New York State Department of Taxation and Finance

Instructions for Form CT-244

Acquisition, Merger and Consolidation Information Report

CT-244-I
(8/95)

General Information

Tax Law Articles 9-A and 22 limit tax benefits associated with certain business restructuring. The provisions apply only to transactions completed on or after April 19, 1989. Form CT-244 must be filed by both the target and acquirer in the year of merger, consolidation or acquisition. For additional information see TSB-M-89(17)C.

Unless the restructuring transaction is specifically excluded, the following tax consequences result:

— in any acquisition, merger or consolidation, the tax benefits of the target corporation's unused investment tax credit, unused employment incentive credit, and unused research and development tax credit are lost;

— in a highly leveraged transaction, up to 5% of the total interest expense of the acquiring corporation or affiliated group, may be a required add-back in the computation of New York taxable income. In addition, the target must recapture a portion of the investment tax credit and research and development credit taken by it in tax years prior to the acquisition year. Also, the acquiring corporation loses the benefit of the target corporation's unused net operating loss available to be carried forward, and;

— in any acquisition, whether or not highly leveraged, if a sufficient portion of the target's stock and/or assets is sold or otherwise disposed of within 18 months following the acquisition date, subsidiary capital treatment of the target by the acquirer is denied.

An ***excluded transaction*** is:

— an acquisition which occurs solely by reason of a redemption of stock to the extent that the redemption qualifies under section 303 of the Internal Revenue Code; or

— an acquisition where a corporation and the corporation acquiring it are members of a previously existing affiliated group as defined in section 1504 of the Internal Revenue Code, except that the term *common parent corporation* is deemed to mean any person, as defined in section 7701(a)(1) of the Internal Revenue Code, and except that references to *at least eighty percent* should be read as *more than fifty percent;* or

— an acquisition by a person, as defined in section 7701(a)(1) of the Internal Revenue Code, that is controlled by a majority of the employees of the target corporation or that is a trust for the exclusive benefit of those employees or their beneficiaries. Control, in this context, refers to (1) ownership of more than 50% of the total voting power in a corporation, or (2) total employees' interest (within the meaning of section 704(b) of the Internal Revenue Code) of more than 50% of a partnership; or

— a merger or consolidation in which all the constituent corporations are members of an affiliated group as defined in section 1504 of the Internal Revenue Code, except that the term *common parent corporation* is any person, as defined in section 7701(a)(1) of the Internal Revenue Code, and except that references to *at least eighty percent* in section 1504 should be read as *more than fifty percent.*

Department of State Notification

The Business Corporation Law requires that the Department of State be notified of all mergers or consolidations. The Department of State will notify the Tax Department of all completed mergers or consolidations. Please refer to Publication 110, *Termination of Business Corporation*, for specific information and instructions.

Definition of Terms

A *corporate merger* is a procedure through which two or more constituent corporations become a single corporation which is one of the constituent corporations. In a corporate merger, the *acquiring person* is the constituent corporation whose stockholders, after the merger, own the largest proportion of the total voting power in the surviving corporation, and the *target corporations* are all other constituent corporations which have been absorbed by the acquiring corporation. For purposes of this definition, a corporate merger does not include an excluded transaction.

A *corporate consolidation* is a procedure through which two or more corporations become a single corporation which is a new corporation formed as a result of the consolidation. In a corporate consolidation, *acquiring person* means the constituent corporation whose stockholders, after the consolidation, own the largest proportion of the total voting power in the new corporation, and *target corporation* means all other constituent corporations. For purposes of this definition, a corporate consolidation does not include an excluded transaction.

A *corporate acquisition* is the purchase and/or other acquisition (including redemption) on an acquisition date, by a person *(the acquiring person),* as the term person is defined in section 7701(a)(1) of the Internal Revenue Code, of stock of a corporation (the *target corporation*), so that immediately prior to the acquisition the person owned 50% or less, and immediately thereafter owned more than 50% of the total voting power in the target corporation. For purposes of this definition, a corporate acquisition does not include an excluded transaction.

Line Instructions

Part I — General Information

This section identifies the parties to a merger, consolidation or acquisition and determines whether tax consequences result for participants in the transaction.

Line 2 — Indicate the date the transaction was completed. Attach a copy of Form CT-244 to your Form CT-3, CT-3-A or CT-3-S.

Line 3 — Indicate your role in the acquisition, merger or consolidation and list the names of the other participants. If you need more room to list the members of an affiliated group, attach a separate sheet.

Lines 4, 5 and 6 — Excluded Transactions - If you answered *Yes* at line 4, 5 or 6, **do not** complete the rest of this schedule. Provide the names and identification numbers requested at the top of the form and attach a copy of the form to your tax return. If you answered *No* at lines 4, 5 and 6, complete Parts II and III.

Part II — Target Corporation's Tax Credit History

Lines 7 through 9 — This section is to be completed by the target (or the acquirer on behalf of the target). Any merger, acquisition or consolidation results in the loss of any unused investment tax credit, unused employment incentive credit, and unused research and development credit of the target corporation.

Part III — Acquirer Information

In any case in which the acquiring person, but not the target, is a member of an affiliated group, the group as a whole is treated as the acquiring person.

An *affiliated group* is a group as defined in section 1504 of the Internal Revenue Code except that:

— references to *at least eighty percent* in section 1504 should be read as *more than fifty percent.*

— section 1504 should be read without regard to the exclusion of foreign corporations provided for in section 1504(b)(3) (provided that the debt, equity and assets of these foreign corporations are included only to the extent that they are effectively connected with the conduct of a trade or business within the United States).

— section 1504 should be read without regard to the exclusion provided for in section 1504(b)(4).

Line 10 — Include total interest expense of the acquirer and all of its affiliates for the transaction year.

Line 12 — Base your answer on the target's total capital, before allocation, as shown on its New York State tax return for the acquisition year. Use a quarterly or more frequent average, and exclude ending values; i.e., the last quarter value is "0."

NOTE: If you answered *No* on lines 10 and either 11 or 12, complete Part V only. If you answered *Yes* on lines 10 and either 11 or 12, you must complete Parts IV, V and VI.

Part IV — Ratio Computation

Use this worksheet to compute the combined acquirer and target corporations' debt-to-equity ratio and the debt-to-assets ratio for both the prior and current years, and to compute the percent of change between the current and prior year ratios.

This worksheet will also determine if the transaction is a *highly leveraged transaction.*

The debt-to-equity ratio and the debt-to-asset ratio of an affiliated group are determined for the entire group. The prior year's ratio should include the target as well.

A *highly leveraged corporate acquisition* is a corporate acquisition in which the taxpayer is the target corporation and;

— the ratio of average aggregate debt to average aggregate equity for the tax year in which the acquisition occurred increases by more than 100% over the ratio for the immediately preceding tax year, and

— the ratio of average aggregate debt to average aggregate assets for the tax year in which the acquisition occurred increases by more than 60% over the ratio for the immediately preceding tax year, and

— the total of the acquiring person's interest paid or accrued during the tax year in which the acquisition occurred exceeds $1 million.

Average aggregate debt for a given tax year is the sum of the average debt of the acquiring person and the average debt of the taxpayer (unless the taxpayer becomes a member of an affiliated group which includes the acquiring person). In computing average aggregate debt, intercompany debt must be eliminated.

Average aggregate equity for a given tax year is the sum of the average equity of the acquiring person and the average equity of the taxpayer (unless the taxpayer becomes a member of an affiliated group which includes the acquiring person). In computing average aggregate equity, intercompany equity must be eliminated.

Average aggregate assets for a given tax year is the sum of the average assets of the acquiring person and the average assets of the taxpayer (unless the taxpayer becomes a member of an affiliated group which includes the acquiring person). In computing average aggregate assets, intercompany assets must be eliminated.

A *highly leveraged corporate merger or corporate consolidation* is a corporate merger or corporate consolidation in which the taxpayer is the surviving or consolidated corporation and:

— its ratio of average aggregate debt to average aggregate equity, for the tax year in which the merger or consolidation occurred, increases by more than 100% over such ratio for the immediately preceding tax year, and

— its ratio of average aggregate debt to average aggregate assets, for the tax year in which the merger or consolidation occurred, increases by more than 60% over such ratio for the immediately preceding tax year, and

— total interest paid or accrued by the surviving or consolidated corporation during its tax year in which the merger or consolidation occurred exceeds $1 million.

Average aggregate debt for a given tax year is the sum of:

— the average debt of the surviving or consolidated corporation; plus

— the average debt of the constituents. In computing average aggregate debt, intercompany debt must be eliminated.

Average aggregate equity for a given tax year is the sum of:

— the average equity of the surviving or consolidated corporation; plus

— the average equity of the constituents. In computing average aggregate equity, intercompany equity must be eliminated.

Average aggregate assets for a given tax year is the sum of:

— the average assets of the surviving or consolidated corporation; plus

— the average assets of the constituents. In computing average aggregate assets, intercompany assets must be eliminated.

Lines 13 and 14 — If you answered *No* on these lines, complete Part V only. If you answered *Yes* on these lines, complete Parts V and VI.

Part V — Subsidiary Capital/Income Adjustments

Valuation of assets — The valuation of assets being disposed is found in section 210.2 of the Tax Law and requires real property to be valued at fair market value and personal property to be valued in accordance with generally accepted accounting principles. The value of assets immediately after disposal is shown in the following examples.

Example: Real property is disposed of by the taxpayer as an acquiring person on July 1, 1994, at a distress price of $8,000, but the property had as of that date a fair market value of $10,000. The real property has an asset value of $10,000. Do not use cost or book value for valuing real property that is disposed of by an acquiring person. (Fair market value is the price at which a willing buyer and a willing seller would arrive, after negotiation for sale, if neither is acting under compulsion.)

Example: Personal property is disposed at a cost of $3,000. The assets should be valued at $3,000 since generally accepted accounting principles would require the use of cost.

Lines 17 through 28 — In any acquisition, highly leveraged or otherwise, the acquirer is required to hold more than 50% of the target's stock for at least 18 months after the acquisition date to retain subsidiary capital treatment for interest, dividends and gains received from the target. Additionally, the target cannot sell or otherwise dispose of 50% or more in value of its assets held on the date of acquisition (exclusive of cash and assets disposed of in the regular course of the target's business) within 18 months of the acquisition date.

If a sufficient portion of the target's stock and/or assets is sold or otherwise disposed of within 18 months following the acquisition date, subsidiary capital treatment of the target by the acquirer is denied in the year of sale or disposition. The parent is required to include, in the computation of its entire net income, interest and dividends received from the target corporation and gains from the sales of stock. In addition, entire net income must be increased by the amount of dividends excluded from the date of acquisition and prior to the first day of the taxable year in which the disposition occurred. (e.g., if a corporation acquired 3/31/92 is disposed 4/10/93, dividends received for the period 3/31/92-12/31/92 must be added back.) In both situations, a 50% dividend deduction is not allowed. For asset disposition, loss of subsidiary capital treatment continues for 18 months following the disposition.

Part VI — Highly Leveraged Transaction Modifications

Lines 29 through 36 — The interest expense add-back, net operating loss carry-forward denial, and investment tax credit recapture provisions may apply to highly leveraged transactions and are triggered by changes in debt-to-asset and debt-to-equity ratios in the acquisition year (see ***Part IV***).

Line 30 — For the investment tax credit and research and development tax credit recapture provisions, the property is deemed to be disposed of on the day immediately preceding the transaction completion date. All other relevant provisions of Tax Law section 210.12(g) apply. The recaptured amount must be added to the tax computed on the target corporation's franchise tax report for the tax period prior to the transaction.

Line 31 — Cost of target includes total costs incurred:

— in a stock acquisition, the taxpayer's total cost of any target corporation or corporations acquired in an acquisition year or during the three immediately preceding tax years;

— in an asset acquisition, the value of assets acquired during an acquisition year or in the three immediately preceding tax years; and

— in a corporate merger or consolidation, the total business, investment and subsidiary capital of constituent corporations during the tax year or in the three immediately preceding tax years.

Line 32 — Average debt of the acquirer includes the average (quarterly or more frequent) debt of the taxpayer plus the average debt of the target corporation, unless the target corporation becomes a member of an affiliated group which includes the taxpayer. All intercompany debt must be eliminated in the computation.

Line 34 — Total interest expense includes interest paid or accrued by the taxpayer during the tax year, to the extent deducted in the computation of entire net income (i.e., net of any interest required to be added back under other provisions of Article 9-A).