New York State Department of Taxation and Finance

Instructions for Form CT-32-S

New York Bank S Corporation Franchise Tax Return

Tax Law — Articles 32 and 22

CT-32-S-I

Up-to-date information affecting your tax return

Visit our Web site for tax law changes or forms corrections that occurred after the forms and instructions were printed (see *Need help?* on page 4).

Changes for 2007

Single factor allocation for certain Article 32 (Franchise Tax on Banking Corporations) filers — In 2005 the Tax Law was amended to provide Article 32 filers described below a new single factor allocation percentage for use in allocating entire net income (ENI), alternative ENI, and taxable assets to New York State. For tax years beginning on or after January 1, 2008, the receipts factor will be the allocation percentage for those 65% or more owned subsidiaries of banks and bank holding companies that:

- are subject to tax under Article 32 because of Tax Law section 1452(a)(9); and
- substantially provide management, administrative, or distribution services to an investment company.

This change will be phased in during tax years beginning in 2006 and 2007 by weighting the three factors currently used to compute the allocation percentage. For more information, see TSB-M-05(3)C, *Summary of Corporation Tax Legislative Changes Enacted in 2005*, and Schedule H on page 12 of Form CT-32-I, *Instructions for Form CT-32.*

Personal service corporations (PSCs) and S corporations — For tax years beginning on or after January 1, 2007, the Tax Commissioner may allocate all income, deductions, credits, exclusions, and other allowances between a PSC or S corporation and its employee-owners if the corporation was formed or used to avoid or evade New York State income tax. The allocation will be made to clearly reflect the source and amount of the income of the PSC, or the S corporation, or any of its employee-owners. An allocation may be made even if the PSC or S corporation is taxed under Tax Law Article 9-A (Franchise Tax on Business Corporations) or is not subject to tax in New York State.

Grandfathered 9-A corporations — For tax years beginning on or after January 1, 2007, new Tax Law section 1452(n) establishes conditions under which certain corporations that elected to be taxable under Article 9-A, or that are required to be taxable under Article 9-A pursuant to the Gramm-Leach-Bliley (GLB) transitional provisions, would become subject to tax under Tax Law Article 32. The previous GLB provisions of Tax Law sections 1452(h), (i), (j), (k), and (l) were each amended to take into consideration new Tax Law section 1452(n). For more information, see Form CT-32-I, page 1, *Who must file*.

Definition of a banking corporation — The definition of a banking corporation in section 1452(a)(9) has been amended, by adding a clause (iii), to include a corporation that is principally engaged in holding and managing investment assets if 65% or more of the stock of the corporation is owned or controlled, directly or indirectly, by a bank or a bank holding company. It was also amended by adding to clause (ii) a reference to section 4(k)4(F) of the federal Bank Holding Company Act of 1956, as amended. See Form CT-32-I, page 2, *Who must file*, item D.

Transitional provisions for the GLB Act extended (Articles 9-A and 32) — Under the federal GLB Act, an entity was created called a *financial holding company* (FHC) that can own banks, insurance companies, and securities firms. As a result of the GLB Act, the Tax Law was amended in 2000 to allow certain corporations that were taxed under Article 9-A or Article-32 in 1999 to retain their tax status in 2000. These transitional provisions were extended by adding new Tax Law section 1452(m), and amending Tax Law section 1462(f)(2)(iv), so they now expire for tax years beginning on or after January 1, 2010. The GLB provisions do not preclude taxpayers that made the one-time election to remain taxable under Article 9-A, pursuant to section 1452(d) (the grandfather election), from revoking that election.

Unlike previous extenders (Tax Law sections 1452(h),(i), (j), (k), and (l)), new section 1452(m) contains language stating that a banking corporation (in existence before January 1, 2008, and subject to tax under Article 32 for its last tax year beginning before January 1, 2008) remains taxable under Article 32 for tax years beginning on or after January 1, 2008, and before January 1, 2010, unless, as a result of a transaction or series of transactions occurring on or after January 1, 2008, the corporation no longer:

- meets the definition of a banking corporation of Tax Law section 1452(a), or
- satisfies the requirements for a corporation to elect to be taxable under Article 32.

Tax rate reductions — For tax years beginning on or after January 1, 2007, the tax rate on the ENI base for corporations taxable under Article 32 is reduced from 7.5% to 7.1%.

Related member royalty payment — For tax years beginning on or after January 1, 2007, where a taxpayer is included in a combined report with a related member under Tax Law section 1462(f), the taxpayer is not required to add back royalty payments to a related member.

Dividend income and net gains from subsidiary capital ENI modifications — For tax years beginning on or after January 1, 2007, and before January 1, 2009, the deductions available under Article 32 for 60% of dividends and net gains from subsidiary capital do not include 50% of disallowed investment proceeds, as defined in new Tax Law section 1453(u).

For tax years beginning on or after January 1, 2009, and before January 1, 2011, 75% of disallowed investment proceeds will not be deductible.

For tax years beginning on or after January 1, 2011, no amount of disallowed investment proceeds will be deductible. Disallowed investment proceeds do not include proceeds from a real estate investment trust (REIT) or regulated investment company (RIC) included in a combined report under Article 9-A. An Article 32 taxpayer with taxable assets of $8 billion or less does not have disallowed investment proceeds.

General information

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.

Definitions

For the purpose of these instructions, *New York S corporation* is a corporation taxable under Tax Law Article 32, for which a New York S election has been made by the filing of Form CT-6, *Election by a Federal S Corporation to be Treated As a New York S Corporation*.

For the purpose of these instructions, *New York C corporation* is a corporation taxable under Tax Law Article 32 that is not a New York S corporation.

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

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 (ENI) reduced by the Article 22 tax equivalent or (2) the fixed dollar minimum tax of $250. However, as the Article 22 tax equivalent rate of 7.875% is greater than the Article 32 ENI tax rate of 7.1%, the fixed dollar minimum tax will be the higher amount for this tax year.

A New York S corporation is not subject to the metropolitan transportation business tax (MTA surcharge).

To compute ENI 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 59a (To complete Schedule B, you may also have to complete Schedules E, F, G, and I 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 ENI and the issuer's allocation percentage. **Attach all applicable schedules to Form CT-32-S.**

With the exception of the special additional mortgage recording tax credit, an Article 32 New York S corporation cannot apply tax credits against its New York State franchise tax liability. Instead, any tax credits earned by such a corporation flow through to its shareholders, and are applied by the shareholders against their New York State personal income tax liability.

Filing requirements

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

Each New York S corporation must **attach Form CT-34-SH,** *New York S Corporation Shareholders' Information Schedule*, to report items of income, loss, deduction, and other pertinent information for all individuals, estates, and trusts who were shareholders of the New York S corporation during any part of the tax year.

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 must file a single franchise tax return. The QSSS is ignored as a separate taxable entity, and the assets, liabilities, income, and deductions of the QSSS are 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. As a result, a foreign authorized QSSS included in the parent's return (disregarded as a separate taxable entity for franchise tax purposes) that is filing under Article 32 by reason of *Who must file*, item D, on page 2 of Form CT-32-I, must file Form CT-245, *Maintenance Fee and Activities Return for a Foreign Corporation Disclaiming Tax Liability.*

a. **Parent is a New York S corporation –** New York State follows the federal QSSS treatment. The parent and QSSS are taxed as a single New York S corporation and file Form CT-32-S.

b. **Nontaxpayer parent –** New York State follows the federal QSSS treatment where the QSSS is a New York State 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 are 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.

c. **Exception: Excluded corporation –** QSSS treatment is not allowed unless both the parent and the QSSS are banking corporations. The corporations must 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 that would be subject to such taxes if taxable in New York State.

If New York State follows federal QSSS treatment, the QSSS is not considered a subsidiary of the parent corporation.

To notify the department that a QSSS is included in your return, mark an ***X*** in the first box under *Additional information* on page 2 of Form CT-32-S and attach Form CT-60-QSSS, *Qualified Subchapter S Subsidiary Information Schedule*.

When and where to file

File this return within 2½ months after the end of your reporting period. Mail returns to:

NEW YORK STATE CORPORATION TAX
PROCESSING UNIT
PO BOX 22038
ALBANY NY 12201-2038

If you cannot meet the filing deadline, you may request a six-month extension by filing Form CT-5.4, *Request for Six-Month Extension to File New York S Corporation Franchise Tax Return*, 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.

Penalty for failure to provide shareholder information — If you do not file Form CT-32-S on time, or you fail to provide the shareholder information required (all items of income, loss, deduction, and other pertinent information) you will have to pay a penalty. The penalty is $50 per shareholder per month or fraction of a month, up to a total of $250 per shareholder (section 685(h)(2)). You will also have to pay an additional 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. These penalties may be waived if it is shown that the failure is due to reasonable cause and not due to willful neglect.

Private delivery services

If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to mail in your return and tax payment. However, if, at a later date, you need to establish the date you filed your return or paid your tax, you cannot use the date recorded by a private delivery service **unless** you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services.* See *Need help?* on page 4 of these instructions for information on obtaining forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your return, contact that private delivery service for instructions on how to obtain written proof of the date your return was given to the delivery service for delivery. If you use **any** private delivery service, whether it is a designated service or not, send the forms covered by these instructions to: State Processing Center, 431C Broadway, Albany NY 12204-4836.

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 (IRS), must file an amended return by using Form CT-32-S and marking an ***X*** in the *Amended return* box. 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.

Third-party designee

If you want to authorize another person (third-party designee) to discuss this tax return with the New York State Tax Department, mark an ***X*** in the *Yes* box in the *Third-party designee* area of your return. Also enter the designee's name, phone number, and any five-digit number the designee chooses as his or her personal identification number (PIN). If you want to authorize the paid preparer who signed your return to discuss the return with the Tax Department, enter ***Preparer*** in the space for the designee's name. You do not have to provide the other information requested.

If you mark the *Yes* box, you are authorizing the Tax Department to discuss with the designee any questions that may arise during the processing of your return. You are also authorizing the designee to:

- give the Tax Department any information that is missing from your return;
- call the Tax Department for information about the processing of your return or the status of your refund or payment(s); and
- respond to certain Tax Department notices that you shared with the designee about math errors, offsets, and return preparation. The notices will not be sent to the designee.

You are not authorizing the designee to receive your refund check, bind you to anything (including any additional tax liability), or otherwise represent you before the Tax Department. If you want the designee to perform those services for you, you must file Form POA-1, *Power of Attorney,* making that designation with the Tax Department. Copies of statutory tax notices or documents (such as a *Notice of Deficiency*) will only be sent to your designee if you file Form POA-1.

You cannot change the PIN. The authorization will automatically end on the due date (without regard to extensions) for filing your next year's tax return.

Entering dates — Unless you are specifically directed to use a different format, enter dates in the *mm-dd-yy* format (using dashes and not slashes).

Line instructions

Line A — Make your check or money order payable in United States funds. We will accept a foreign check or foreign money order only if payable through a United States bank or if marked ***Payable in U.S. funds.***

Line 1 — Use Form CT-32, lines 22 through 59a, to compute the ENI of the New York S corporation. However, the New York State net operating loss deduction (NOLD) that is allowed to New York C corporations on line 56 of Form CT-32 is not allowed to New York State S corporations. Therefore, you should skip line 56 of Form CT-32 when computing the ENI of the New York S corporation.

Enter on Form CT-32, line 22, the amount of federal taxable income (FTI) that you would have reported on federal Form 1120, line 28, had you not made the election under Subchapter S of IRC Chapter One. Attach a statement (or a pro forma federal Form 1120) showing the computation of FTI 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.

If a parent corporation and QSSS file a joint return on Form CT-32-S, compute the ENI of the New York S corporation on Form CT-32, lines 22 through 59a, 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 are deemed to be those of the parent corporation;
- the stocks, bonds, and other securities issued by the QSSS, and any indebtedness from the QSSS, are not subsidiary capital of the parent corporation;
- transactions between the parent corporation and the QSSS, including the payment of interest and dividends, are not taken into account; and
- general executive officers of the QSSS are deemed to be general executive officers of the parent corporation.

Line 2 — Use Form CT-32, lines 108 through 123, and lines 125 through 128, and enter the appropriate results below to compute the ENI allocation percentage. Refer to the Schedule H instructions in Form CT-32-I for instructions specific to corporations substantially engaged in providing management, administrative, or distribution services to an investment company. Such corporations need only complete line E of the worksheet below, by entering the amount from Form CT-32, line 131.

A Payroll factor – enter the percentage from Form CT-32, line 110	
B Receipts factor – enter the percentage from Form CT-32, line 123	
C Deposits factor – enter the percentage from Form CT-32, line 128	
D Total of New York percentages *(add lines A, B, and C)*	
E ENI allocation percentage *(divide line D by three or by the number of percentages; enter on Form CT-32-S, line 2)*	

Lines 3, 5, 6, 7, and 8 — As the fixed dollar minimum tax is the highest tax for this tax year, lines 3, 5, 6, 7, and 8 require no entries and have therefore been shaded.

Line 12 — The special additional mortgage recording tax credit may not reduce the franchise tax on line 10 to less than $250. If the amount determined by subtracting the amount on line 11 from the amount on line 10 is less than $250, enter ***250*** on the line.

Line 13b — If the net franchise tax on line 12 exceeds $1,000, enter 25% of the net franchise tax shown on line 12.

Lines 25 through 29, Composition of prepayments on line 15

If you need more space, write ***see attached*** in this section, and attach a separate sheet showing all relevant prepayment information. Transfer the total shown on the attached sheet to line 15.

Additional information

Termination year — The New York S election can terminate on a day other than the first day of the tax 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 that of the New York C short year return.

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

If the federal S election continues but the New York S election terminates, use the normal tax accounting rules under IRC section 1362(e)(3) 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 IRC section 1362(e)(2).

Mark an ***X*** in the *Normal accounting rules* box or the *Daily pro rata allocation* box on page 2 of Form CT-32-S to indicate which method of accounting the New York S corporation elected for the New York S short year and subsequent New York C short year.

The total tax for the New York S short year and New York C short year cannot be less than the fixed dollar minimum tax determined as if the corporation were a C corporation for the entire year.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

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

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

Internet access: *www.nystax.gov*
(for information, forms, and publications)

Fax-on-demand forms:	1 800 748-3676
To order forms and publications:	1 800 462-8100
Corporation Tax Information Center:	1 888 698-2908
From areas outside the U.S. and outside Canada:	(518) 485-6800
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only):	1 800 634-2110