NEW YORK STATE | Department of Taxation and Finance

Important

Article 32 of the Tax Law was repealed, effective for tax years beginning on or after January 1, 2015, by Part A of Chapter 59 of the Laws of 2014. As a result, this TSB-M is obsolete and cannot be relied upon for tax years on or after that date insofar as the TSB-M addresses matters relating to Article 32.

For additional information concerning the Article 32 repeal, see Transitional Filing Provisions for Taxpayers Affected By Corporate Tax Reform Legislation.

This TSB-M begins on page 2 below.

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New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-85 (16)C
Corporation Tax
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General

Chapter 298 of the Laws of 1985 revises the franchise tax on banking corporations to make the tax analogous to the franchise tax on general business corporations. The new law is effective immediately and is applicable to taxable years beginning on or after January 1, 1985. The State Tax Commission repealed Article 9-B and 9-C regulations and adopted comprehensive Article 32 regulations for the franchise tax on banking corporations which reflect the changes made by Chapter 298 of the Laws of 1985.

The bill specifically:

(a) reduces the rate of the basic tax measured by entire net income from 12 percent to nine percent;

(b) provides a uniform alternative minimum tax measured by assets for all banking corporations;

(c) provides that the portion of entire net income or assets attributable to business done in New York State is to be determined by the use of an allocation formula (the method used by general business corporations);

(d) taxes non-New York banking corporations which are doing business in this State; and

(e) provides that where a group of affiliated corporations computes its tax on one return the tax shall be computed on a combined basis (the method used by general business corporations) rather than on a consolidated basis.

The bill also:

(a) provides tax relief to certain banking corporations which receive federal assistance;

(b) provides a new alternative minimum tax of three percent of alternative entire net income;

(c) provides for the creation of a temporary state commission to study the franchise tax on banking corporations; and

(d) sunsets all provisions except those which apply to savings bank and savings and loan associations and the alternative minimum tax measured by assets.

At the request of the City of New York, the Administrative Code of the City of New York has been substantially conformed.

Changes in Taxability

Previously, to be taxable under Article 32, a banking corporation not organized under the laws of New York State was required to be doing a banking business within New York State. The amendment to Article 32 deleted the words "in this state" from the definition of the term "banking corporation," as contained in Section 1452(a)(1) through (a)(7). It also changed the Section 1452(b) definition of the term "banking business" to include such business as any corporation or association organized under the laws of any other state or country which has authority to do that which is substantially similar to the business a corporation or association may be created or authorized to do under Article 3, 3-b, 5, 5-a, 6, or I0 of the New York Banking Law. Thus, a banking corporation not organized under the laws of New York State, which is doing business within New York State in a corporate or organized capacity and a banking business anywhere, is now subject to tax under Article 32 of the Tax Law.

The definition of the term "banking corporation" under Section 1452(a)(9) was amended to subject to tax under Article 32 certain corporations which were previously taxable under Article 9 or Article 9-A of the Tax Law. Section 1452(a)(9), as amended, makes a 65 percent or more owned subsidiary of a savings bank, a savings and loan association or a holding company of either of these subject to the franchise tax on banking corporations rather than the franchise tax on general business corporations provided the subsidiary is principally engaged in a business which might be lawfully conducted by a New York State commercial bank or by a National Banking Association or which is so closely related to banking or managing or controlling banks as to be a proper incident thereto (as set forth in Section 4 (c)(8) of the Federal Bank Holding Company Act of 1956, as amended). Also, sixty-five percent or more owned subsidiaries of (1) corporations subject to Article 3-A of the New York State Banking Law, (2) corporations registered under the Federal Bank Holding Company Act of 1956, as amended, or (3) commercial banks would be subject to the franchise tax on banking corporations provided the subsidiary is principally engaged in a business which might be lawfully conducted by a New York State commercial bank or by a National Banking Association or which is so closely related to banking or managing or controlling banks as to be a proper incident thereto (as set forth in Section 4 (c)(8) of the Federal Bank Holding Company Act of 1956, as amended). In no event is a 65 percent or more owned subsidiary subject to the franchise tax on banking corporations if it is principally engaged in a business described in Sections 183, 184 or 186 of the Tax Law (such as a telegraph, telephone, trucking, railroad, gas or electric business) and if any of its business receipts from such business are from nonaffiliated corporations.

A corporation as described in the preceding paragraph, which was subject to tax under Article 9-A for a 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 taxab]e year. The election is made by the 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.

A foreign corporation subject to tax under Article 32, Section 1452(a)(9) is liable for a license fee and maintenance fee imposed by Section 181 of the Tax Law.

Computation of Tax

The tax under Article 32 is assessed on the largest of the following:

1. 9% of entire net income allocated to New York State.

2. 3% of alternative entire net income allocated to New York State.

3. Alternative minimum tax on taxable assets allocated to New York State. (The rate of tax on taxable assets allocated to New York State is either 1/10 of a mill, 1/25 of a mill or 1/50 of a mill.)

4. Minimum tax of $250.00.

Entire Net Income

Entire net income is Federal taxable income, with certain modifications. Modifications which were enacted by Chapter 298 include the following:

1. Entire net income of a corporation organized under the laws of a country other than the U.S. includes:

a. Income from dividends or interest on any kind of stock, securities or indebtedness which is income effectively connected with the conduct of a trade or business in the U.S. pursuant to section 864 of the IRC,

b. Income which is exempt from federal taxable income under any treaty obligation, provided such income would be effectively connected with the conduct of a trade or business in the U.S. pursuant to section 864 of the IRC if it were not for the treaty,

c. Income which is exempt from federal taxable income pursuant to section 103(a) of the IRC, provided such income would be effectively connected with the conduct of a trade or business in the U.S. pursuant to section 864 of the IRC if it were not for the exemption.

2. Entire net income of a corporation organized under the laws of a state or of the United States includes income from dividends or interest on any kind of stock, security or indebtedness except Section 78 dividends.

3. Entire net income does not include any amount of money or other property (whether or not evidenced by note or other instrument) received from the Federal Deposit Insurance Corporation under section 13(c) of the Federal Deposit Insurance Act, as amended. (Under section 13(c) of the Federal Deposit Insurance Act, as amended, the Federal Deposit Insurance Corporation is authorized to make loans to, make deposits in, purchase the assets or securities of, assure the liabilities of or make contributions to insured banks.)

4. Entire net income does not include any amount of money or other property (whether or not evidenced by note or other instrument) received from the Federal Savings and Loan Insurance Corporation under section 406(f)(1), (2), (3) or (4) of the Federa] National Housing Act, as amended. Under section 406(f)(1)(2)(3)(4) of the Federal National Housing Act, as amended, the Federal Savings and Loan Insurance Corporation is authorized to make loans to, make deposits in, purchase the assets or securities of, assure the liabilities of or make contributions to insured banks.

5. Entire net income does not include:

a. 17% of interest income from subsidiary capital and

b. 60% of dividend income, gains and losses from subsidiary capital. For purposes of this exclusion, the terms "subsidiary" and "subsidiary capital" are identical to the terms "subsidiary" and "subsidiary capital" as defined by Article 9-A.

6. Entire net income does not include 22½% of interest income from:

a. obligations of New York State or its political subdivisions and

b. obligations of the U.S., not held by the taxpayer for resale to customers in the regular course of trading activities.

7. Entire net income does not include the reduction in the basis of property that is required by section 362 of the IRC as a result of any amount of money or other property received from:

a. The Federal Deposit Insurance Corporation under section 13(c) of the Federal Deposit Insurance Act, as amended, or

b. The Federal Savings and Loan Insurance Corporation under sections 406(f)(1), (2), (3) or (4) of the Federal National Housing Act, as amended.

8. Provided an election has not been made pursuant to Section 1454 (b)(2), a deduction is allowed for the adjusted eligible net income of the International Banking Facility (IBF) of the taxpayer. In such event adjusted eligible net income is a loss, the amount of such loss is added to entire net income.

Alternative Net Income

The computation of alternative entire net income is the same as entire net income (E.N.I.) computed pursuant to Section 1453 except that alternative entire net income does not include the 17%, 60% and 22½% deductions described in paragraphs 5 and 6 under Entire Net Income of this memorandum. Whatever election the taxpayer makes concerning its IBF pursuant to Section 1454(b)(2) for purposes of computing E.N.I. applies to the computation of alternative entire net income as well.

Taxable Assets

The rate of the alternative minimum tax measured by taxable assets is 1/10 of a mill (.0001) on taxable assets allocated to New York State except that:

1. For taxable years beginning on or after 1/1/85, a taxpayer is not subject to the tax measured by assets for that portion of the taxable year in which it had outstanding net worth certificates issued in accordance with section 406(f)(5) of the Federal National Housing Act, as amended, or section 13(i) of the Federal Deposit Insurance Act, as amended.

2. The rate of tax is 1/25 of a mill (.00004) on taxable assets allocated to New York State if:

a. the taxpayer's net worth ratio is less than 5% but greater than or equal to 4% and

b. the taxpayer's total assets are comprised of 33% or more of mortgages (as defined herein.)

3. The rate of tax is 1/50 of a mill (.00002) on taxable assets allocated to New York State if:

a. the taxpayer's net worth ratio is less than 4% and

b. the taxpayer's total assets are comprised of 33% or more of mortgages (as defined herein.)

The term "net worth ratio" means the percentage of net worth to assets where net worth and assets have the same meaning and determination as in Section 406(f)(5)(B)(i) of the Federal National Housing Act, or regulations promulgated thereunder, as such clause and regulations were in effect on June 1, 1985.

Generally, the term net worth means the sum of ali reserve accounts, retained earnings, common stock, preferred stock, mutual capital certificates, securities which constitute permanent equity capital in accordance with generally accepted accounting principles, appraised equity capital, and any other nonwith-drawable accounts of an insured institution, with certain provisions.

The term net worth also includes the sum of outstanding net worth certificates issued in accordance with part 572 of Title 12 of the Code of Federal Regulations or which the corporation is committed to purchase by virtue of Section 572.1(c), and subordinated debt securities issued pursuant to Section 561.13(c)(1) of Title 12 of the Code of Federal Regulations, with certain provisions.

For more information on the definition and computation of "net worth" and the "net worth ratio," refer to Title 20, N.Y.C.R.R., Section 18-5.3.

The term "mortgages" means loans secured by real property in or outside the 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 bv stock in a cooperative housing corporation.

The percentage of total assets comprised of mortgages is an amount equal to the ratio of the average of the four quarterly balances of such mortgages ending within the taxable year to the average of the four quarterly balances of all assets ending within the taxable year. Such quarterly balances are computed in the same manner as the report of condition required for Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation purposes, whether or not such report is required. For taxable periods of less than one year, the taxpayer computes the ratio using the number of quarterly balances ending within the taxable period.

The term "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 and in the computation of the eligible net income of the taxpayer's IBF for the taxable year. Taxable real and personal property, such as buildings, land, machinery and equipment, is to be valued at cost. Intangible property, such as loans, investments, coins and currency, is to be valued at book value.

Taxable assets shall not include the following:

1. any amount of money or property received under section 13(c) of the Federal Deposit Insurance Act, as amended, or

2. any amount of money or property received from the Federal Savings and Loan Insurance Corporation under sections 406(f)(1),(2),(3) or (4) of the Federal National Housing Act, as amended, or

3. if taxable assets are comprised of 20% or more of interbank placements, taxable assets shall not include interbank placements of funds up to an amount not exceeding $500 million.

The term "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 in Title 20, N.Y.C.R.R., Section 16-2.5(j)) provided such banking corporation is not one:

(1) which owns or controls, directly or indirectly, 65 percent or more of such taxpayer's voting stock; or

(2) 65 percent or more of whose voting stock is owned or controlled, directly or indirectly by such taxpayer; or

(3) 65 percent or more of whose voting stock is owned or controlled, directly or indirectly, by the same interest.

Allocation

Section 1454 provides that if a taxpayer's entire net income, alternative entire net income or assets are derived from business carried on within and without New York State, the taxpayer has the right to allocate a portion of its entire net income, alternative entire net income and assets outside 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 which has an 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.

The allocation percentage is determined by a three-factor formula. The three factors are receipts, payroll and deposits. The receipts factor is the ratio of receipts earned within New York State to receipts earned within and without New York State. The payroll and deposits factors are similarly computed except that for allocating entire net income and taxable assets, the numerator of the payroll factor is limited to 80 percent of payroll paid to employees within New York State. For allocating entire net income and taxable assets, the allocation percentage is calculated by adding the three factors together, giving double weight to the receipts factor and deposits factor and dividing the result by five. For allocating alternative entire net income, no factor receives double weight and the numerator of the payroll factor includes 100% of New York payroll.

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

If the allocation percentage does not properly reflect the activity, business, income or assets of a taxpayer within New York State, the Tax Commission is authorized to add or delete factors or use a different method to reflect the taxpayer's activity in New York State.

There are special allocation rules for taxpayers that have an IBF. A taxpayer which has an IBF located in New York State is entitled to modify its entire net income by deducting the adjusted eligible net income of the IBF. Where a taxpayer who is entitled to allocate its entire net income and alternative entire net income makes the IBF modification, such taxpayer must:

(1) exclude from both the numerator and denominator of the payroll and deposits factors, the wages, salaries and other personal service compensation and deposits the expenses of which are attributable to the production of eligible gross income, and

(2) exclude from both the numerator and denominator of the receipts factor those receipts which are attributable to the production of eligible gross income of the IBF.

In lieu of the IBF modification, the taxpayer may elect on an annual basis to reflect the results of its IBF operations in its income allocation percentage by including in the denominator but excluding from the numerator of the payroll, deposits and receipts factors the wages, salaries and other personal service compensation, deposits and receipts, the expenses or receipts of which are attributable to the production of eligible gross income of the IBF. This election will entitle the taxpayer to allocate its entire net income and alternative entire net income within and without New York State.

In computing the taxable assets allocation percentage, both the numerator and denominator of the payroll, deposits and receipts factors include the wages, salaries and other personal service compensation, deposits and receipts, the expenses of which are attributable to the production of eligible gross income of the IBF, regardless of whether the IBF election is made.

For purposes of computing the allocation percentages, in no event shall transactions between the taxpayer's IBF and its foreign branches be considered.

Payroll Factor - The percentage of the taxpayer's payroll allocated to New York State is determined by dividing 80% (or 100% when allocating alternative entire net income) of the wages, salaries and other personal service compensation of the taxpayers employees, except general executive officers, within New York State during the taxable year by the total amount of compensation of all the taxpayer's employees, except general executive officers, during the taxable year.

Receipts Factor - The percentage of the taxpayer's receipts allocated to New York State is determined by dividing receipts earned within New York State during the taxable year from loans (including a taxpayer's portion of a participation in a loan) and financing leases and all other business receipts by the total of such receipts.

Gross income from loans and financing leases is earned within New York State if the greater portion of income-producing activity related to the loan or financing lease occurred within New York State. If the taxpayer attributes a loan or financing lease to a branch outside New York State, such attribution shall be deemed proper unless the State Tax Commission can demonstrate that it is improper. If the Tax Commission so demonstrates, and if the taxpayer had a branch in New York State at the time the loan or financing lease was made, then the loan or financing lease is presumed to be within the State. Where a loan or financing lease ts recorded on the books of a place outside the State which is not a branch, it is presumed that the greater portion of income producing activity occurred within the State if the taxpayer had a branch within New York State at the time the loan or financing lease was made.

In the case of a taxpayer which is a bank holding company or a taxpayer described in subdivision (g) or (j) of Section 16-2.5 of Title 20, N.Y.C.R.R., a loan or financing lease attributed by such taxpayer to a bona fide office outside New York State is presumed to be properly attributed provided that such presumption may be rebutted if the Tax Commission demonstrates that the greater portion of income producting activity relating to the loan or financing lease did not occur outside New York State.

Receipts from lease transactions are earned within New York State if the property subject to the lease is located in New York State.

Receipts from bank, credit, travel, entertainment and other card operations are attributable to New York State according to the following rules:

1. Interest, and fees and penalties in the nature of interest, are earned within New York State if the cardholder's domicile is tn New York State. It is presumed that the domicile of a cardholder is its billing address.

2. Service charges and fees are earned within New York State if the card is serviced in New York State.

3. Receipts from merchant discounts are earned within New York State if the merchant is located in New York State. It is presumed that the location of the merchant is the address of the merchant shown on the invoice submitted by the merchant.

Receipts from net gains and losses and other income from trading and investment activities are earned within New York State if the greater portion of income producing activity related to the activity occurred within New York State.

Receipts from fees or charges from the issuance of letters of credit, travelers checks and money orders are earned within New York State if the letters of credit, traveler's checks or money orders are issued in New York State.

Receipts from the performance of other services not previously mentioned are earned within New York State if the service was performed in New York State.

All other receipts shall be allocated to New York State in accordance with rules and regulations issued by the Tax Commission.

For computing the allocation percentage, the terms "bona fide office" and "branch" are defined as follows:

1. Bona fide office means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

2. Branch means a bona fide office which is used by the taxpayer on a regular and systematic basis to conduct the following:

    a. approve loans (regardless of whether the approval of certain classes of loans requires review or final approval by another office),

    b. accept loan repayments,

    c. disburse funds, and

    d. conduct one or more other functions of a banking business.

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 within New York State during the taxable year by the average value of all the taxpayer's deposits maintained at branches within and without New York State.

A deposit is "maintained" at the branch of the taxpayer at which the 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. (See Title 20, N.Y.C.R.R. Section 19-7.3.)

The term "deposits" as contained in Regulations Section 19-7.2 means:

(1) 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;

(2) 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;

(3) 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;

(4) 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.

Combined Filing

The new legislation repeals section 1462(f) and replaces it with a new section 1462(f) which in certain cases mandates that certain taxpayers compute their tax on a combined basis, and in other cases authorizes the Tax Commission to permit or require certain taxpayers to compute their tax on a combined basis. Each banking corporation or bank holding company is a separate taxable entity and must file its own return. However, where a group of banking corporations or bank holding

companies are required or permitted to file a combined return in accordance with Section 1462(f), the group of taxpayers computes its tax on a combined basis. The income of one corporation can be offset by the losses of another.

In all cases where a combined return is permitted or required, a combined franchise tax return must be submitted on Form CT-32A. In addition, a separate franchise tax return must be filed for each corporation in the combined group on form CT-32.

If a banking corporation or bank holding company has been required or permitted to file a combined return, such corporation must continue to file a combined return until the facts affecting its combined reporting status materially change. If the facts materially change from the time such corporation was required or permitted to file on a combined return, such corporation must notify the Tax Commission of such change not later than 30 days after the close of its taxable year. The Tax Commission will then notify the corporation whether it will be required or permitted to be included in a combined return.

Combined reporting has been extended to holding companies of savings banks and savings and loan associations and to 65-percent-or-more owned or controlled corporations. Where a combined return is filed, the term "bank holding company" includes the following corporations:

1. a corporation subject to Article 3-A of the New York Banking Law,

2. a corporation registered under the Federal Bank Holding Company Act of 1956, as amended, and

3. a corporation registered as a savings and loan holding company (but excluding a diversified savings and loan holding company) under the Federal National Housing Act, as amended.

A banking corporation or bank holding company subject to tax under Article 32 must file a combined return with the following corporations:

1. a banking corporation or bank holding company in which it owns or controls, directly or indirectly, 80% or more of the voting stock, or

2. a banking corporation or bank holding company which owns or controls, directly or indirectly, 80% or more of its voting stock.

It will be presumed that the tax liability of any banking corporation or bank holding company which meets this 80% or more ownership or control requirement will be properly reflected when such corporation reports on a combined basis. Such a corporation may nevertheless be excluded from the combined return if the taxpayer or the Tax Commission shows that the inclusion of such a corporation in the combined return fails to properly reflect the tax liability of such corporation under Article 32 of the Tax Law.

A banking corporation or bank holding company not subject to tax under Article 32 will not be included in a combined return when the 80% or more ownership or control requirement is met unless the Tax Commission determines that such inclusion is necessary to properly reflect the tax liability of one or more banking corporations or bank holding companies in the combined return.

Additionally, a banking corporation or bank holding company subject to tax under Article 32 may be required or permitted to file a combined return with the following corporations:

1. a banking corporation or bank holding company in which it owns or controls, directly or indirectly, 65% or more of its voting stock, or

2. a banking corporation or bank holding company which owns or controls, directly or indirectly, 65% or more of its voting stock, or

The corporations described in 1 and 2 above include corporations which are not exercising their corporate franchise or doing business in New York State in a corporate or organized capacity.

Also, banking corporations or bank holding companies 65% or more of the voting stock of each of which is owned or controlled, directly or indirectly, by the same interest, may be permitted or required to file a combined return if at least one of such corporations is exercising its corporate franchise or doing business in New York State in a corporate or organized capacity.

A banking corporation or bank holding company which meets the 65% or more ownership or control requirement may file a combined return only if the Tax Commission determines such filing to be necessary to properly reflect the tax liability of one or more banking corporations or bank holding companies.

Tax liability may be deemed to be improperly reflected because of intercor-porate transactions or some agreement, understanding, arrangement or transaction whereby the activity, business, income or assets within New York State is improperly or inaccurately reflected.

Corporations filing a combined return compute the tax on combined E.N.I., combined alternative entire net income and combined taxable assets. When computing combined E.N.I. and combined alternative entire net income, intercor-porate dividends and all other tntercorporate transactions are eliminated. In computing combined taxable assets, intercorporate stockholdings, bills, notes receivable and payable, accounts receivable and payable and other intercorporate indebtedness are eliminated. A combined allocation percentage is computed on a combined basis, eliminating intercorporate transactions involving payroll, receipts and deposits.

The following corporations may not be included in a combined return under Article 32:

1. a corporation which elected under section 1452(d) to be taxed under Article 9-A, and

2. a corporation whose largest tax under Article 32 is computed on taxable assets at the rate of 1/25 or 1/50 of a mill.

Corporations organized under the laws of a country other than the U.S. (an alien corporation) may be included in a combined return only with other alien corporations. In no event shall an item of income or expense of an alien corporation be included in the combined return unless it is includible in E.N.I. or alternative entire net income. Nor shall an asset of an alien corporation be included in a combined return unless it is included in taxable assets.

The Article 32 regulations contain interpretations of the statutory language regarding combined reporting. For details, refer to Title 20, N.Y.C.R.R. Section 21-2.

Miscellaneous Provisions

1. A foreign corporation subject to tax under Article 32 pursuant to Section 1452 (a) (9):

   a. is liable for a license fee;

   b. is subject to the maintenance fee if authorized to do business in New York State (since such corporation will have paid the minimum tax of $250 under Article 32, the maintenance fee is deemed paid);

   c. is not subject to tax under Article 9, Section 183 or 184 (even though it may be principally engaged in transportation or transmission);

   d. is not subject to the Metropolitan Transportation Business Tax Surcharge (M.T.B.T.S.) under Article 9, Section 183-a.1 or 184-a.1;

   e. is not subject to tax under Article 9, Section 186 (even though it is principally engaged in supplying water, gas, electricity or steam); and

   f. is not subject to the (M.T.B.T.S.) under Article 9, Section 186-b.1.

2. A bank holding company filing a combined return in accordance with Section 1462(f) will not be subject to tax under Article 9-A. Such bank holding company organized outside New York State is liable for the license fee and maintenance fee imposed by Section 181 of the Tax Law.

3. For a taxable year beginning on or after 1/1/85 and ending before 12/31/86, all Article 32 taxpayers may compute estimated tax payments based on the tax for the preceding taxable year.