDEND DEDUCTIONS, 1985 - 1992

	Deduction for 60% of Dividend Income		Deduction for 17% of Subsidiary Interest		Deduction for 22.5% of Interest on Gov't Obligations	
	Number of Banks Claiming Deduction	Deduction Amount ($ Thousands)	Number of Banks Claiming Deduction	Deduction Amount ($ Thousands)	Number of Banks Claiming Deduction	Deduction Amount ($ Thousands)
Clearinghouse						
1985	6	$135,881	8	$195,803	12	$329,302
1986	7	664,439	7	253,549	11	272,967
1987	8	349,245	8	389,874	12	269,375
1988	9	305,886	8	430,949	12	225,443
1989	6	726,641	8	436,652	11	201,166
1990	8	782,111	8	418,696	11	178,808
1991	6	1,243,709	6	134,482	8	173,562
1992	8	774,672	7	254,667	10	194,440
Commercial						
1985	15	$58,657	12	$20,477	154	$403,957
1986	16	472,000	11	563,106	178	407,791
1987	15	195,150	8	73,730	163	363,824
1988	14	299,710	11	182,078	164	398,074
1989	18	455,593	11	124,188	168	327,188
1990	24	819,288	11	221,319	191	343,070
1991	27	335,078	11	68,082	200	349,592
1992	24	1,072,774	11	74,750	187	344,451
Other						
1985	9	$8,987	11	$5,559	180	$189,949
1986	11	20,087	10	5,079	206	211,012
1987	10	40,338	9	982	231	219,830
1988	10	21,757	9	3,035	235	216,252
1989	10	13,001	8	22,805	228	165,881
1990	4	20,244	9	22,987	218	203,363
1991	3	5,307	7	19,217	216	167,547
1992	3	1,665	6	6,092	211	243,173
All Banks						
1985	30	$203,525	31	$221,839	346	$923,208
1986	34	1,156,526	28	821,734	395	891,770
1987	33	584,733	25	464,586	406	853,029
1988	33	627,353	28	433,995	411	839,769
1989	34	1,195,235	27	583,645	407	694,235
1990	36	1,621,643	28	663,002	420	725,241
1991	36	1,584,094	24	221,781	424	690,701
1992	35	1,849,111	24	335,509	408	782,064

Chart 9
CLAIMS FOR DEDUCTION FOR 60%
OF DIVIDEND INCOME, 1985 - 1992

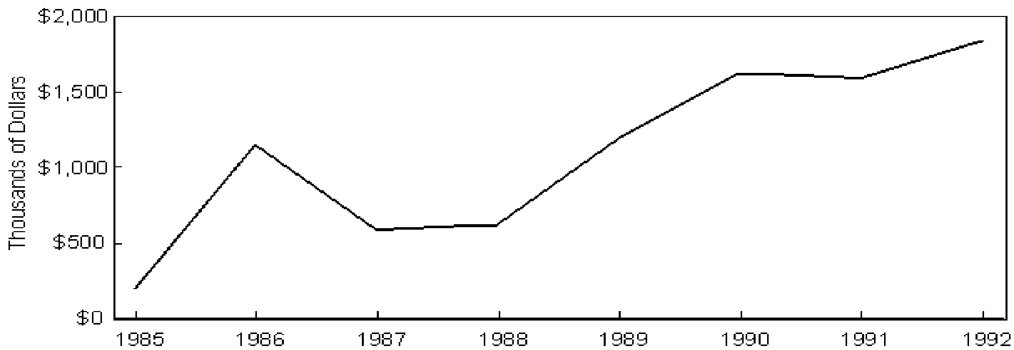


Chart 10
CLAIMS FOR DEDUCTION FOR 17%
OF SUBSIDIARY INTEREST, 1985 - 1992

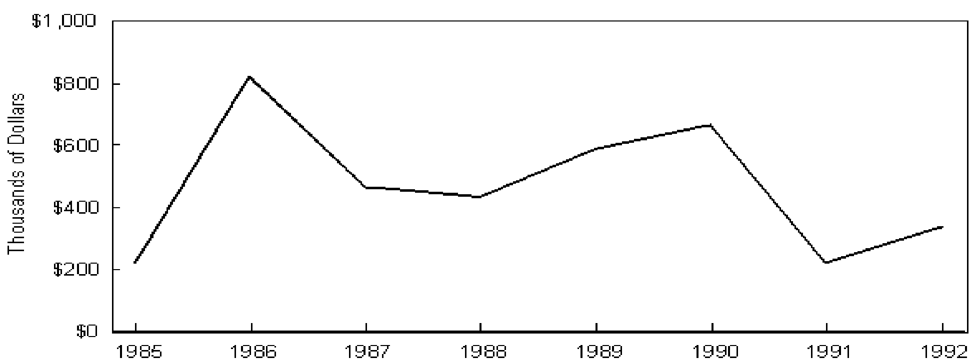
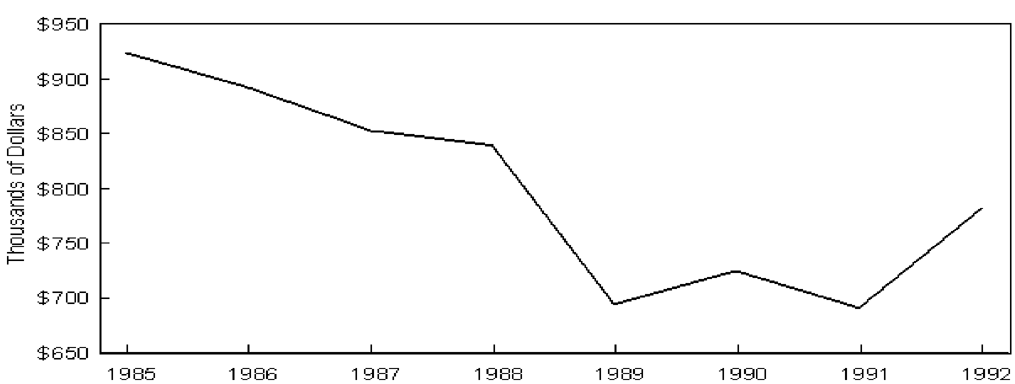


Chart 11
CLAIMS FOR DEDUCTION FOR 22.5% OF INTEREST
ON GOVERNMENT OBLIGATIONS, 1985 - 1992



Between 30 to 36 banks typically claim the deduction for 60 percent of dividend income and gains or losses from subsidiary capital. From 1985 through 1992, the amount of the deduction rose from $203.5 million to over $1.8 billion. In the 1992 tax year, 24 commercial banks claimed over $1 billion of the deduction.

Fewer than 32 banks claimed the deduction for 17 percent of interest income from subsidiary capital in each of the tax years from 1985 through 1992. The total amount of the deduction for all banks equaled $221.8 million in the 1985 tax year. In the 1986 through 1990 tax years, the amount of this deduction was significantly higher, ranging from $434 million in the 1988 tax year to almost $822 million in the 1986 tax year. By the 1991 tax year, the total amount of the deduction decreased to an all-time low of $221.8 million. In the 1992 tax year, the amount of the deduction increased to over $335 million. On average, clearinghouse banks claimed over 67 percent of the total deduction.

The deduction for 22.5 percent of interest income on New York or United States obligations has been, by far, the most frequently used of the deductions provided for by the 1985 legislation. A total of 346 taxpayers claimed the deduction in the 1985 tax year. The total amount of the deduction claimed by all banks equaled $923.2 million in that year. By 1992, the total amount of the deduction claimed by all banks decreased to just over $782 million. In the 1992 tax year, 408 banks claimed the deduction. Between 1985 and 1992, the commercial bank category claimed over 45 percent of the deduction.

International Banking Facility (IBF) Tax Benefits

Since 1981, Article 32 has provided banking corporations with an income modification for certain income from IBFs. In addition, the 1985 legislation allowed banks an election to treat IBFs as if they were doing business outside New York in calculating their income allocation percentage.[14]

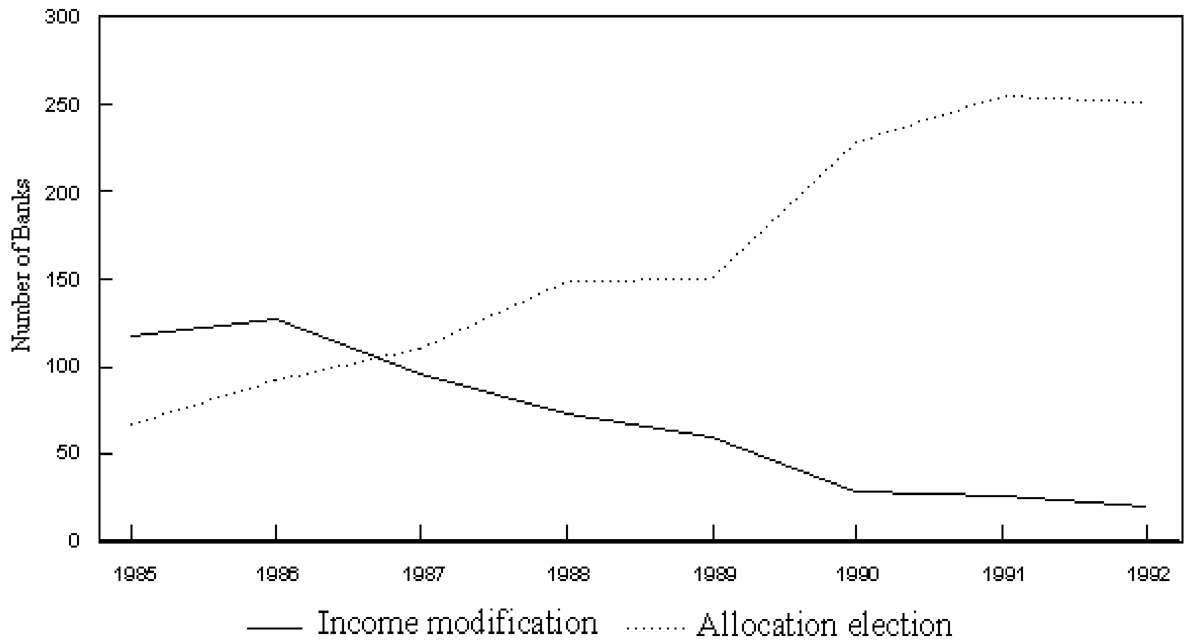
As shown in Table 11, from 1982 through 1985, the net amount of adjustments to federal taxable income for IBF activities (subtraction of IBF income and addition of IBF losses) increased from $1.2 billion to over $1.9 billion. Clearinghouse banks and foreign banks accounted for the bulk of the increase.

[14] For a description of the IBF tax benefits see Appendix C.

Table 11
BANKS MAKING MODIFICATIONS TO INCOME FOR INTERNATIONAL BANKING FACILITY ACTIVITIES, 1982 - 1992

	Number of Banks Using IBF Income Modification	Number of Banks Using IBF Subtraction	Amount of IBF Subtraction ($ Thousands)	Number of Banks Adding IBF Losses to Income	Amount of IBF Losses Added to Income ($ Thousands)	Total Amount of Reductions in ENI from IBF Modifications ($ Thousands)
FOREIGN						
1982	100	76	$314,601	24	-$56,905	$257,696
1983	121	96	387,824	25	-25,028	362,796
1984	138	96	584,516	42	-50,856	533,660
1985	94	73	506,161	21	-78,831	427,330
1986	97	72	422,716	25	-39,642	383,074
1987	74	46	288,206	28	-53,930	234,276
1988	58	33	172,528	25	-74,150	98,378
1989	43	28	159,039	15	-9,719	149,320
1990	22	10	49,649	12	-8,000	41,649
1991	19	8	18,195	11	-20,896	-2,701
1992	15	7	8,751	8	-62,194	-53,443
ALL BANKS						
1982	125	98	$1,250,382	27	-$57,765	$1,192,617
1983	151	125	1,523,720	26	-25,237	1,498,483
1984	165	122	1,929,885	43	-51,050	1,878,835
1985	119	97	1,919,875	22	-84,438	1,835,437
1986	127	98	1,522,742	29	-41,817	1,480,925
1987	96	59	801,508	37	-163,507	638,001
1988	73	41	563,794	32	-228,113	335,681
1989	60	36	169,338	24	-731,137	-561,799
1990	29	13	49,729	16	-9,898	39,831
1991	25	10	18,529	15	-22,430	-3,901
1992	19	9	9,154	10	-69,320	-60,166

Chart 12
NUMBER OF BANKS USING IBF INCOME MODIFICATION VERSUS NUMBER OF BANKS USING IBF ALLOCATION ELECTION, 1985 - 1992



Since 1986, the number of banks claiming the IBF income modification has dropped steadily. By the 1992 tax year, only 19 banks utilized the IBF income modification. As shown in Chart 12, most of the decrease relates to the increased use of the allocation benefit election provided for by the 1985 legislation. In 1985, the first year of the election, 67 banks elected to use the allocation benefit. By the 1992 tax year, the number of banks electing to use the allocation benefit grew to 259.

IV. AUDIT STATISTICS

The historically high percentage of bank tax revenue collected as a result of audits was one of the factors that led to the bank tax reform measures enacted in 1985.[15] This section analyzes trends in bank tax audit collections. It helps in determining whether the legislation made the bank tax more predictable and less subject to adjustment under audit.

The analysis includes trends in audit revenues by both State fiscal year and by tax year. Unless otherwise stated, references to years throughout this section refer to the state fiscal year ending in that year.

For purposes of analyzing the effect of the 1985 reform, much of the data presented in this section are classified as attributable to pre-reform or post-reform audits. Audits covering tax years which began before January 1, 1985 are classified as pre-reform audits; audits covering tax years which began on or after January 1, 1985 are classified as post-reform audits. Appendix B discusses in more detail the methodology used to classify the audits.

The following are some of the highlights of the analysis presented in this section:

- In the period from the 1985 through 1992, audit revenue as a percentage of total bank tax collections, on average, equaled 40 percent. In 1993 and 1994, the average percentage dropped to less than 12 percent.

- For all categories of banks except clearinghouse banks, the average revenue per audit decreased significantly for audits of post-reform tax years. Overall, the average revenue per audit under the reformed law was approximately one-tenth of the average revenue under the pre-reform law.

- The percentage of audits that resulted in no assessment increased significantly from 26 percent of audits of pre-reform tax years to 45 percent of post-reform audits.

- The percentage of assessments that were disagreed with by taxpayers dropped from 10 percent of audits of pre-reform tax years to 7 percent of audits of post-reform tax years.

AUDIT REVENUE AS A PERCENTAGE OF TOTAL COLLECTIONS

Table 12 shows the percentage of total bank tax revenue collected through audits from 1980 through 1994. Chart 13 graphically presents the data contained in Table 12.

[15] Chapter 298 of the Laws of 1985, Memorandum in Support, page 10.

The table and chart show that, on average, from 1980 through 1984, bank tax audit revenue was less than 10 percent of total bank tax collections.[16] Beginning in 1985, bank tax audit revenue as a percentage of total bank tax collections increased. From 1985 through 1989, audit revenue as a percentage of total collections averaged more than 26 percent. The average percentage increased significantly in the period from 1990 through 1992. During that period, audit revenue as a percentage of total collections averaged nearly 57 percent. In 1993 and 1994, the percentage dropped significantly to an average of 12 percent.

Table 12
BANK TAX AUDIT REVENUE AND TOTAL BANK TAX COLLECTIONS, STATE FISCAL YEARS ENDING 1980 - 1994

Fiscal Year Ending	Audit Revenue[1]	Total Bank Tax Collections	Audit Revenue as a Share of Total Revenue
1980	$16,689,000	$181,933,328	9.2%
1981	$5,166,199	$234,444,357	2.2%
1982	$22,858,379	$222,084,087	10.3%
1983	$35,839,541	$176,389,008	20.3%
1984	$15,576,772	$172,391,787	9.0%
1985	$56,718,965	$169,852,899	33.4%
1986	$63,592,544	$247,760,631	25.7%
1987	$87,098,496	$379,613,840	22.9%
1988	$93,817,181	$406,999,822	23.1%
1989	$131,602,035	$431,921,720	30.5%
1990	$233,685,629	$425,082,656	55.0%
1991	$203,624,341	$330,700,009	61.6%
1992	$309,556,328	$565,819,270	54.7%
1993	$78,142,426	$670,482,253	11.7%
1994	$99,331,205	$850,734,348	11.7%

(1) Audit revenue equals cash collected plus refunds reduced.

[16] "Collections" refers to total Article 32 revenue received less refunds paid in the state fiscal year. For a more detailed discussion of collections see Appendix B.

Chart 13
PERCENTAGE OF BANK TAX REVENUE COLLECTED FROM AUDITS, STATE FISCAL YEARS ENDING 1980 - 1994

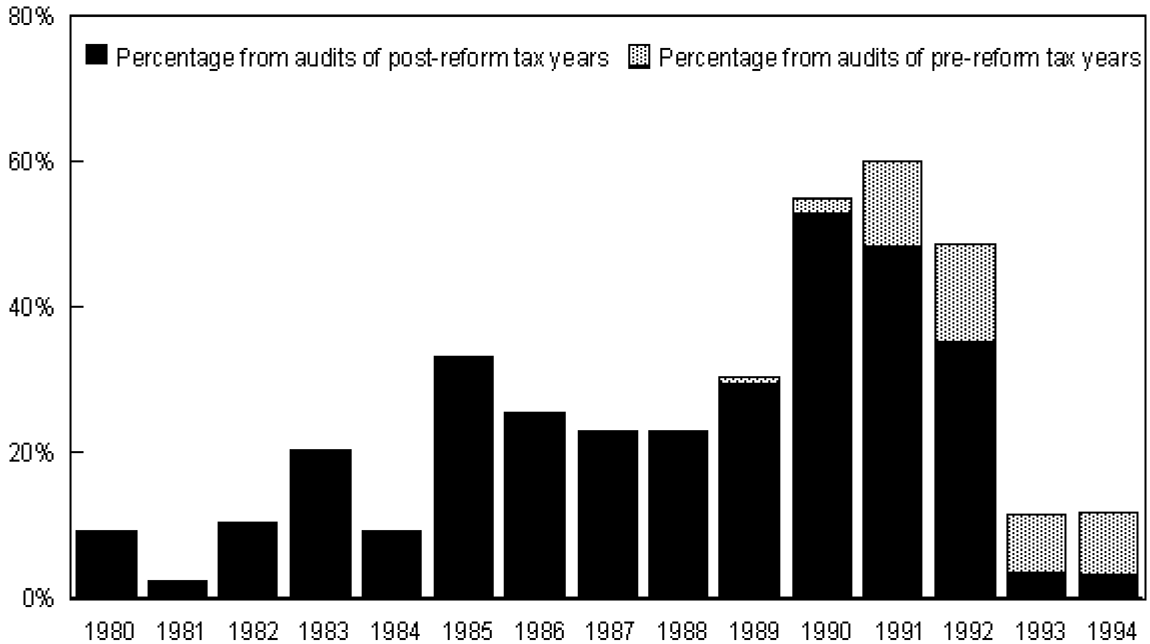


Chart 13 also shows the portion of the audit collections by fiscal year attributable to audits of pre-reform and post-reform tax years. The exhibit clearly shows that, in the fiscal years where audit revenue represents a large portion of total bank tax revenue, a high percentage of the total audit revenue was from audits of pre-reform tax years. For example, in 1990, when 55 percent of bank tax collections was attributable to audits, audits of pre-reform tax years accounted for over 90 percent of audit revenue. In contrast, in 1993 and 1994, when few pre-reform audits were closed, audit revenue as a percentage of total bank tax revenue decreased significantly.

BANK TAX AUDIT REVENUE BY TYPE OF BANK

A number of factors could affect the data presented in Table 12 and Chart 13. These include the number of audits conducted, the types of banks audited, voluntary compliance within the banking industry and the effect of the 1985 reform measures. Table 13 and Charts 14 through 16 provide detail on two of these factors -- the number of audits and the types of banks audited in each fiscal year.

Table 13 shows, by type of bank, the number of bank tax audits, the total audit revenue, the average revenue per audit and the percentage of audit revenue attributable to audits of pre-reform tax years. It shows that relatively few bank tax audits were closed each year from 1980 through 1988. In fact, over that nine-year period, only 125 bank tax audits were closed. This reflects the difficulties the Department experienced in obtaining agreements from taxpayers on audit assessments. In fact, many of these audits from the early 1980's were not closed until the early 1990's.

Table 13
BANK TAX AUDIT REVENUE BY TYPE OF BANK, STATE FISCAL YEARS ENDING 1980 - 1994

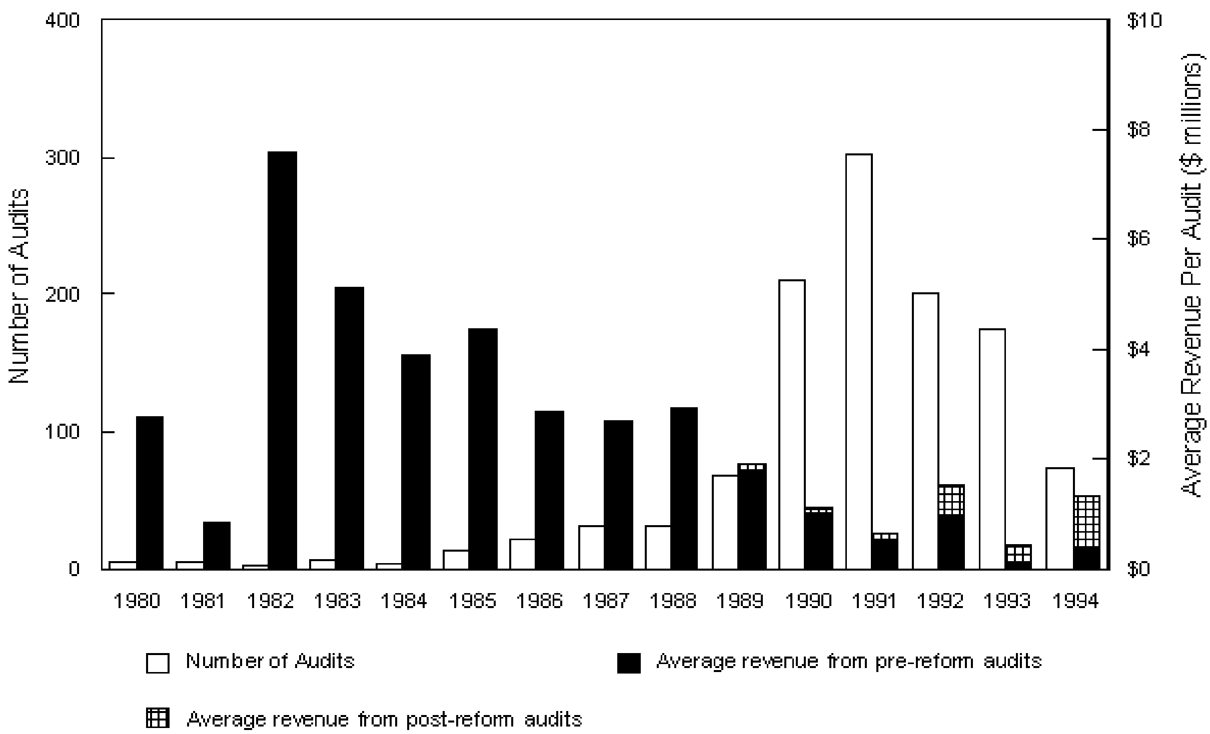
Bank Type	Fiscal Year Ending	Number of Audits	Total Audit Revenue	Average Revenue Per Audit[1]	Share of Revenue from Pre-ReformTax Years
Clearinghouse	1980-1988	38	$300,211,460	$7,900,302	100%
	1989	9	$94,446,102	$10,494,011	100%
	1990	14	$172,823,279	$12,344,520	100%
	1991	11	$165,448,364	$15,040,760	86%
	1992	15	$232,186,082	$15,479,072	68%
	1993	3	$9,015,600	$3,005,200	100%
	1994	4	$76,780,039	$19,195,010	39%
	Total:	94	$1,050,910,926	$11,179,903	86%
Foreign	1980-1988	47	$20,233,394	$430,498	100%
	1989	32	$23,188,258	$724,633	84%
	1990	73	$16,183,830	$221,696	90%
	1991	90	$24,774,543	$275,273	67%
	1992	85	$43,443,019	$511,094	62%
	1993	69	$51,668,506	$748,819	18%
	1994	40	$13,102,217	$327,555	5%
	Total:	436	$192,593,767	$441,729	66%
Commercial	1980-1988	35	$71,504,307	$2,042,980	100%
	1989	24	$13,675,555	$569,815	99%
	1990	80	$39,861,955	$498,274	96%
	1991	124	$9,726,099	$78,436	72%
	1992	61	$19,980,534	$327,550	86%
	1993	56	$14,459,765	$258,210	44%
	1994	54	$1,245,035	$23,056	0%
	Total:	434	$170,453,250	$392,749	90%
Thrifts	1980-1988	5	$5,408,221	$1,081,644	100%
	1989	5	$292,120	$58,424	0%
	1990	43	$4,816,565	$112,013	4%
	1991	77	$3,675,335	$47,732	0%
	1992	41	$13,946,693	$340,163	2%
	1993	47	$2,998,555	$63,799	1%
	1994	29	$8,203,914	$282,894	0%
	Total:	247	$39,341,403	$159,277	15%
Total All Banks	1980	6	$16,689,305	$2,781,551	100%
	1981	6	$5,166,199	$861,033	100%
	1982	3	$22,858,379	$7,619,460	100%
	1983	7	$35,839,541	$5,119,934	100%
	1984	4	$15,576,772	$3,894,193	100%
	1985	13	$56,718,965	$4,362,997	100%
	1986	22	$63,592,544	$2,890,570	100%
	1987	32	$87,098,496	$2,721,828	100%
	1988	32	$93,817,181	$2,931,787	100%
	1989	70	$131,602,035	$1,880,029	97%
	1990	210	$233,685,629	$1,112,789	97%
	1991	302	$203,624,341	$674,253	82%
	1992	202	$309,556,328	$1,532,457	66%
	1993	175	$78,142,426	$446,528	31%
	1994	127	$99,331,205	$782,135	31%
	Total:	1211	$1,453,299,346	$1,200,082	81%

(1) Audit revenue equals cash collected plus refunds reduced.

The table also shows that, beginning in 1989, the first year that post-reform audits were closed, the Department began to conduct more numerous audits.[17] The Department also began conducting more audits of smaller commercial banks, foreign banks and thrifts.

Chart 14 presents the data contained in Table 17 in the form of a bar chart. Chart 14 clearly shows that, beginning in 1989, when the Department began to audit a larger population of banks, the average revenue per audit decreased.

Chart 14
AVERAGE BANK TAX REVENUE PER AUDIT, ALL BANKS,
STATE FISCAL YEARS ENDING 1980 - 1994



Charts 15 and 16 present the data for clearinghouse banks and non-clearinghouse banks separately. Charts 15 and 16 also show the portion of the total audit revenue attributable to audits of pre-reform and post-reform tax years.

[17] Between 1988 and 1989 the Department increased the staff days expended on bank tax audits by 20 percent. Most of the additional staffing was accomplished by shifting auditors from the auditing of other taxes.

Chart 15 shows the trend in average audit revenue for clearinghouse banks. The chart shows that, from 1980 through 1988, average revenue per audit fluctuated from a low of approximately $1 million in 1981 to a high of $16 million in 1985. From 1989 through 1992, average audit revenue from clearinghouse banks increased steadily. This increase was followed by a marked decline in 1993 and an increase to an all-time high of approximately $19 million in 1994.

Chart 15
AVERAGE BANK TAX REVENUE PER AUDIT, CLEARINGHOUSE BANKS, STATE FISCAL YEARS ENDING 1980 - 1994

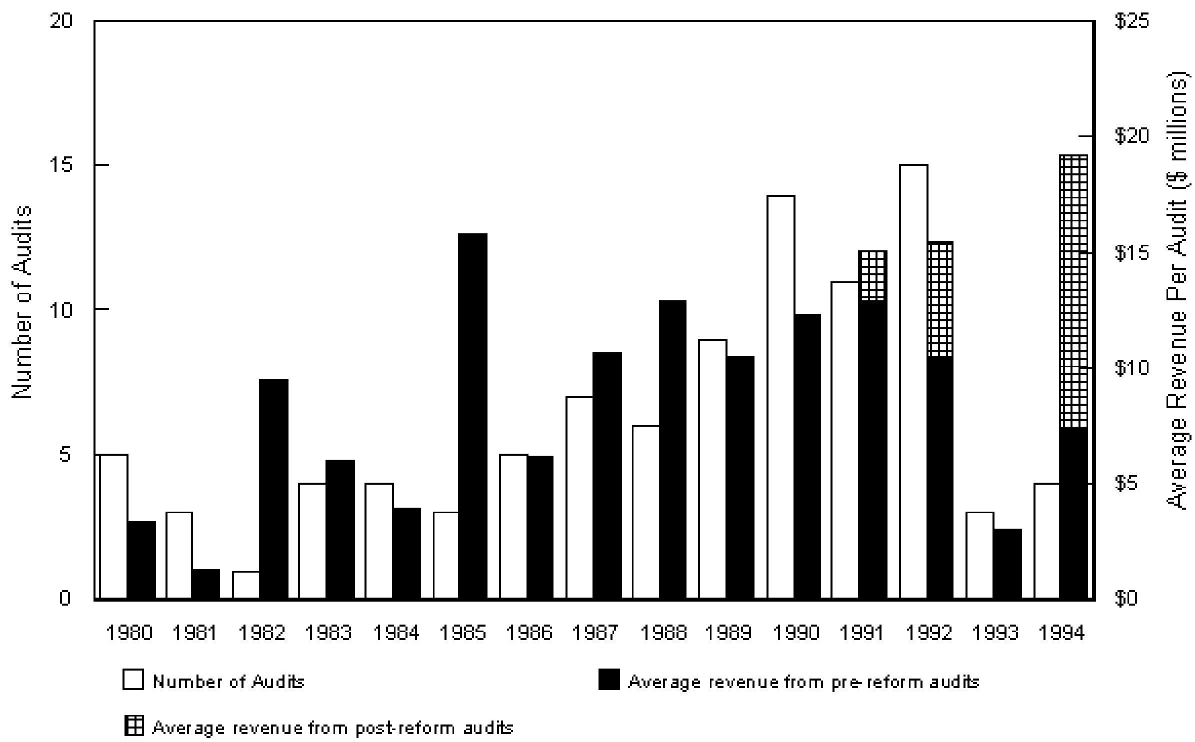
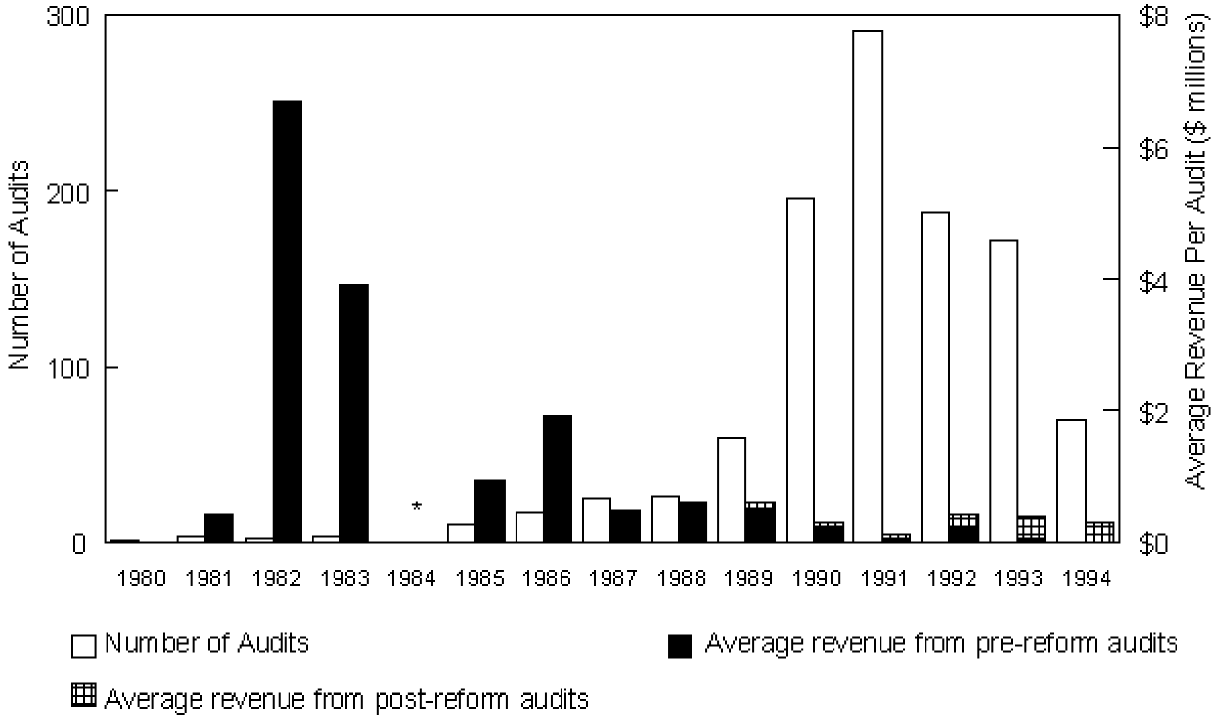


Chart 16 shows the trend in average revenue for non-clearinghouse banks. In the period from 1980 through 1986, this group, like the clearinghouse banks, exhibited wide fluctuations in average revenue per audit. However, from 1987 through 1994, the average revenue per audit from the non-clearinghouse banks has remained consistently low.

Chart 16
AVERAGE BANK TAX REVENUE PER AUDIT, NON-CLEARINGHOUSE BANKS, STATE FISCAL YEARS ENDING 1980 - 1994



* No audits of non-clearinghouse banks were closed in 1984.

COMPARISON OF AUDITS OF PRE-REFORM AND POST-REFORM TAX YEARS

The two preceding charts seem to indicate that at least some of the decrease in average audit revenue relates to the auditing of smaller, non-clearinghouse banks beginning in 1989. However, the analysis that follows shows that much of the decrease in audit revenue in the post-reform years relates to the 1985 reforms. The balance of this section's analysis compares the results of audits of pre-reform and post-reform tax years for each type of bank. This type of analysis, by viewing the data by tax year rather than fiscal year, and by type of bank, allows a more direct comparison of audit results before and after the reform legislation.

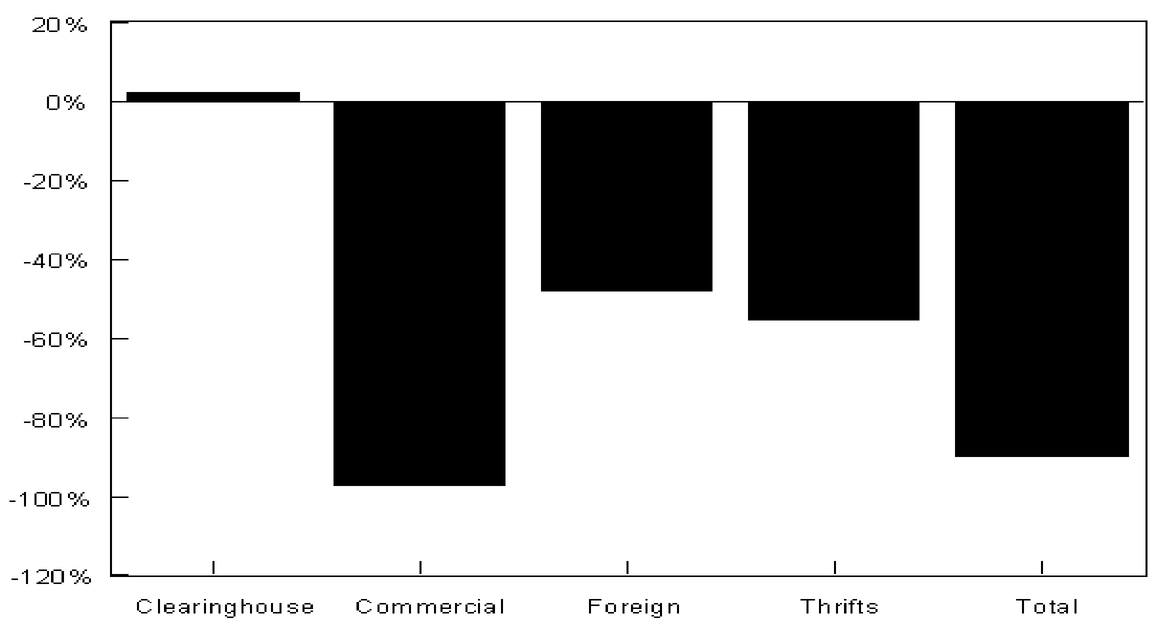
Table 14 compares the number of audits, total audit revenue and average revenue per audit for audits of pre-reform and post-reform tax years. Chart 17 presents, graphically, the change in average revenue per audit by type of bank. Both Table 14 and Chart 17 show that, for all categories of banks except clearinghouse banks, average revenue per audit decreased significantly for audits of post-reform tax years. Overall, the average revenue per audit decreased from $3 million for audits of pre-reform tax years to $311,000 for audits of post-reform tax years.

Table 14
AVERAGE BANK TAX AUDIT REVENUE BY TYPE OF BANK, PRE-REFORM AND POST-REFORM TAX YEARS

	Audits of Pre-Reform Tax Years			Audits of Post-Reform Tax Years			Change in Average Revenue per Audit*
	Number of Audits	Total Audit Revenue	Average Revenue per Audit	Number of Audits	Total Audit Revenue	Average Revenue per Audit	
Clearinghouse	84	$907,400,120	$10,802,382	13	$143,510,806	$11,039,293	2%
Foreign	191	$107,638,754	$563,554	291	$84,536,409	$290,503	-48%
Commercial	103	$153,628,720	$1,491,541	355	$16,824,530	$47,393	-97%
Thrifts	19	$5,929,979	$312,104	238	$33,411,424	$140,384	-55%
Total	397	$1,174,597,573	$2,958,684	896	$278,283,169	$310,584	-90%

Note: Audits spanning both pre- and post-reform periods were counted in both periods.
* Change from average revenue per pre-reform audit to average revenue per post-reform audit.

Chart 17
PERCENT CHANGE IN AVERAGE REVENUE PER AUDIT BY TYPE OF BANK, PRE-REFORM VERSUS POST-REFORM TAX YEARS



For foreign banks, the average revenue per audit decreased from $564,000 for audits of pre-reform tax years to $291,000 for audits of post-reform tax years. The average revenue for audits of commercial banks dropped from $1.5 million for pre-reform tax years to $47,000 for post-reform tax years. For thrifts, the average revenue per audit decreased from $312,000 for audits of pre-reform tax years to $140,000 for audits of post-reform years.

In contrast to the overall trend, the average revenue per audit for clearinghouse banks increased from $10.8 million for pre-reform tax years to $11 million in post-reform tax years. However, audit revenue from any particular tax year is subject to the same economic influences that affect overall tax liability. Therefore, with all other factors being equal, audit revenue from years of high tax liability would typically exceed the audit revenue from years of lower tax liability. This may explain the 2 percent increase in average revenue per audit between the pre-reform tax years and the post-reform tax years for the clearinghouse category. A significant fraction of the 12 post- reform audits of clearinghouse banks related to tax years 1985 through 1987. Referring back to Chart 3, it is evident that the average tax liability of clearinghouse banks in that period was significantly higher than in the tax years prior to reform. In fact, for the clearinghouse banks audited since 1980, the change in average tax liability between the pre-reform years that were audited and the post-reform years that were audited equaled 44 percent.

RESULTS OF PRE-REFORM AND POST-REFORM BANK TAX AUDITS CLOSED

The number of audits resulting in no assessments and the taxpayer response to the audit assessments are good indicators of the success of the 1985 reforms in making the bank tax more certain for taxpayers. Table 15 and Chart 18 contrast the final disposition of audits of pre-reform tax years with audits of post-reform tax years. As shown in the table and chart, the percentage of audits that resulted in no assessment increased significantly from 26 percent of audits of pre-reform tax years to 45 percent of audits of post-reform tax years. Moreover, this percentage increased for all categories of banks. The increase in no-assessment audits may suggest improved compliance as a result of the changes in the law.

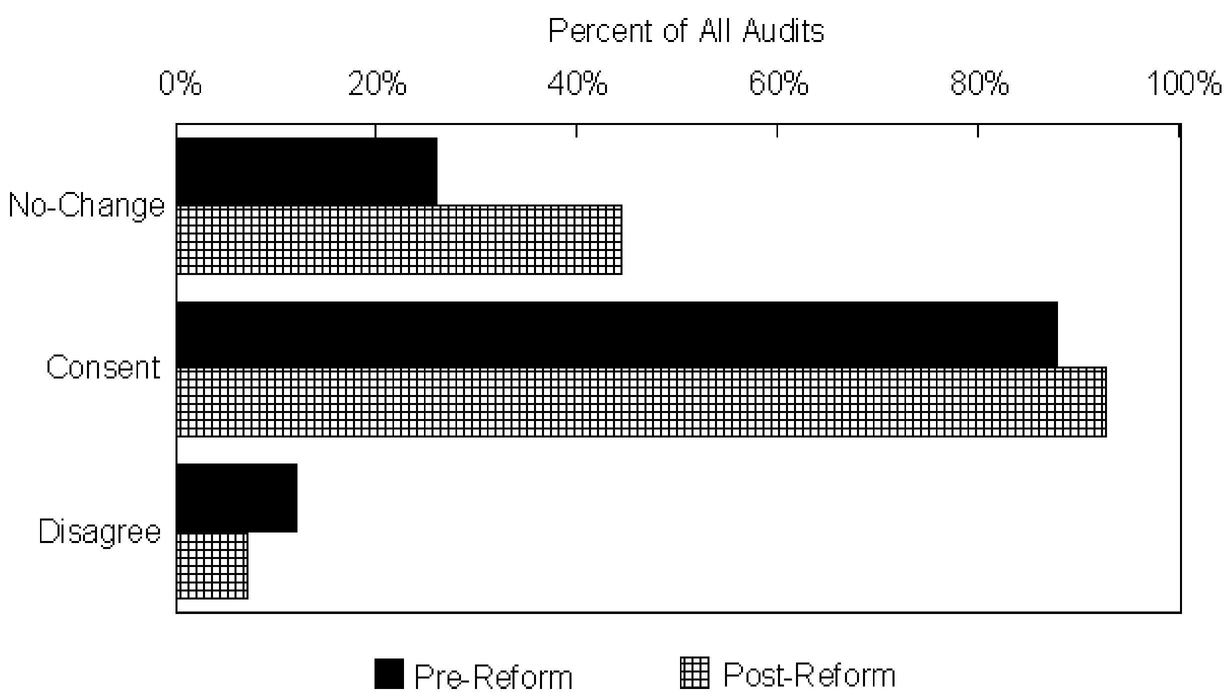
Table 15 and Chart 18 also show the percentages of audit results that were fully agreed to or disagreed with by taxpayers. As shown in the table and chart, the share of audits fully agreed to by taxpayers rose from 88 percent in the pre-reform period to 93 percent in the post-reform period.

Table 15
RESULTS OF BANK TAX AUDITS CLOSED, PRE-REFORM AND POST-REFORM TAX YEARS

	All Audits[1]		No-Change Audits		Taxpayer Consented		Taxpayer Disagreed	
	Number of Audits	Amount Paid	Number of Audits	Share of Total	Number of Audits[2]	Share of Total	Number of Audits	Share of Total
Pre-Reform	314	$1,150,795,898	82	26%	276	88%	32	10%
Post-Reform	814	$261,081,811	362	45%	755	93%	54	7%

1 Audits spanning both pre- and post-reform periods were excluded from this analysis.
2 Audits where the taxpayer consented partially are not counted in either the "Taxpayer Consented" or "Taxpayer Disagreed" columns; the sum of these two categories will therefore be less than the total number of all audits.

Chart 18
RESULTS OF BANK TAX AUDITS CLOSED, PRE-REFORM VERSUS POST-REFORM TAX YEARS



CONCLUSION

Overall, this analysis of audit results provides several indicators that the 1985 reforms have been effective in making the tax less likely to be adjusted as a result of audits. First, in the two most recent fiscal years for which data is available, audit revenue as a percentage of total bank tax collections dropped to less than one-fourth of the level that it was in the previous three years. Secondly, average revenue from audits of post-reform tax years is approximately one-tenth of the average revenue from audits of pre-reform tax years. Finally, the percentage of audits not resulting in any changes, an indicator of good tax compliance, has increased from 26 percent for pre-reform tax years to 45 percent for post-reform tax years.

APPENDIX A: DESCRIPTION OF CORPORATE FRANCHISE TAX ON BANKING CORPORATIONS

Article 32 levies a franchise tax on banking corporations doing business in the State. The bank tax consists of the highest of four alternatives:

- 9 percent of allocated entire net income (ENI); or
- 3 percent of allocated alternative entire net income (alternative ENI); or
- $250; or
- one-tenth, one-twenty-fifth or one-fiftieth of a mill upon each dollar of allocated taxable assets.

Calculation of the taxes on allocated ENI begins with federal taxable income, which includes certain exclusions and deductions. Taxpayers then make several New York modifications and allocate their income to arrive at New York entire net income. These modifications include, for example, a bad debt deduction for large commercial banks, a deduction for the eligible net income of international banking facilities (IBFs), a deduction for a portion of interest income from government obligations and deductions for interest and dividend income from subsidiary capital. Banks conducting business both inside and outside New York allocate their income and assets to New York by applying a three-factor allocation formula consisting of payroll, deposits and receipts. The receipts and deposits factors are double-weighted.

Alternative entire net income is the same as ENI, except that the deductions for portions of subsidiary interest and dividend income and interest on government obligations are not allowed. In addition, the factors of the alternative income allocation formula are single-weighted.

The tax on allocated taxable assets starts with the taxpayer's total assets. Assets attributable to the Federal Deposit Insurance Corporation and Federal Savings and Loan Insurance Corporation are then subtracted to determine taxable assets. This total is then multiplied by the allocation percentage, which is the same as the percentage used for allocating entire net income. The tax rate imposed on this amount (one-tenth, one-twenty-fifth or one-fiftieth of a mill) is determined by the taxpayer's net-worth-to-assets ratio and the percentage of its loans secured by mortgages.

Taxpayers may take credits against the highest tax liability to determine their after-credit liability. These credits include, for example, credits for investment and employment in economic development zones and the special additional mortgage recording tax credit.

The temporary 12.5 percent business surcharge applies to taxpayers for the 1994 tax year. Effective through 1995, a surcharge rate of 17 percent also applies to taxes otherwise due, after deduction of credits, allocable to the 12-county Metropolitan Commuter Transportation District.

APPENDIX B: DATA DESCRIPTION

Confidentiality

Confidentiality laws prohibit the disclosure of statistics that would reveal the identity, either directly or indirectly, of a particular taxpayer. Where confidentiality rules preclude disclosure, the exhibits describe the statistic as "not disclosable." Generally, the statistical tabulations cannot include cells containing data from fewer than three taxpayers. However, in certain circumstances, statistics for cells containing more than three observations cannot be provided because disclosure would enable calculation of confidential data.

Tables 1 through 8 provide statistics regarding total tax liability and the basis of tax liability. In order to maintain confidentiality, it was necessary to combine categories of banks in these tables. In Tables 3 and 4, the clearinghouse and commercial categories were combined. In Tables 7 and 8, the savings bank and savings & loan association categories were combined.

Tax Return Data Base

The tax statistics provided in Section III are based solely on data as reported on bank tax returns. This data has not been adjusted to reflect the changes made as a result of audits.

The statistics do not reflect the surcharges imposed since the 1989 tax year. Also, the statistics do not reflect the Metropolitan Commuter Transportation District (MCTD) surcharge paid by banks doing business within the MCTD region.

Audit Results Data Base

The analysis of audit collections is based on a data base maintained by the Department's Audit Division. Each record in this data base relates to a single bank tax audit closed after April 1, 1980.

In the analysis of audit revenue by fiscal year, audit revenues are grouped based on the year that the audit was closed. For example, an audit that was closed in the 1989-90 fiscal year that related to a 1982 tax return was included with the fiscal year 1989-90 audit revenue. In some instances, the fiscal year data relates to tax years that ended a number of years prior. For example, some of the audit revenue attributable to the 1981-82 fiscal year relates to audits of tax years that ended in the 1960's. For purposes of the analysis by fiscal year, audits closed after March 31, 1994 have not been included.

In the analysis comparing audit results for pre-reform and post-reform tax years, audit collections were attributed based on the tax year in which the liability was incurred. Most audits of banking corporations are conducted for periods spanning multiple tax years. However, the data base does not provide sufficient detail to allow tracing of multi-year assessments to individual tax years. Therefore, for purposes of the analysis, some adjustments were necessary. Of the 1,211 total audits examined, 1,128 encompassed either entirely pre-reform or entirely post-reform tax years while 83 spanned both pre-reform and post-reform tax years. For the audits spanning both pre-reform and post-reform tax years, and where the total assessment equaled $100,000 or more, the audit revenue was attributed to pre-reform and post-reform periods based on an examination of the Audit Division's records. For audits resulting in assessments of less than $100,000 the total assessment was apportioned to the pre-reform and post-reform periods based on the number of pre-reform and post-reform tax years upon which the assessment was based.

Collections Data

The analysis of audit revenue compares total audit revenue to total collections. Audit revenue refers to audit assessments collected plus penalties and interest collected. Collections refers to total revenue received less refunds paid in each state fiscal year. The revenue included in collections includes payments made when a banking corporation files its tax return, estimated tax payments, and audit revenue including penalties and interest.

APPENDIX C: DISCUSSION OF TERMS

The following is a description of the terms used in the report.

Taxpayer- Taxpayers are corporations or associations subject to Article 32 of the Tax Law. This report considers each consolidated or combined group, or a bank filing separately, as a single filing entity. It refers to each filing entity as a single taxpayer.

Clearinghouse Banks - Clearinghouse banks are large commercial banks that are members of the New York Clearinghouse Association.

Foreign Banks - Foreign banks are commercial banks, with New York nexus, that are headquartered outside of the United States or its possessions.

Savings Banks - Savings banks are depository financial institutions that primarily accept consumer deposits and make home mortgage loans.

Savings and Loan Associations - Savings and loan associations are depository financial institutions that receive deposits primarily from consumers and hold most of their assets as home mortgage loans. Unlike savings banks, these financial institutions are authorized to engage in commercial lending, non-mortgage consumer lending and trust services.

Thrifts - The term "thrifts" describes both savings banks and savings and loan associations.

Commercial Banks - Commercial banks, as referred to throughout the report, are all non-thrift institutions that are neither clearinghouse nor foreign banks. These banks may be headquartered anywhere within the United States.

Consolidated Reporting - Consolidated reporting is a form of joint reporting (on one return) by related corporations. Each member calculates its separate income allocated to the state with certain intercorporate eliminations. (The separate allocation percentages reflect intercorporate eliminations, but only for those corporations in the group.) The group then sums the separate allocated incomes.

Combined Reporting - Combined reporting is a form of joint reporting (on one return) by related corporations. The group first adds each members unallocated income, with appropriate intercorporate eliminations, then allocates the total income with one allocation formula based on the factors (payroll, deposits and receipts) of the entire group.

Alternative Tax Bases - Capital stock was the alternative tax base for clearinghouse, foreign and commercial banks through the 1984 tax year. For thrifts, the base of the alternative tax, through the 1984 tax year, was interest or dividends credited to depositors or shareholders. Beginning in the 1985 tax year, two alternative tax bases, taxable assets and alternative entire net income, apply to all types of banking corporations. This report aggregates tax liabilities under these two alternative bases.

Tax Liability - Tax liability refers to the tax due after credits as reported on Article 32 tax returns. Tax liability statistics do not include surcharges.

Federal Taxable Income/Entire Net Income - Federal taxable income (federal gross income minus allowable deductions) is the starting point in the calculation of New York income. Entire net income (ENI) refers to a bank's federal taxable income adjusted for New York modifications (additions and subtractions) before the New York portion is determined through separate accounting (pre-1985) or formula apportionment (1985 and later).

Allocated Entire Net Income (ENI) - Allocated ENI refers to the amount of ENI attributable to New York through separate accounting in pre-1985 tax years or formula apportionment for tax years beginning in 1985 and after.

International Banking Facilities (IBF) - An IBF is a set of asset and liability accounts segregated on the books and records of a depository institution, United States branch or agency of a foreign bank, or an Edge or Agreement Corporation. IBF accounts include only international banking facility time deposits and international banking facility extensions of credit. Since 1981, Article 32 has provided that banks that establish an IBF in New York may deduct from entire net income the adjusted eligible net income of the IBF. The 1985 legislation provided that, in lieu of the IBF deduction, a taxpayer may elect to modify its income allocation percentage by excluding IBF activities in calculating the numerator of its payroll, receipts and deposits factors. The number of banks claiming the IBF deduction is compared to the number using the IBF allocation benefit in Chart 12.

Formula Apportionment/Allocation Percentage - For corporations doing business within and without the State, formula apportionment is used to determine the portion of the tax base (i.e., entire net income, alternative entire net income and assets) attributable to New York. The tax base allocable to New York is calculated by multiplying the unallocated base by an allocation percentage. This percentage is based on the ratio of receipts, deposits and payroll earned or paid in New York to those earned or paid everywhere.

Deduction for 60 Percent of Dividend Income, Gains or Losses from Subsidiary Capital - The 1985 legislation provided that in computing New York entire net income, banks are allowed to deduct 60 percent of dividend income, gains and losses from subsidiary capital. The amount of this deduction and its distribution by type of bank are presented in Table 14.

Deduction for 17 Percent of Interest Income from Subsidiary Capital - The 1985 legislation provided that in computing New York entire net income, banks are allowed to deduct 17 percent of interest income from subsidiary capital. The amount of this deduction and its distribution by type of bank are shown in Table 14.

Deduction for 22.5 Percent of Interest from Certain Government Obligations - The 1985 legislation provided for a deduction for 22.5 percent of interest income on New York or United States obligations, other than obligations held for resale in connection with regular trading activities. The amount of this deduction and its distribution by type of bank are shown in Table 14.