



# Instructions for Form CT-32-S

## New York Bank S Corporation Franchise Tax Return

Tax Law — Articles 32 and 22

# CT-32-S-I

### General Information

Article 32 of the New York Tax Law has been amended to conform with the amendments to the federal Small Business Job Protection Act of 1996 (JPA) allowing certain banks to elect subchapter S corporation status.

In order to be eligible to elect federal subchapter S corporation status, the bank must not use the reserve method of accounting for bad debts, either because it is a large bank and is required under Internal Revenue Code (IRC) section 585 to use the direct charge-off method, or because the bank is a small bank and has elected to use the direct charge-off method. The bank must also meet all federal subchapter S corporation eligibility requirements (for example, it must be a domestic corporation and have 75 or fewer shareholders, all of whom are individuals, estates, or certain trusts).

The Tax Law was also amended to conform to the federal treatment of *qualified subchapter S subsidiaries (QSSS)*. For more information see *Filing Requirements* below.

### Overview of Tax Computation

Article 32 provides that a New York bank S corporation must pay the higher of (1) the tax on entire net income reduced by the Article 22 tax equivalent, or (2) the fixed dollar minimum tax of \$250.

To compute entire net income on Form CT-32-S, you must begin by completing the following schedules on Form CT-32, *Banking Corporation Franchise Tax Return*:

Schedule B, lines 22 through 58 (To complete Schedule B, you may also have to complete Schedules E, F, and G on Form CT-32.)

Schedule H, lines 108 through 123 and lines 125 through 128

In addition, refer to Form CT-32-I, *Instructions for Form CT-32*, for information regarding the completion of header information, computation of interest and penalties, refund, and computation of the issuer's allocation percentage. Attach all applicable schedules to Form CT-32-S.

### Filing Requirements

Form CT-32-S must be filed by any federal S corporation taxable in New York State under Article 32 of the Tax Law, whose shareholders filed Form CT-6 electing to be a New York S corporation.

### Qualified Subchapter S Subsidiary (QSSS)

The filing requirements for a QSSS that is owned by a New York S corporation or a nontaxpayer corporation are outlined below. Where New York follows federal QSSS treatment, the parent and QSSS will file a single franchise tax return. The QSSS will be ignored as a separate taxable entity, and the assets, liabilities, income, and deductions of the QSSS will be included on the parent's franchise tax return. However, for other taxes, such as sales and excise taxes and the license and maintenance fees imposed under Article 9, the QSSS will continue to be recognized as a separate corporation.

- Parent is a New York S Corporation** – New York will follow the federal QSSS treatment. The parent and QSSS will be taxed as a single New York S corporation and file Form CT-32-S.
- Nontaxpayer Parent** – New York will follow the federal QSSS treatment where the QSSS is a New York taxpayer but the parent is not, if the parent elects to be taxed as a New York S corporation by filing Form CT-6. The parent and QSSS will be taxed as a single New York S corporation and file Form CT-32-S on a joint basis. If the parent does not elect to be a New York S corporation, the QSSS must file as a New York C corporation on a stand-alone basis on Form CT-32.

- Exception: Excluded Corporation** – Notwithstanding the above rules, QSSS treatment will not be allowed unless both parent and QSSS are banking corporations. That is, the corporations will have to file on a stand-alone basis if one is an Article 32 taxpayer but the other is an Article 9, 9-A, or 33 taxpayer, or is a corporation which would be subject to such taxes if taxable in New York.

Where New York follows federal QSSS treatment, the QSSS will not be considered a subsidiary of the parent corporation.

**To notify the department that a QSSS is included in your return, check the box on page 3 of Form CT-32-S and attach Form CT-60-QSSS, *Qualified Subchapter S Subsidiary Information Schedule*.**

### Definitions

*New York S corporation* means a corporation taxable under Article 32 of the Tax Law, for which a New York S election has been made by the filing of Form CT-6.

*New York C corporation* means a corporation taxable under Article 32 of the Tax Law that is not a New York S corporation.

*QSSS* means a corporation that is a qualified subchapter S subsidiary under IRC section 1361(b)(3)(B).

### When and Where to File

File this return within 2½ months after the end of your reporting period. If you are reporting for the 1997 calendar year, file your return on or before March 16, 1998. Mail returns to: New York State Corporation Tax, Processing Unit, PO Box 1909, Albany NY 12201-1909.

### Private Delivery Services

The date recorded or marked by certain private delivery services, as designated by the U.S. Secretary of the Treasury, will be treated as a postmark, and that date will be considered to be the date of delivery. If you use one of these services, address your return to: NYS Processing Center, 431C Broadway, Menands, NY 12204. (This address is valid only through December 31, 1998.) For a listing of designated delivery services, see Internal Revenue Service Notice 97-26.

If you cannot meet the filing deadline, you may request a six-month extension by filing Form CT-5.4 and paying any tax due on or before the original due date of the return. No additional extension of time beyond six months will be granted to file Form CT-32-S.

A New York S corporation is not subject to the MTA surcharge.

### Federal Changes and Amended Returns

A New York S corporation whose income, loss, or deductions are changed as a result of a final federal determination, or that files an amended return with the Internal Revenue Service, must file an amended return by using Form CT-32-S and writing the words **Amended Return** across the top. Additionally, every shareholder of the electing New York S corporation must file an amended return on a designated New York State individual, estate, or trust tax return.

## Instructions

### Schedule A, line 1

Use Form CT-32, Schedule B, lines 22 through 58, to compute the entire net income of the New York S corporation.

Enter on Form CT-32, Schedule B, line 22, the amount of federal taxable income that you would have reported on federal Form 1120, line 28, had the election under Subchapter S of Chapter One of the IRC not been made. Attach a statement (or a pro forma federal Form 1120,) showing the computation of federal taxable income required to be shown on federal Form 1120, line 28. The statement (or pro forma federal Form 1120) must include the following items not reported on federal Form 1120S:

- dividend income from federal Form 1120, line 4
- interest income from federal Form 1120, line 5
- gross rental income from federal Form 1120, line 6
- gross royalty income from federal Form 1120, line 7
- capital gain net income from federal Form 1120, line 8
- charitable contribution deductions from federal Form 1120, line 19

Where a parent corporation and QSSS file a joint return on Form CT-32-S, compute the entire net income of the New York S corporation on Form CT-32, Schedule B, lines 22 through 58, as if:

- the assets, liabilities, income, and deductions, property, payroll, receipts, capital, credits, and all other tax attributes and elements of economic activity of the QSSS shall be deemed to be those of the parent corporation;
- the stocks, bonds, and other securities issued by, and any indebtedness from, the QSSS shall not be subsidiary capital of the parent corporation;
- transactions between the parent corporation and the QSSS, including the payment of interest and dividends, shall not be taken into account; and
- general executive officers of the QSSS shall be deemed to be general executive officers of the parent corporation.

**Schedule A, line 2**

Use Form CT-32, Schedule H, lines 108 through 123 and lines 125 through 128 and enter the appropriate results below to compute the entire net income allocation percentage.

|   |   |
|---|---|
| A Payroll factor – enter the percentage from Form CT-32, Schedule H, Part I, line 110.....  | % |
| B Receipts factor – enter the percentage from Form CT-32, Schedule H, Part I, line 123.....   | % |
| C Deposits factor – enter the percentage from Form CT-32, Schedule H, Part I, line 128.....   | % |
| D Total of New York percentages (add lines A, B, and C) .....   | % |
| E Entire net income allocation percentage (divide line D by three or by the number of percentages; enter on Schedule A, line 2) ..... | % |

**Instructions for Shareholder Information**

**Part I** — Enter complete information for all individuals, estates, and trusts who were shareholders of the corporation during any part of the tax year. Attach a separate sheet if necessary. Check the box on the return if a separate sheet is attached.

**Part II — Lines 25 through 43** — Complete lines 25 through 43 for each shareholder of the electing New York S corporation, showing the pro rata share of the S corporation's items of income, loss, and deduction, as shown on Schedule K-1 filed with federal Form 1120S.

Nonresident shareholders should determine the amount of business and investment income, losses, and deductions derived from New York State sources, by using the entire net income allocation percentage, Form CT-32-S, Schedule A, Line 2.

For lines 30 and 35, attach a separate schedule showing the nature and amount of each item for each shareholder.

**Line 37** — A shareholder with tax preference items may be required to file Form IT-220, *Minimum Income Tax*. See Form IT-220 and its instructions for definitions of tax preference items, filing requirements, and tax computation.

**Line 42** — Attach a separate schedule showing the nature and amount of each item for each shareholder.

**Part III** — The following adjustments must be added to or subtracted from each shareholder's federal adjusted gross income or federal itemized deductions on his or her individual New York State income tax return, in arriving at total New York income and New York itemized deductions, respectively.

If a New York S corporation is on a fiscal year basis, the amount of any listed adjustment for the shareholders will be their pro rata share determined as of the end of the S corporation year ending within the shareholder's tax year.

Use lines 44 through 48 to list only those changes that apply to federal adjusted gross income on the individual returns of shareholders. Use lines 49 and 50 to list those changes that apply to federal itemized deductions.

**Additions**

**Line 44** — Enter each shareholder's pro rata share of the Article 32 corporate franchise tax, including the fixed dollar minimum tax of \$250, that was deducted by the S corporation on its federal return (section 612(b)(3)). See subtraction S-14.

**Line 45 – Accelerated Cost Recovery System (ACRS) and Modified Accelerated Cost Recovery System (MACRS) Deductions** — Enter the ACRS and MACRS deductions from Form CT-399, line 12, Column A (section 612(b)(25)). Attach a copy of Form CT-399 to your Form CT-32-S.

**Line 46 – 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 the New York S corporation income, loss, and deduction, and enter the total of these additions that apply to each shareholder in the proper column on line 46.

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

**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)).

**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)).

**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 tax years beginning before 1987 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)). See subtraction S-9.

**A-5** Any amount deducted for percentage depletion on mines, oil and gas wells, and other natural deposits (section 612(b)(10)).

**A-6 Safe Harbor Leases** — Any 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 IRC, as it was in effect for agreements entered into prior to January 1, 1984 (section 612(b)(23)).

**A-7 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 IRC, as it was in effect for agreements entered into prior to January 1, 1984, not been made (section 612(b)(24)).

**A-8 Tax on Petroleum Business** — The amount of gross receipts tax imposed before June 1, 1990, on petroleum businesses under Article 13-A that was deducted in figuring each shareholder's pro rata share of S corporation income (section 612(b)(28)).

**A-9 Reduction for Taxes** — An amount equal to each shareholder's pro rata share of the S corporation's reductions for the federal tax on certain built-in gains and tax on certain passive investment income (section 612(b)(18)).

**A-10** The amount of special mortgage recording tax paid by the corporation in a tax year beginning before 1994, when the property for which the tax was paid is sold or disposed of at a gain or loss, and the basis of such property was not adjusted by the special additional mortgage recording tax credit (section 612(b)(16)).

**A-11 New Business Investment — Deferral Recognition —** The amount of capital gain deferred on the sale of a capital asset if the new business investment property is sold (section 612(b)(22)).

**A-12** Five percent of the deduction for interest related to corporate acquisitions (section 612(b)(30)).

#### Subtractions

**Line 47 New York Depreciation —** Enter the total New York depreciation from Form CT-399, line 12, Column B (section 612(c)(26)).

**Line 48 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 the New York S corporation income, and enter the total of these subtractions that apply to each shareholder in the proper column on line 48.

**S-1** Interest income on bonds or other obligations of the United States government included as income on Form CT-32-S. Include qualified dividends from regulated investment companies (mutual funds) that invest in obligations of the United States government and meet the 50% asset requirement (section 612(c)(1)).

**S-2** Interest or dividend income on bonds or securities of any United States authority, commission, or instrumentality included as income on Form CT-32-S, but exempt from state income taxes under federal laws (section 612(c)(2)).

**S-3** Interest or dividend income included on Form CT-32-S on bonds or securities to the extent exempt from New York State income taxes under the laws of this state (section 612(c)(6)).

**S-4** 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 tax year and the S corporation did not deduct the expense from income on its federal return (section 612(c)(9)).

**S-5** Ordinary and necessary business expenses paid or incurred during the tax 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 the S corporation did not deduct the expenses from income on its federal return (section 612(c)(10)).

**S-6** Amortization of bond premium attributable to the tax 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 tax year and the S corporation did not deduct the expense from income on its federal return (section 612(c)(10)).

**S-7** The amount of wages and salaries paid or incurred during the tax year, for which a salaries deduction is not allowed with regard to claiming a federal employment credit (section 612(c)(15)).

**S-8** Cost depletion figured according to federal tax law on property where percentage depletion (addition A-5) was added on line 46 (section 612(c)(13)).

**S-9** Special depreciation expenditures or carryover of research and development expenditures incurred in tax years beginning before 1987, in connection with depreciable tangible business property located in New York State (section 612(c)(11)). For more information see Form IT-211, *Special Depreciation Schedule*, and its instructions. Also see addition A-4.

**S-10 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 IRC, as it was in effect for agreements entered into prior to January 1, 1984 (section 612(c)(24)).

**S-11 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 IRC, as it was in effect for agreements entered into prior to January 1, 1984, not been made (section 612(c)(25)).

**S-12** The part of any gain (but limited to the difference in basis) included in federal adjusted gross income from the sale or other disposition of (1) property that had a higher basis for New York income tax than for federal income tax on December 31, 1959 (or on the last day of a fiscal year ending during 1960), and (2) property held in connection with mines, oil or gas wells, and other natural deposits that had a higher adjusted basis for New York State income tax (sections 612(c)(4) and 612(c)(13)).

**S-13 New Business Investment Exclusion —** The amount of gain to be subtracted from the sale of a New York new business investment that was included in federal adjusted gross income (section 612(c)(20)).

**S-14** The amount of any refund or credit of the tax imposed under Article 9-A or 32 of the Tax Law for a New York S corporation tax year ending after 1990, to the extent the tax was added to the shareholders' federal income in a prior tax year under section 612(b)(3).

**Lines 49 and 50** 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 46 and 48. Attach a statement identifying by item number any of the following changes that relate to New York S corporation items of the shareholders' federal itemized deductions.

#### Line 49 – 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 48.
- B** Ordinary and necessary expenses paid or incurred during the tax 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 48.
- C** Amortization of bond premium attributable to the tax 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 48.

#### Line 50 – Subtractions from Federal Itemized Deductions

- A** State, local, and foreign income taxes properly deductible as an itemized deduction, rather than a deduction for federal adjusted gross income.
- B** Interest expense on money borrowed to buy or carry bonds or securities whose income is exempt from New York State income tax, if not added on line 46.
- 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, if not added on line 46.
- D** Amortization of bond premium attributable to the tax year on any bond whose interest is exempt from New York State income tax, if not added on line 46.

**Line 51 – 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.

### Shareholder Information, Part IV

**Lines 52, 53, and 54** — Enter each individual shareholder's pro rata share of a tax credit, or recapture of a tax credit that originated in a tax year in which the corporation was a New York S corporation.

Lines 52, 53, and 54 should **not** include an individual shareholder's pro rata share of a tax credit or recapture of a tax credit that originated in a tax year in which the corporation was a New York C corporation.

Tax credits that originate in a New York S year:

- flow through to the individual shareholders of the New York S corporation under Article 22, and
- cannot be applied against the New York State corporation franchise tax in a New York S year, and
- cannot be applied against the New York State corporation franchise tax in a New York C year.

Tax credits that originate in a New York C year:

- do not flow through to the individual shareholders of the New York C corporation under Article 22, and
- cannot be applied against the New York State corporation franchise tax in a New York S year, and
- can be applied against the New York State corporation franchise tax in a New York C year.

Both a New York C year and a New York S year will be counted as a tax year for the carryforward of tax credits.

The Economic Development Zone (EDZ) and Zone Equivalent Area (ZEA) tax credits will be allowed to individuals, estates, and trusts who are shareholders of an electing New York S corporation (section 606(i)(1)). The amount of the EDZ and ZEA wage and capital tax credits allowed each shareholder is his or her pro rata share of these tax credits as computed by the New York S corporation on Forms DTF-601, DTF-601.1, and DTF-602.

Attach the following forms to Form CT-32-S if they apply: DTF-601, *Claim for EDZ Wage Tax Credit*; DTF-601.1, *Claim for ZEA Wage Tax Credit*; and DTF-602, *Claim for EDZ Capital Tax Credit*.

**Penalty for Failure to Provide Shareholder Information** — If you don't file Form CT-32-S on time, providing the shareholder information requested (all items of income, loss, deduction and other pertinent information), you will have to pay a penalty (section 685(h)(2)). The penalty is \$50 per shareholder per month or fraction of a month up to a total of \$250 per shareholder. You will also have to pay a penalty of \$50 for each shareholder whose social security number you do not show (section 685(k)). All shareholders of the S corporation during any part of the tax year must be counted. The penalty may be waived if it is shown that the failure is due to reasonable cause and not due to willful neglect.

**Termination Year** — The New York S election can terminate on a day other than the first day of the taxable year, whether or not the federal S election terminates at the same time. In either case, the tax year is divided into two tax periods (an S short year and a C short year). The corporation must file Form CT-32-S for the S short year and Form CT-32 for the C short year. The due date of the S short year return is the same as the New York C short year return.

If the federal and New York S elections terminate at the same time, entire net income assigned to the Form CT-32-S for the S short year and to the Form CT-32 for the C short year is determined using the same method of accounting as used for federal income tax purposes (that is, daily pro rata allocation under section 1362(e)(2) of the IRC or normal tax accounting rules under section 1362(e)(3) of the IRC).

If the federal S election continues but the New York S election terminates, use the normal tax accounting rules under section

1362(e)(3) of the IRC if:

- all persons who are shareholders in the corporation at any time during the New York S short year and all persons who are shareholders in the corporation on the first day of the New York C short year consent to such election, or
- there is a sale or exchange of 50% or more of the stock in the corporation during the year.

Otherwise, use the daily pro rata allocation method under section 1362(e)(2) of the IRC.

Check the box on Form CT-32-S, page 3, that indicates which method of accounting the New York S corporation elected for the New York S short year and subsequent New York C short year.

In no event will the total tax for the New York S short year and New York C short year be less than the fixed dollar minimum tax determined as if the corporation were a C corporation for the entire year.

### Need Help?

**Telephone Assistance** is available from 8:30 a.m. to 4:25 p.m., Monday through Friday. **For business tax information and forms**, call the Business Tax Information Center at 1 800 972-1233. **For general information**, call toll free 1 800 225-5829. **To order forms and publications**, call toll free 1 800 462-8100. **From areas outside the U.S. and Canada**, call (518) 485-6800.

**Fax-on-Demand Forms Ordering System** - Most forms are available by fax 24 hours a day, 7 days a week. Call toll free from the U.S. and Canada 1 800 748-3676. You must use a Touch Tone phone to order by fax. A fax code is used to identify each form.

**Internet Access** - <http://www.tax.state.ny.us> Access our website for forms, publications, and information.

**Hotline for the Hearing and Speech Impaired** - If you have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free from the U.S. and Canada 1 800 634-2110. Assistance is available from 8:30 a.m. to 4:15 p.m., Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

**Persons with Disabilities** - In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call the information numbers listed above.

**Mailing Address** - If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.

### Privacy Notification

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions and forms, is found in Articles 8, 9, 9-A, 13, 19, 27, 32, 33 and 33-A of the Tax Law and 42 USC 405(c)(2)(C)(i).

The Tax Department will use this information primarily to determine and administer corporate tax liabilities under the Tax Law, for certain tax refund offsets, and for any other purpose authorized by law.

Failure to provide the required information may result in civil or criminal penalties, or both, under the Tax Law.

This information will be maintained by the Director of the Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 905, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and Canada, call (518) 485-6800.