

Instructions for Form CT-3S

S Corporation Information Report

Articles 9-A and 22

Federal and State Privacy Notification

The authority to request this personal information from you or your employer, including identifying numbers (social security numbers, etc.) is found in Sections 211, 213-a, 658 and 1096, Articles 9-A and 22 of the Tax Law. The principal purpose for collection is to assist the Department of Taxation and Finance in determining State corporation and personal income tax liabilities under Articles 9-A and 22 of the Tax Law.

The information will be used for tax administration purposes and as necessary under Education Law Section 663, Social Services Law Section 23, 111-b and 136-a, Executive Law Section 49, Labor Law Section 537, Tax Law Sections 171-a, 171-b, 171-c, 171-d, 171-e, 211 and 697 and for any other purposes authorized by law.

Failure to provide the requested information may result in civil penalties under Sections 217, 685 and 1085 of the Tax Law and Part 9 of the Business Corporation Franchise Tax Regulations and/or criminal penalties under Article 37 of the Tax Law.

The authority to maintain this information is found in Sections 211(7) and 697(e) of the Tax Law and Section 152.8 of the Personal Income Tax Regulations. This information will be maintained by the Director, Accounting and Records Management Bureau, Processing and Revenue Management Division, Department of Taxation and Finance, W.A. Harriman Campus, Building 8, Room 905, Albany, New York 12227-0125; telephone 1-800-342-3536; outside New York State (518) 438-8581.

and not due to willful neglect. Failure to include the identifying number of the shareholders in the information return will result in a penalty, imposed pursuant to section 685(k). The penalty to be paid by the S corporation is \$50 for each failure to include an identifying number. The maximum penalty in any calendar year is \$10,000.

Specific Filing Requirements

A copy of all pages of Federal Form 1120S must accompany this report.

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

This article requires every corporation, with an interest in real property located in New York State to keep a record of the transfer of its stock and report annually every transfer of a "controlling" interest in its stock and any other information that may be required to enforce this article.

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

All corporations must answer both questions on page 1, (preceding Schedule A). If the answer to both questions is yes, a rider must be attached which must provide the following information:

- Name, address, and identification number of the new controlling stockholder. (Use Social Security Number for individuals and Federal Employer Identification Number for corporations.)
- Date transfer was made.
- Location of real property.
- Indicate if the corporation is a cooperative housing corporation.

General Information

Article 9-A and Article 22 permit the shareholders of a corporation that have made an election under Subchapter S of Chapter One of the Internal Revenue Code to make a similar election to be taxed under the New York State Personal Income Tax Law (Article 22) and to exempt the corporation from New York State Corporate franchise tax (Article 9-A).

Detailed information concerning the New York State election can be found in the instructions for Form CT-6, Election by Shareholder of a Small Business Corporation.

CHANGE OF BUSINESS INFORMATION

If there have been any changes in your business' name, ID number, mailing address, business address, telephone number or owner/officer information, complete the enclosed Form DTF-95, *Change of Business Information*. If no form is enclosed, call 1-800-462-8100 (from out of state (510) 438-1073) to request one.

WHO MUST FILE FORM CT-3S

This form must be filed by a small business corporation where shareholders have filed a valid election form CT-6. This form must be used in place of Forms CT-3 and CT-4 previously filed.

TIME FOR FILING

This report must be filed two and one-half months after the close of the reporting period.

EXTENSION OF TIME FOR FILING REPORT

A request for an extension of time to file a report must be filed on Form CT-5 on or before the due date of the report, for the period for which the extension is requested.

PENALTIES

Section 658(c) requires every electing New York S corporation to file an information return showing all items of income, loss, deduction and other pertinent information. Failure to file the information return or failure to include the information requested will result in a penalty, imposed pursuant to section 685(h)(2). The penalty, to be paid by the S corporation, is \$50.00 per shareholder per month or fraction of a month that the failure continues, not to exceed five months. All shareholders of the S corporation during any part of the taxable year who were subject to the New York State personal income tax must be counted. The penalty may be waived if it is shown that the failure is due to reasonable cause

Schedule A

Line 1. Recapture of tax credits applied against the corporation's franchise taxes in prior years may be required. This applies to property acquired in years prior to the shareholders' election and on which the Investment Tax Credit, Retail Enterprise Tax Credit and Research and Development Tax Credit were claimed. The excess credit allowed must be paid back in the year the property is disposed of or ceases to be in qualified use.

Use Form CT-46, Schedule E or Form CT-42, Schedule C to compute the excess credit allowed and enter the recaptured tax credits at this line.

Line 2. In these instructions a foreign corporation means a corporation incorporated in another state or country. Foreign corporations that have been authorized by the New York State Department of State to do business in New York State must pay an annual maintenance fee of \$200.00, even if it is an electing small business corporation. The failure of a corporation to pay this fee may result in the revocation of its authority. The maintenance fee is \$200.00 except for short periods. A short period of not more than 6 months will reduce the maintenance fee 50% and a short period of more than 6 months but not more than 9 months will reduce the maintenance fee 25%.

Foreign corporations are also subject to a license fee (Article 9, Section 181), to be paid on Form CT-240.

Line 3. New York State corporations and foreign corporations that have not been authorized to do business in New York State by the New York State Department of State must enter either its recaptured tax credit from line 1 or zero if line 1 is zero.

Foreign authorized corporations that did not recapture any tax credits (line 1) enter amount from line 2.

Foreign authorized corporations that have entries at both lines 1 and 2 must enter the largest amount shown at line 1 or line 2.

Line 4. Prepayments of franchise tax made by a corporation prior to its election to become exempt from the franchise tax, may be entered at this line and line 9(b) to facilitate the refunding of such payments.

Line 6. If the amount due is not paid on or before the due date (determined without regard to any extension of time), interest must be

paid on the amount of the underpayment from the due date to the date paid. The interest should be determined in accordance with Part 603 of the Tax Regulations. For more information on interest rates call Taxpayer Assistance (phone number on last page of instructions).

Line 7. In case of failure to file a return when due or if application for extension is invalid, add to the tax and or maintenance fee, less any payments made on or before the due date, 5% per month up to 25%. If a report is not filed within 60 days of the prescribed due date, the addition to tax cannot be less than the smaller of \$100 or 100% of the amount required to be shown.

In case of failure to pay the tax or maintenance fee shown on a report, add to the tax or fee, less any payments made, $\frac{1}{2}$ % per month up to 25%.

The total of the additional charges may not exceed 5% for any one month except as provided for above.

If you think you are not liable for these additional charges, attach a statement to your report explaining the delay in filing and/or payment (Section 1085, Tax Law).

Schedule B Shareholder Information

Enter complete information for all individuals, estates and trusts who are shareholders of the corporation during any part of the taxable year.

Schedule C PART I

Shareholders' Pro rata Shares

Lines 10-18

Complete lines 10 through 16 using the figures reported on federal Form 1120S.

For line 10, attach a separate schedule showing any interest income which is allocated by the investment allocation percentage at Schedule E line 44.

For line 16, attach a separate schedule showing the nature and amount of each item for each shareholder.

Complete lines 17 and 18 using the figures reported on federal Form 1120S. Line 18 is also used to report a shareholder's distributive share of charitable contributions and itemized deductions as reported on his individual federal Form 1040.

For line 18, attach a separate schedule showing the nature and amount of each item for each shareholder.

Lines 19a through 19f

Enter each shareholder's distributive share of items of income and deduction that enter into the computation of tax preference items. A shareholder with tax preference items may be required to file Form IT-220, *Minimum Income Tax*. See Form IT-220 and the instructions for Form IT-220 for definitions of tax preference items, filing requirements, and tax computation.

Line 20a through 24

Complete lines 20a through 24 using the figures reported on federal Form 1120S.

Line 24

Attach a separate schedule showing the nature and amount of each item for each shareholder.

PART II Shareholders' Share of Corporation's New York Tax Credits and Tax on Early Dispositions

Enter each shareholder's pro rata share of the credits computed at the corporate level. Enter each shareholder's pro rata share of taxes on early dispositions of property on which the shareholders were allowed a pro rata share of the credit. The taxes on early dispositions are to be computed at the corporate level.

The following forms must be attached to Form CT-3S if they apply: CT-46, *Claim for Investment Tax Credit*; CT-43, *Claim for Additional Mortgage Recording Tax Credit*; and CT-42, *Claim for Research and Development Tax Credit*.

PART III Shareholders' Shares of New York Changes in Federal Items

Any of the listed adjustments are to be added to or subtracted from each shareholder's federal adjusted gross income or federal itemized deductions on their individual New York State income tax return in arriving at their total New York income and New York itemized deductions, respectively.

Use lines 30 through 33 to list **only** those changes that apply to federal adjusted gross income on the individual returns of shareholders.

ADDITIONS

Line 30/Accelerated Cost Recovery System (ACRS) Deduction

Enter the accelerated cost recovery system (ACRS) deduction from Form CT-399 Schedule A (Section 612(b)(25) of the Tax Law). In the case of an S corporation that is on a fiscal year basis and is using ACRS to determine the cost recovery deduction, the amount of the modification for the shareholders will be their pro rata share of the cost recovery deduction determined as of the end of the S corporation year ending within the shareholder's taxable year. For information regarding the new tax law changes affecting the ACRS deductions see the instructions for Form CT-399 (CT-399-I). Attach a copy of Form CT-399 to your CT-3S report.

Line 31/Other Additions

Identify by item number on a separate schedule any of the following additions that apply to each shareholder's pro rata share of S corporation income, loss and deduction and enter the total of these additions that apply to each shareholder in the proper column on line 31.

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

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

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

A-4 Any amount that has to be added to your federal adjusted gross income if you made an election under the Tax Law for additional depreciation or research and development expenditures, waste treatment facility expenditures, air pollution control equipment expenditures or acid deposition control equipment (Section 612(b)(6) of the Tax Law). See subtractions S-10 and S-11.

A-5 Any amount deducted for percentage depletion on mines, oil and gas wells and other natural deposits (Section 612(b)(10) of the Tax Law).

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

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

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

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

A-10 Reduction for Taxes — An amount equal to each shareholder's pro rata share of the S corporation's reductions for the federal minimum tax, tax on certain capital gains and tax on certain passive investment income (Section 612(b)(18) of the Tax Law).

A-11 Enter in the proper columns all income taxes (including City of New York income taxes) that were deducted in determining each shareholder's pro rata share of the S corporation items of income and deductions (Section 612(b)(3) of the Tax Law). Franchise taxes are not to be added back.

A-12 — The amount of special additional mortgage recording tax that was excluded or deducted in figuring your federal adjusted gross income (Section 612(b)(15) of the Tax Law). For information about the special additional mortgage tax credit, see Form CT-43, *Claim for Special Additional Mortgage Recording Tax Credit*.

SUBTRACTIONS

Line 32/New York Depreciation

Enter the total New York depreciation from Form CT-399, Schedule B (Section 612(c)(26) of the Tax Law). In the case of an S corporation that is on a fiscal year basis and is using ACRS to determine the cost recovery deduction, the amount of the modification for the shareholders will be their pro rata share of the New York depreciation deduction determined as of the end of the S corporation year ending within the shareholder's taxable year. For information regarding new tax law changes see the Instructions for Form CT-399 (CT-399-1). Attach a copy of Form CT-399 to your CT-3S report.

Line 33/Other Subtractions

Identify by item number on a separate schedule any of the following subtractions that apply to each shareholder's pro rata share of S corporation income and enter the total of these subtractions that apply to each shareholder in the proper column on line 33.

S-1 Any refund or credit for overpayment of any income tax (including the refund of the City of New York Unincorporated Business Tax) to the extent included in income reported on Form CT-3S (Section 612(c)(7) of the Tax Law).

S-2 Interest income on bonds or other obligations of the United States government included as income on Form CT-3S (Section 612(c)(1) of the Tax Law).

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

S-4 Interest or dividend income included on Form CT-3S on bonds or securities to the extent exempt from New York State income taxes (Section 612(c)(6) of the Tax Law).

S-5 Interest expense on money borrowed to buy or carry bonds or securities the income from which is subject to New York State income tax but exempt from federal income tax, provided this interest was a business expense for the taxable year and was not deducted in figuring S corporation income (Section 612(c)(9) of the Tax Law).

S-6 Ordinary and necessary business expenses paid or incurred during the taxable year in connection with income, or property held to produce income, that is subject to New York State income tax but exempt from federal income tax, provided those expenses were not deducted in figuring S corporation income (Section 612(c)(10) of the Tax Law).

S-7 Amortization of bond premium attributable to the taxable year on any bond whose interest income is subject to New York State income tax but exempt from federal income tax, provided this amortization was a business expense for the taxable year and was not deducted in figuring S corporation income (Section 612(c)(10) of the Tax Law).

S-8 The amount of wages and salaries paid or incurred during the taxable year for which a salaries deduction is not allowed with regard to claiming the federal targeted jobs credit (Section 612(c)(15) of the Tax Law).

S-9 Cost depletion figured according to federal tax law on property where percentage depletion (addition A-5) was added on line 32 (Section 612(c)(13) of the Tax Law). Further, in the case of sale or exchange of such property, the excess of the New York basis over the federal basis.

S-10 Special depreciation or research expenditures in connection with depreciable, tangible business property located in New York State (Section 612(c)(11) of the Tax Law). For more information, see Form IT-211, *Special Depreciation and Expenditure* schedule and instructions. Also, see addition A-4.

S-11 Expenses for waste treatment facilities, air pollution control equipment or acid deposition control equipment. This subtraction applies only to depreciable, tangible business property located in New York State and certified under the provisions of the Environmental Conservation Law

(Section 612(c)(11) of the Tax Law). This subtraction cannot be made if subtraction S-10 was made. Also, see addition A-4.

S-12 Any amount included on Form CT-3S that is the distributive or pro rata share of income or gain from an insurance business operating as a member of the New York Insurance Exchange (Section 617-a of the Tax Law).

S-13 Safe Harbor Leases — Any amount that was included in federal adjusted gross income (except for mass transit vehicles) solely because of an election made under Section 168(f)(8) of the Internal Revenue Code, as it was in effect for agreements entered into prior to January 1, 1984 (Section 612(c)(24) of the Tax Law).

S-14 Safe Harbor Leases — Any amount that could have been excluded from federal adjusted gross income (except for mass transit vehicles) had the election under Section 168(f)(8) of the Internal Revenue Code, as it was in effect for agreements entered into prior to January 1, 1984, not been made (Section 612(c)(25) of the Tax Law).

Lines 34 and 35 should be used **only** for changes that apply to federal itemized deductions on the individual returns of shareholders and should exclude any amounts properly reportable on lines 30 through 33. Attach a statement identifying by item number any of the following changes that relate to S corporation items of the shareholders' federal itemized deductions.

Line 34/Additions to Federal Itemized Deductions

- A** Interest expense on money borrowed to buy or carry bonds or securities subject to New York State income tax, but exempt from federal income tax, if this interest was not deducted on the federal return or subtracted on line 33.
- B** Ordinary and necessary expenses paid or incurred during the taxable year in connection with income, or property held to produce income, that is subject to New York State income tax but exempt from federal income tax if these expenses were not deducted on the federal return or subtracted on line 33.
- C** Amortization of bond premium attributable to the taxable year on any bond whose interest is subject to New York State income tax but exempt from federal income tax if this amortization was not deducted on the federal return or subtracted on line 33.

Line 35/Subtractions from Federal Itemized Deductions

- A** State, local and foreign income taxes.
- B** Interest expense on money borrowed to buy or carry bonds or securities whose income is exempt from New York State income tax.
- C** Ordinary and necessary expenses paid or incurred in connection with income or property held to produce income that is exempt from New York State income tax.
- D** Amortization of bond premium attributable to the taxable year on any bond whose interest is exempt from New York State income tax.

Line 36/New York Adjustments to Federal Tax Preference Items

See the instructions for Form IT-220 for an explanation of the required adjustments. On an attached schedule give details of the adjustments to the federal tax preference items for each shareholder.

Schedule D Business Allocation

Only corporations with nonresident shareholders and business activities outside New York State are required to complete this schedule.

The business allocation percentage must be computed by adding the percentages allocated to New York State of the taxpayer's real and tangible personal property factor, business receipts factor, payroll factor and an additional factor equal to the business receipts factor and dividing the total percentage by the number of percentages.

If you are allocating property and wages outside New York State attach a rider listing:

- Location of real and/or tangible personal property describing how such property is used _____ and _____
- Number, location and duties of your own employees located outside New York State.

Line 37a. For years beginning on or after January 1, 1982, real property and related equipment, except inventoriable goods, that is under construction and is not occupied or used during construction, should be excluded from the numerator and denominator of the property factor. Property or equipment under construction that is partially used by the taxpayer in the regular course of business should be included in the property factor to the extent used.

Line 37b. The value of real property rented to the taxpayer generally is eight times the gross rent payable during the year covered by the report. Gross rent includes any amount payable as rent or in lieu of rent, such as taxes, repairs, etc., and amortization of leasehold improvements that revert to the lessor at the termination of the lease.

Line 37d. The term "tangible personal property" means corporeal personal property, such as machinery, tools, implements, goods, wares and merchandise. DO NOT INCLUDE cash, shares of stock, bonds, notes, credits or evidences of an interest in property or evidences of debt.

Lines 38a and b. Sales of tangible personal property are allocated on a destination basis.

Line 38c. Services are allocated where performed. For periods beginning on or after January 1, 1982, corporations engaged in the publication of newspapers and periodicals shall allocate to New York State receipts from the sale of advertising to the extent that such newspapers and periodicals are delivered to the ultimate purchasers or subscribers in New York State.

Line 38d. Rental income is allocated where property is located.

Line 38e. Receipts from royalties are allocated where earned.

Line 38f. Other business receipts are allocated where earned.

Line 39. An additional receipts factor is required to be included in the computation of the business allocation percentage. Enter at this line the same percentage computed in line 38h (Section 210.3(a)(4)).

Line 40. Employees within New York include all employees regularly connected with or working out of an office or place of business maintained by the taxpayer within New York, irrespective of where the services of such employees were performed. General executive officers are excluded from the payroll factor. General executive officers include the chairman, president, vice president, secretary, assistant secretary, treasurer, assistant treasurer, comptroller and any other officer charged with the general executive affairs of the corporation. An executive officer whose duties are restricted to territory either within or without New York State is not a general executive officer.

Line 41. Add percentages at lines 37f, 38h, 39 and 40a.

Line 42. Divide line 41 by the number of percentages used.

EXAMPLES:

	Corp. A	Corp. B	Corp. C
Property factor	80%	60%	60%
Receipts factor	20%	30%	30%
Additional receipts factor	20%	30%	30%
Payroll factor	60%	0%	None*
TOTAL	180%	120%	120%
Computation	(180 ÷ 4)	(120 ÷ 4)	(120 ÷ 3)
Business Allocation Percentage	45%	30%	40%

*Corporation C has no employees inside or outside New York. Zero percent (Corporation B) is not a missing percentage unless the numerator and denominator of the factor are missing.

Schedule E Investment Allocation Percentage

Complete this schedule if the S corporation has both nonresident shareholders and investment income. The S corporation must compute the investment allocation percentage (as provided for under Article 9-A rules and regulations) to determine each nonresident shareholder's pro rata share of New York investment income or New York deduction derived from or connected to the investment capital of the S corporation.

Schedule E column a — List the name of each of the following items of investment capital of the S corporation: stocks, bonds and other securities issued by a corporation (other than the S corporation, a subsidiary of the S corporation or a DISC) or by the United States, any state (other than New York State), territory or possession of the United States, the District of Columbia, or any foreign country, or any political subdivision or governmental instrumentality of any of the foregoing. Investment capital includes investments in regulated investment corporations (money market funds and mutual funds). Investment capital also includes a loan to a subsidiary, the interest on which is claimed by the subsidiary as a deduction for the purposes of any tax imposed by Articles 9 A, 32 or 33 of the Tax Law, provided such loan is evidenced by a bond or other security. The term subsidiary means a corporation which is controlled by the S corporation, by reason of the S corporation's ownership of more than 50% of the total number of shares of capital stock of such corporation issued and outstanding, which entitles the S corporation as the holder of the shares to vote at elections of its directors or trustees.

Investment capital to be included in Schedule E does not include cash; stock, bonds or other securities held by the S corporation for sale to customers in the regular course of business; investments in securities of an individual, partnership, trust or other non-governmental entity that is not a corporation; or obligations of New York State or its political subdivisions or instrumentalities.

Schedule E column c — List the average fair market value of each item of investment capital listed in column (a). The fair market value, on any date, of stocks, bonds and other securities regularly traded on an exchange, or in an over-the-counter market, is the mean between the highest and lowest selling prices on that date. To determine the fair market value of investment capital not traded on an exchange see 20 NYCRR 3-4.5(c).

The average fair market value is generally computed quarterly if the taxpayer's usual accounting practice permits it. But the taxpayer may use a monthly, weekly or daily average. If the taxpayer's usual accounting practice does not permit a quarterly or more frequent computation of average fair market value, a semiannual or annual computation may be used if no distortion of average fair market value results.

Schedule E column d — List any current liabilities attributable to each item of investment capital listed in column (a). Current liabilities are any liabilities maturing in one year or less from the date originally incurred or which are payable on demand. Do not include loans or advances outstanding for more than a year as of any date during the year covered by the report. Use the same method of averaging as is used in determining average fair market value of investment capital.

Schedule E column f — Enter the issuer's allocation percentage for each item of investment capital listed in column (a). The issuer's allocation percentage is used to compute the amount of investment capital allocated to New York State. The issuer's allocation percentage is obtained from the New York State Corporation Franchise Tax Return filed by the corporation which issued the stock, bond or other security and represents that corporation's amount of capital employed in New York State as compared to total capital employed everywhere. Issuer's allocation percentages can be obtained from tax service publications or by written request (in duplicate) to:

New York State Tax Department
Taxpayer Assistance Bureau
W.A. Harriman Campus
Albany, New York 12227-0125
Telephone (518) 457-7034

If the corporation which issued the stock, bond or other security is not required to file a New York State Corporation Franchise Tax Return its issuer's allocation percentage is zero. The issuer's allocation percentage for governmental obligations is zero.

Always enter the issuer's allocation percentage from the first year preceding the current taxable year. Example: If the S corporation is computing Schedule E for 1985, enter the issuer's allocation percentage obtained from the 1984 tax return.