



Instructions for Form CT-33

Life Insurance Corporation Franchise Tax Return

CT-33-I

Form CT-1, Supplement to Corporation Tax Instructions

See Form CT-1 for the following topics:

- Changes for the current tax year (general and by Tax Law Article)
- Business information (how to enter and update)
- Entry formats
 - Dates
 - Negative amounts
 - Percentages
 - Whole dollar amounts
- Are you claiming an overpayment?
- Third-party designee
- Paid preparer identification numbers
- Is your return in processible form?
- Use of reproduced and computerized forms
- Electronic filing and electronic payment mandate
- Web File
- Form CT-200-V
- Collection of debts from your refund or overpayment
- Fee for payments returned by banks
- Reporting requirements for tax shelters
- Tax shelter penalties
- Voluntary Disclosure and Compliance Program
- Your rights under the Tax Law
- Need help?
- Privacy notification

Temporary deferral of certain tax credits

For tax years beginning on or after January 1, 2010, and before January 1, 2013, if the total amount of certain credits that you may use to reduce your tax or have refunded to you is greater than \$2 million, the excess over \$2 million must be deferred to, and used or refunded in, tax years beginning on or after January 1, 2013. For more information about the credit deferral, see Form CT-500, *Corporation Tax Credit Deferral*.

If you are subject to the credit deferral, you must complete all credit forms without regard to the deferral. However, the credit amount that is transferred to your tax return to be applied against your tax due or to be refunded to you may be reduced. Follow the instructions for Form CT-500 to determine the amounts to enter on your tax return.

Who must file Form CT-33

- Domestic life insurance corporations for the privilege of exercising a corporate franchise.
- Foreign and alien life insurance corporations doing business, employing capital, owning or leasing property, or maintaining an office in this state.
- Any life insurance company whose *Certificate of Authority* from the Superintendent of Financial Services has expired, or that ceases to transact new business in this state, but has business remaining in force in this state.
- Life insurance corporations exempt from federal income tax but that conduct business in New York State.
- An unauthorized life insurance corporation that is affiliated with an insurer licensed in New York State and is operating from an office within the state pursuant to New York State Insurance Law sections 1101(b)(5) and 2117(i). See TSB-M-00(1)C, *Amended Definition of Insurance Corporation*, for additional information.

An **unauthorized** non-life insurance corporation, as well as an unauthorized life insurance corporation, doing business, employing capital, owning or leasing property in New York State in a corporate or organized capacity, or maintaining an office in New York State is subject to a franchise tax under Tax Law, Article 33, section 1501(a). The tax is then computed under Article 33 section 1502, which provides that such tax shall be the greatest amount of tax computed on four basis: (1) a tax on allocated entire net income (ENI); (2) a tax on allocated business and investment capital; (3) a tax on a prescribed portion of ENI, plus salaries and other compensation

of elected or appointed officers and certain stockholders; or (4) a fixed dollar minimum tax of \$250, plus a tax on allocated subsidiary capital. An **unauthorized** insurance corporation is not subject to the premiums tax under Tax Law, Article 33, section 1502-a and must file Form CT-33. Additionally, when filing Form CT-33 the unauthorized insurance corporation is not subject to the additional premiums tax under Article 33 section 1510 or the limitations on tax under Article 33 section 1505. For more information, see TSB-A-09(2)C, *Service Lloyds Insurance Company*, and TSB-M-12(4)C, *Filing Requirements and the Calculation of Tax for Unauthorized Insurance Corporations*.

Exceptions: Life insurance corporations specifically exempted by Tax Law, Article 33, section 1512 do not have to file Form CT-33. Captive insurance companies licensed by the Superintendent of Financial Services under Insurance Law Article 70 must file Form CT-33-C, *Captive Insurance Company Franchise Tax Return*. Overcapitalized captive insurance companies must file on a combined return under Article 9-A or 32 with their closest controlling stockholder, as applicable. For-profit health maintenance organizations (HMOs) are required to file Form CT-33-NL, *Non-Life Insurance Corporation Franchise Tax Return*.

Definition of insurance corporation — An *insurance corporation* (as defined in Tax Law, Article 33, section 1500) is any corporation, association, joint stock company or association, person, society, aggregation, or partnership, doing an insurance business. The term insurance corporation also includes an HMO required to obtain a certificate under Article 44 of the Public Health Law. It does not include any overcapitalized captive insurance company.

Combined filing rules — A taxpayer must file a combined return with any related corporations if there are substantial intercorporate transactions among the related corporations, regardless of the transfer price for such intercorporate transactions.

To determine if there are substantial intercorporate transactions, the Commissioner of Taxation and Finance considers and evaluates all activities and transactions of the taxpayer and its related corporations. For examples of related corporations and a list of activities and transactions considered to determine if there are substantial intercorporate transactions, see *Who must file a combined return* on Form CT-33-A-I, *Instructions for Forms CT-33-A, CT-33-A/ATT, and CT-33-A/B*.

A captive real estate investment trust (REIT) (as defined in Tax Law, Article 1, section 2.9) or a captive regulated investment company (RIC) (as defined in Tax Law, Article 1, section 2.10) must file a combined return with the closest corporation that directly or indirectly owns or controls over 50% of the voting stock of the captive REIT or the captive RIC. In addition, a qualified REIT subsidiary must be included in the combined return of its captive REIT parent.

The ENI of the captive REIT or RIC (Tax Law, Article 33, section 1515(f)(5)(iii)) generally has the same meaning as the terms real estate investment trust taxable income and investment company taxable income, respectively, and are defined pursuant to the Internal Revenue Code (IRC). However, the deduction allowed by the IRC for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns or controls over 50% of the voting stock of the captive REIT or captive RIC will not be allowed.

For the most recent information on combined filing requirements, visit our Web site.

When and where to file

File your return within 2½ months after the end of your reporting period. If you are reporting for the calendar year, file your return on or before March 15. If your filing date falls on a Saturday, Sunday, or legal holiday, then you must file your return on or before the next business day.

If you cannot meet this filing deadline, you may request a six-month extension of time to file by filing Form CT-5, *Request for Six-Month Extension to File*.

Mail returns to:
**NYS CORPORATION TAX
PROCESSING UNIT
PO BOX 22038
ALBANY NY 12201-2038**

Also mail a copy to:
**NYS DEPARTMENT OF FINANCIAL SERVICES
ONE COMMERCE PLAZA
ALBANY NY 12257**

Private delivery services — See Publication 55, *Designated Private Delivery Services*.

Specific instructions

Metropolitan transportation business tax (MTA surcharge) Article 33 section 1505-a

Any insurance corporation taxable under Article 33 that does business, employs capital, owns or leases property, or maintains an office in the Metropolitan Commuter Transportation District (MCTD) must file Form CT-33-M, *Insurance Corporation MTA Surcharge Return*, and pay the MTA surcharge imposed by section 1505-a. The MCTD includes the counties of New York, Bronx, Kings, Queens, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester. Corporations not doing business in the MCTD must disclaim liability for the tax surcharge by marking an **X** in the *No* box on page 1 of Form CT-33. They are not required to file Form CT-33-M.

Amended return

If you are filing an amended return, mark an **X** in the *Amended return* box on the top of Form CT-33.

If you file an amended federal return, you must file an amended New York State return within 90 days (120 days if filing an amended combined return) thereafter.

For amended returns based on changes by the Internal Revenue Service (IRS) — If any of the taxable income amounts listed here have been changed or corrected by a final determination of the Commissioner of Internal Revenue, you must file an amended return reflecting the federal changes within 90 days (120 days if filing an amended combined return) of the final federal determination. For a definition of final determination, see New York Codes, Rules, and Regulations (NYCRR), Title 20, section 6-1.3(b).

- Life insurance company taxable income (which includes, in the case of a stock life insurance company that has an existing policyholders' surplus account, the amount of direct and indirect distributions during the tax year to shareholders from such account).
- Taxable income of a partnership.
- Taxable income or alternative minimum taxable income of any taxpayer.

You must attach a copy of federal Form 4549, *Income Tax Examination Changes*, to your amended return.

For credits or refunds based upon carryback of a net operating loss (NOL) or operations loss — To claim a credit or refund resulting from the carryback of an NOL, an operations loss, or alternative net operating loss (ANOL) to a prior year, file an amended return within 90 days (120 days if filing an amended combined return) from the date of the document indicating approval of the federal refund or credit.

You must attach the following to your amended return:

- federal claim Form 1139, *Corporation Application for Tentative Refund*, amended Form 1120-L, *U.S. Life Insurance Company Income Tax Return*, or amended Form 1120-PC, *U.S. Property and Casualty Insurance Company Return*;
- a copy of the New York State return for the loss year; and
- proof of federal refund approval, *Statement of Adjustment to Your Account*.

For credits or refunds of corporation tax paid — To claim any refund type that requires an amended return, other than an NOL or operations loss carryback (see *For credits or refunds based upon carryback of a net operating loss (NOL) or operations loss*), file an amended New York State return for the year being amended and, if applicable, attach a copy of the claim form filed with the IRS and proof of federal refund approval, *Statement of Adjustment to Your Account*.

The amended return must be filed within three years of the date the original return was filed or within two years of the date the tax was paid, whichever is later. If you did not file an original return, you must make the request within two years of the date the tax was paid. However, a claim for credit or refund based on a federal change must be filed within two years from the time the amended return reporting the change or correction was required to be filed (see *For amended returns based on changes by the Internal Revenue Service (IRS)*). For additional limitations on credits or refunds, see Tax Law, Article 27, section 1087.

Erroneously paid or illegally or unconstitutionally imposed retaliatory taxes or other charges — If after exhaustion of all further judicial review, there is a final determination by competent authority that a refund or credit is due for retaliatory taxes or other charges imposed or assessed by

another state, and a credit against New York State tax was allowed under Tax Law, Article 33, section 1511(c) for such taxes or charges, then the final determination, along with the amount to be refunded or credited, must be reported within 90 days of its issuance.

Reporting period

Use this tax return for calendar year 2012 and fiscal years that begin in 2012 and end in 2013.

You can also use the 2012 return if:

- you have a tax year of less than 12 months that begins and ends in 2013, **and**
- the 2013 return is not yet available at the time you are required to file the return.

In this case you must show your 2013 tax year on the 2012 return and take into account any tax law changes that are effective for tax years beginning after December 31, 2012.

All filers must complete the beginning and ending tax year boxes in the upper right corner on page 1 of the form.

Important identifying information

When preparing your corporation tax return, be sure to accurately complete the corporation's identifying information (employer identification number (EIN) and file number) including your current address. Keep a record of your identifying information for future use. If you use a paid preparer or accounting firm, make sure they use your complete and accurate information when completing all your forms.

Signature

The return must be certified by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the taxpayer corporation.

The return of an association, publicly traded partnership, or business conducted by a trustee or trustees must be signed by a person authorized to act for the association, publicly traded partnership, or business.

If an outside individual or firm prepared the return, all applicable entries in the paid preparer section must be completed, including identification numbers (see *Paid preparer identification numbers* in Form CT-1). Failure to sign the return will delay the processing of any refunds and may result in penalties.

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**.

Computation of tax and installment payments of estimated tax

Line 3 — To compute the alternative tax measured by ENI plus compensation:

- Add the unallocated ENI from line 81 and the total salaries and compensation paid to the officers and stockholders from line 61. If line 81 is a loss, subtract it from line 61.
- Deduct \$15,000 (or a proportionate part if the return is for a period of less than one year) from the amount computed in item A above.
- Multiply the result of item B above by 30% (.3).
- Multiply the amount computed in item C above by the allocation percentage from line 45.
- Enter the result of item D above in the first box on line 3, and multiply the result by 9% (.09) to compute the tax.

Line 6 — Enter amount from line 86, column A. **Unauthorized insurance corporations:** Enter **0**.

Line 8 — Enter amount from line 86, column B. **Unauthorized insurance corporations:** Enter **0**.

Line 9a — Enter amount from line 7 or 8, whichever is greater. **Unauthorized insurance corporations:** Enter amount from line 7.

Line 9b — Enter the amount of empire zone (EZ) and zone equivalent area (ZEA) tax credits being claimed on line 100. These credits **must** be subtracted from the tax on line 9a and **not** from the tax on line 11.

Line 9c — Subtract line 9b from line 9a and enter the result on this line. The amount after EZ and ZEA tax credits claimed may not be less than the minimum tax of \$250.

Line 10 — Enter amount from line 88. **Unauthorized insurance corporations:** Enter **0**.

Line 11 — Enter the tax determined under section 1505(a)(2) (line 10), or the tax determined under sections 1501 and 1510 (line 9c), whichever is less. **Unauthorized insurance corporations:** Enter the amount from line 9c.

Line 12 — Enter the total amount of tax credits claimed from line 101. A special rule applies to taxpayers claiming EZ and ZEA tax credits which may **not** be subtracted from the tax calculated under section 1505(a)(2).

Line 14b — If the tax is more than \$1,000, and you did not file Form CT-5, you must pay a mandatory first installment for the period following the one that is covered by this return.

Authorized life insurance corporations: Enter 40% (.40) of the tax shown on line 13. **Unauthorized insurance corporations:** If your tax is more than \$1,000, but less than or equal to \$100,000, enter 25% (.25) of the tax shown on line 13. If your tax is more than \$100,000, enter 40% of the tax shown on line 13.

Line 18 — Form CT-222, *Underpayment of Estimated Tax by a Corporation*, is filed by a corporation to inform the Tax Department that the corporation meets one of the exceptions to reduce or eliminate the underpayment of estimated tax penalty pursuant to Tax Law, Article 27, section 1085(d).

Line 19 — If you do not pay the tax due on or before the original due date (**without** regard to any extension of time for filing), you must pay interest on the amount of underpayment (line 13 minus line 16) from the original due date to the date paid. Exclude from the interest computation any amount shown on line 14a or 14b, first installment of estimated tax for next period.

Line 20 — Compute additional charges for late filing and late payments on the amount of tax minus any payment made on or before the due date (**with** regard to any extension of time for filing) (line 13 minus line 16). Exclude from the penalty computation any amount shown on line 14a or 14b, first installment of estimated tax for next period.

- If you do not file a return when due or if the request for extension is invalid, add to the tax 5% per month up to 25% (section 1085(a)(1)(A)).
- If you do not file a return within 60 days of the due date, the addition to tax in item A above cannot be less than the smaller of \$100 or 100% of the amount required to be shown as tax (section 1085(a)(1)(B)).
- If you do not pay the tax shown on a return, add to the tax ½% per month up to 25% (section 1085(a)(2)).
- The total of the additional charges in items A and C above may not exceed 5% for any one month except as provided for in item B above (section 1085(a)).

If you think you are not liable for these additional charges, attach a statement to your return explaining reasonable cause for the delay in filing, payment, or both (section 1085).

Note: You may compute your penalty and interest by accessing our Web site, or you may call and we will compute the penalty and interest for you (see *Need help?*).

Lines 27a and 27b — If you request a refund of unused tax credits, enter the total amount on line 27a. If you request tax credits to be credited as an overpayment to next year's tax return, enter the total on line 27b. Attach the appropriate tax credit forms.

Schedule A — Allocation of reinsurance premiums when location of risks cannot be determined

Complete this schedule to allocate reinsurance premiums to New York State when the location or residence of the property or risks covered by the reinsurance cannot be determined. This schedule must be completed for premiums assumed from authorized companies.

Column C — Enter the percentage each ceding corporation's New York premiums bear to its total premiums for the preceding tax year (reinsurance allocation percentage). You may obtain this percentage from tax service publications or by calling the Corporation Tax Information Center (see *Need help?*). If the ceding corporation did not do business in New York State during the preceding year and therefore did not file a New York State tax return, the percentage is zero.

Schedule B — Computation of allocation percentage

A taxpayer doing business both inside and outside New York State may allocate its business and investment capital, ENI, and ENI plus compensation.

Compute the income allocation percentage by adding the percentages of the taxpayer's premiums allocated to New York State (multiplied by nine) and payroll allocated to New York State, and dividing the total by ten. For both the numerator and denominator of the premium allocation percentage, the term *premium* includes all amounts received as consideration for insurance, reinsurance and annuity contracts, including premium deposits, assessments, policy fees, membership fees, and all other compensation for such contracts.

Line 31 — Authorized life insurance corporations: Enter the total New York taxable premiums received from life insurance from line 86, column A, plus any additional premiums on these types of policies that were written, procured, or received in New York on business that cannot be specifically assigned as located or resident in any other state or states that were not included on line 86 (attach schedules for such additional premiums). Do not include in this amount any separate costs assessed by the insurance corporation upon its policyholders. See Tax Law, Article 33, section 1504(b)(2)(A). Include any New York premiums for long-term care insurance policies under United States Code, Title 5, Chapter 90, and any New York premiums for federal group life insurance policies under United States Code, Title 5, Chapter 87, when computing the premium percentage. **Unauthorized insurance corporations:** Follow **all** of these same line instructions as if you were required to complete line 86.

Line 32 — Enter the total ocean marine premiums written, procured, or received on property or risks located or resident in New York State, plus ocean marine premiums written within New York State on property or risks that cannot be specifically assigned as located or resident in any other state or country. See Tax Law section 1504(b)(2)(C).

Line 33 — Enter the total of premiums for annuity contracts and insurance for the elderly that are written, procured, or received on risks located or resident in New York State, and those premiums for annuity contracts and insurance for the elderly written, procured, or received in New York State on business that cannot be specifically assigned as located or resident in any other state or states.

Line 34 — Enter the total New York premiums on reinsurance assumed from authorized companies. Include premiums allocated to New York State where the location of the risk cannot be determined (line 30) and premiums from risks located in New York State. Also include reinsurance premiums assumed from unauthorized companies that relate to transactions authorized under Insurance Law section 2105 and that are subject to the premiums tax on excess-lines brokers under Insurance Law section 2118.

Line 36 — Enter the total amount of New York premiums included on line 35 that were ceded to other insurance companies.

Attach a separate schedule showing the computation of New York premiums included on lines 31 through 36.

Line 38 — You must report total premiums on a written or paid-for basis, consistent with the basis required by the annual statement filed with the Superintendent of Financial Services.

Attach a separate schedule showing the computation of total premiums included on line 38.

First, determine total gross premiums, deposit premiums, and assessments, less returns thereon, on **all** policies, annuity contracts, certificates, renewals, policies subsequently canceled, and insurance and reinsurance executed, issued, or delivered on property or risks, including premiums for reinsurance assumed. Include **only** those special risk premiums written, procured, or received in New York State on risks located or resident in New York State.

From the total amount determined, deduct dividends on total premiums and premiums on reinsurance ceded. When computing the dividend deduction, include unused or unabsorbed portions of premium deposits paid or credited to policyholders, but not deferred dividends paid in cash to policyholders on maturing policies or cash surrender values.

Lines 41 and 42 — Enter total wages, salaries, personal service compensation, and commissions for the tax year of employees, agents, and representatives regularly connected with or working out of an office or place of business maintained within New York State on line 41. It does not matter where the services were performed.

Enter total wages, salaries, personal service compensation, and commissions for the tax year of all employees, agents, and representatives on line 42.

Include on both lines any commissions or personal service compensation derived from policies for a long-term care insurance policy under United States Code, Title 5, Chapter 90, and from policies for federal group life insurance under United States Code, Title 5, Chapter 87, when computing the payroll percentage.

Attach a separate schedule indicating how you computed the amounts shown on lines 41 and 42 and where these amounts are shown on the federal return.

Line 45 — If the premiums factor is missing from line 39, the income allocation percentage is the payroll factor percentage on line 43. If the payroll factor is missing from line 43, the income allocation percentage is the premium factor percentage on line 39. A factor is missing if both its numerator and denominator are zero. If the numerator is zero and the denominator has a positive figure, the factor has an allocation value of 0% and is included in the computation of the allocation percentage.

Schedule C — Computation and allocation of subsidiary capital

Subsidiary capital — A *subsidiary* is a corporation of which over 50% of the voting stock is owned by the taxpayer. The term *subsidiary capital* means all investments in the capital stock of subsidiary corporations, plus all indebtedness from subsidiary corporations (other than accounts receivable acquired in the ordinary course of trade or business for services rendered, or for sales of property held primarily for sale to customers). When computing the amount of indebtedness owed to the taxpayer by its subsidiaries, consider each subsidiary separately. Loans and advances from the parent to the subsidiary may be offset by loans and advances from the same subsidiary to the parent, but may not be reduced to less than zero. Loans and advances from a subsidiary to the parent may not offset the parent's investment in the stock of the subsidiary, or offset loans and advances from the parent to any other subsidiary.

This indebtedness, whether or not evidenced by bonds or other written instruments, qualifies as subsidiary capital as long as the subsidiary does not claim and deduct the interest for the purpose of taxation under any Tax Law article.

Column C – Average fair market value — Enter the average fair market value of each item of subsidiary capital listed in column A. The *fair market value* of an asset is the price (without deduction of any encumbrance) at which a willing seller will sell and a willing buyer will buy. The fair market value, on any date, of stocks, bonds, and other securities regularly traded on an exchange or in the over-the-counter market is the mean between the highest and lowest selling prices on that date. Average value is generally computed quarterly if your usual accounting practice permits it. However, you may use a more frequent basis such as monthly, weekly, or daily. If your usual accounting practice does not permit a quarterly or more frequent computation of the average value of assets, you may use a semiannual or annual computation if no distortion of average fair market value results.

Column D – Average value of current liabilities attributable to subsidiary capital — Each item of subsidiary capital must be reduced by any liabilities of the taxpayer (parent) payable by their terms on demand or not more than one year from the date incurred. These liabilities do not include loans or advances outstanding for more than a year, as of any date during the year covered by the return.

Column F – Issuer's allocation percentage — Enter the percentage of the entire capital or the issued capital stock or the gross direct premiums or net income of each issuing corporation allocable to New York State as determined on the corporation's New York State tax return for the preceding tax year. If the issuing corporation did not do business in New York State during the preceding year and therefore did not file a New York State tax return, the percentage is zero. Issuer's allocation percentages are available on the Tax Department's Web site and from many online and printed tax services. You may also obtain up to three issuer's allocation percentages by calling (see *Need help?*).

Schedule D — Computation and allocation of business and investment capital

Definition of capital — *Total capital* is the average fair market value of all the corporation's assets minus its average current liabilities.

Valuation of capital — *Business and investment capital* is total capital minus subsidiary capital. It does not include assets that are held to

maintain reserves of an insurance corporation as required under New York State Insurance Law sections 1303, 1304, and 1305. In computing business and investment capital, you are normally required to value assets at fair market value. But in valuing real and tangible personal property, you may elect to substitute book values for these assets; that is, the value established and regularly kept on the books of the company. If you make this election you must so indicate on each return. Once you have made the election, it is binding for all subsequent tax years and cannot be changed without prior permission. You must value stocks, bonds, and other securities at fair market value.

Average fair market value — The *fair market value* of an asset is the price (without deduction of any encumbrance) at which a willing seller will sell and a willing buyer will buy. The fair market value, on any date, of stocks, bonds, and other securities regularly traded on an exchange or in the over-the-counter market is the mean between the highest and lowest selling prices on that date. Average value is generally computed quarterly if your usual accounting practice permits it. However, you may use a more frequent basis such as monthly, weekly, or daily. If your usual accounting practice does not permit a quarterly or more frequent computation of the average value of assets, you may use a semiannual or annual computation if no distortion of average fair market value results.

Line 50 — Attach copies of your *Assets Schedule* of the *Annual Statement* reflecting admitted and nonadmitted assets for both the previous tax year and the current tax year.

Line 52 – Current liabilities — Include **only** liabilities maturing in one year or less from the date originally incurred. Do not include loans or advances outstanding for more than a year as of any date during the year covered by this return, notes payable that are renewed from year to year, or the current portion of a long-term liability. Do not include reserves required under New York State Insurance Law sections 1303, 1304, and 1305. Use the same method of averaging used to determine average fair market value of assets.

Lines 52 and 56 — Attach copies of your *Liabilities, Surplus and Other Funds Schedule* of the *Annual Statement*.

Schedule E — Computation of adjustment for gains or losses on disposition of property acquired before January 1, 1974

Tax Law, Article 33, section 1503(b)(5) details the adjustments you must make when reporting the gain or loss from sale or exchange of property acquired before January 1, 1974.

Columns B, D, and F — Enter the amounts used in computing federal taxable income (FTI).

Column C — The *fair market price or value* is the price at which a willing seller will sell and a willing buyer will buy.

Column E

- If **both** the amounts entered in columns B **and** C are less than the amount entered in column D, a New York gain is realized. Enter in column E the difference between column D and the higher of column B or C.
- If **both** the amounts entered in columns B **and** C are more than the amount entered in column D, a New York loss is sustained. Enter in column E (use a minus (-) sign) the difference between column D and the lower of column B or C.
- If only one of the amounts entered in column B **or** C is more than the amount entered in column D, no New York gain is realized. Enter **0** in column E.
- If only one of the amounts entered in column B **or** C is less than the amount entered in column D, no New York loss is sustained. Enter **0** in column E.

Schedule G — Computation and allocation of ENI

Line 62 — Enter the amount of life insurance company taxable income (LICTI) (including, in the case of a stock life insurance company, distributions to shareholders from an existing policyholder's surplus account), plus the operations loss deduction included in LICTI as reported to the U.S. Treasury Department for the tax year. Corporations filing federal Form 1120-PC must enter the total of taxable income per Schedule A, plus any NOL included in taxable income as reported to the U.S. Treasury Department for the tax year. Companies having an amount of excess inclusion as a result of having a residual interest in a real estate mortgage investment conduit (REMIC), must properly reflect this income in FTI. Corporations exempt from federal income tax but subject to tax under Article 33 must enter the taxable income which would have been required to be reported to the U.S. Treasury Department.

Additions

Line 64 — Enter all interest and dividend income, received or accrued, that was exempt from federal income tax and not included in line 62, minus interest expense, bond premium amortization, and other ordinary and necessary expenses, paid or incurred, attributable to this income.

Line 65 — Enter interest paid or accrued on indebtedness directly or indirectly owed to any stockholder (including subsidiaries of a corporate stockholder) or members of his or her immediate family that own more than 5% of the issued capital stock of the taxpayer. *Immediate family* includes brothers and sisters of whole or half blood, a spouse, ancestors, and descendants. If no such interest was paid or accrued, enter **0**.

Line 67 — Enter capital losses from sales and exchanges of subsidiary capital, other losses and bad debts, interest expense (direct or indirect), foreign taxes, and any carrying charge attributable to subsidiary capital deducted in computing FTI.

Line 68 — Enter the amount of New York State franchise taxes, including the MTA surcharge, imposed by Article 33 and deducted on your federal return.

Line 69a — Enter any amount claimed as a deduction in computing FTI solely as a result of an election made under the provision of IRC section 168(f)(8) (safe harbor lease, as it was in effect for agreements entered into before January 1, 1984).

Line 69b — Enter any amount you would have been required to include in the computation of FTI had you not made the election permitted by the provisions of IRC section 168(f)(8) (safe harbor lease, as it was in effect for agreements entered into before January 1, 1984).

Line 70 — Use this line if:

- the corporation claims the federal accelerated cost recovery system/modified accelerated cost recovery system (ACRS/MACRS) deduction for property placed in service either **in or outside** New York State after 1980, in tax periods beginning before 1985; or
- the corporation claims the federal ACRS/MACRS deduction for property placed in service **outside** New York State in tax periods beginning after 1984, and before tax periods beginning in 1994, and the corporation made the election to continue using the IRC section 167 depreciation modification for the property (see TSB-M-99(1)(C), *New York Depreciation Deduction for Property Placed in Service Outside New York State in Tax Years 1985-1993*); or
- the corporation claims a 30%/50%/100% federal special depreciation deduction under IRC section 168(k) for qualified property (excluding qualified resurgence zone property described in Tax Law, Article 9-A, section 208.9(q) or qualified New York liberty zone property described in IRC section 1400L(b)(2)) placed in service on or after June 1, 2003, in tax years beginning after December 31, 2002; or
- the corporation disposes this year of either ACRS/MACRS property, or property for which you claimed a 30%/50%/100% federal special depreciation deduction, and the New York depreciation modifications applied to the property in any prior years.

If this line applies, complete Form CT-399, *Depreciation Adjustment Schedule*. Include from Form CT-399, line 3, column E, the amount of your federal deduction that must be added back to FTI, or, if you disposed of property this year, use the amount from Form CT-399, line 10, column A.

Line 71 — Other additions:

IRC section 199 deduction — Enter in the first entry box the amount of the deduction for domestic production activities from your federal return that is required to be added back under Tax Law section 1503(b)(2)(u).

If you have any of the following other additions to FTI, add the amount from the first entry box to the total amount of those additions and enter the result. Attach a separate sheet listing the other additions.

- A-1** The portion of the special additional mortgage recording tax claimed as a credit that was claimed as a deduction in arriving at FTI. The gain or loss on the sale of real property on which the special additional mortgage recording tax credit was claimed must be increased in the case of a gain, or decreased in the case of a loss, when any portion of the credit was also used in the basis for computing the federal gain.
- A-2** Qualified emerging technology investments (QETI) — If you elected to defer the gain from the sale of QETI, then **you must** add to FTI the amount previously deferred when the reinvestment in the New York qualified emerging technology company which qualified you for that deferral is sold. See subtraction S-3 under line 79.

- A-3** Include the amount deducted from federal gross income on federal Form 1120-PC as a result of IRC section 847(1).
- A-4** Include the amount of unearned premiums on outstanding business at the end of the preceding tax year excluded from premiums earned as a result of IRC sections 832(b)(4)(B), 832(b)(7)(B)(i), and 832(b)(8)(A)(i).
- A-5** Include the difference between the amount of discounted unpaid losses at the end of the preceding tax year used in the computation of losses incurred as a result of IRC section 832(b)(5)(A), and the amount of unpaid losses at the end of the preceding tax year that would have been used in such computation if such losses were not discounted for federal income tax purposes. Provide a copy of the loss reserves discount summary schedule used to compute discounted unpaid losses from federal Form 1120-PC and a copy of Schedule P, *Analysis of Losses and Loss Expenses, Part 1, Summary*, from the prior year's *Annual Statement*.
- A-6** Amount of related member royalty payment required to be added back pursuant to Tax Law section 1503(b)(14).
- A-7** If you are claiming an environmental remediation insurance credit, you must include on this line the amount of premiums paid for environmental remediation insurance and deducted in determining FTI, to the extent of the amount of the credit allowed under Tax Law, Article 1, section 23 and Article 33, section 1511(w).
- A-8** Include the amount of any Article 23 tax that was deducted on your federal return.

Subtractions

Line 73 — Enter interest and dividend income from subsidiary capital and capital gains from sales and exchanges of subsidiary capital. The interest, dividends, and capital gains amount used to calculate the deduction **cannot** exceed the amount used to compute FTI.

Line 74 — A life insurance company may enter only 50% of the company's share (IRC section 812(a)(1)) of **all** such dividend income.

Line 75 — Enter any income or gain from installment sales of real or personal property made before January 1, 1974, that was used to compute FTI.

Line 76 — Enter New York State operations losses or NOLs. Attach a separate schedule showing the details of the application of the federal and New York State losses.

In determining the operations loss or NOL of any given year, the following rules apply:

- Federal operations losses (IRC section 810) or NOLs (IRC section 172) must be adjusted in accordance with Article 33 section 1503(b).
- The operations losses incurred may be carried back as set forth in RC section 810.
- For NOLs incurred, refer to IRC section 172 for carryback and carryforward periods.
- If you have elected for federal purposes to relinquish the carry back of an operations loss or NOL, you may not carry back an operations loss or NOL for state purposes, and you must submit a copy of your federal election.
- The New York State operations loss deduction or NOL deduction for any particular year is limited to the federal operations loss deduction (IRC section 810) or NOL deduction (IRC section 172) for that year.
- No deduction is allowed for an operations loss or NOL sustained during any year in which the corporation was not subject to tax under Article 33.

Line 77a — Enter any amount included in federal income solely as a result of an election made under the provisions of IRC section 168(f)(8) (safe harbor lease, as it was in effect for agreements entered into before January 1, 1984).

Line 77b — Enter any amount that you could have deducted from FTI had you not made an election under IRC section 168(f)(8) (safe harbor lease, as it was in effect for agreements entered into before January 1, 1984). For additional information on safe harbor leases, see TSB-M-82(15)C, *1982 Legislation - Safe Harbor Leases*.

Line 78 — In place of the disallowed deduction entered on line 70, a New York State depreciation deduction is allowed under Article 33 sections 1503(b)(10), 1503(b)(14), 1503(b)(15), and 1503(b)(16). For additional information, see Form CT-399-I, *Instructions for Form CT-399*.

Use this line if:

- the corporation claims the federal ACRS/MACRS deduction for property placed in service either **in or outside** New York State after 1980, in tax periods beginning before 1985; or
- the corporation claims the federal ACRS/MACRS deduction for property placed in service **outside** New York State in tax periods beginning after 1984, and before tax periods beginning in 1994, and the corporation made the election to continue using the IRC section 167 depreciation modification for the property (see TSB-M-99(1)(C)); or
- the corporation claims a 30%/50%/100% federal special depreciation deduction under IRC section 168(k) for qualified property (excluding qualified resurgence zone property described in Tax Law, Article 9-A, section 208.9(q) or qualified New York liberty zone property described in IRC section 1400L(b)(2)) placed in service on or after June 1, 2003, in tax years beginning after December 31, 2002; or
- the corporation disposes this year of either ACRS/MACRS property, or property for which you claimed a 30%/50%/100% federal special depreciation deduction and the New York depreciation modifications applied to the property in any prior years.

If this line applies, complete Form CT-399. Include the amount from Form CT-399, line 3, column I, or, if you disposed of property this year, use the amount from Form CT-399, line 10, column B.

Line 79 — Other subtractions:

- S-1** Include the amount of wages disallowed under IRC section 280C in the computation of your FTI because you claimed a federal credit. Attach a copy of the appropriate federal credit form.
- S-2** Interest deductions under section 1503(b)(3) to the extent not deducted on line 64.
- S-3** You may defer the gain on the sale of QETI that is held for more than 36 months and rolled over into the purchase of a QETI within 365 days. You must purchase the replacement QETI within the 365-day period beginning on the date of sale. Gain is not deferred and must be recognized to the extent that the amount realized on the sale of the original QETI exceeds the cost of a replacement QETI. The gain deferral applies to any QETI sold on or after March 12, 1998, that meets the holding-period criteria. You must add back the gain deferred in the year the replacement QETI is sold.
If you elect the gain deferral, deduct from FTI the amount of the gain deferral (to the extent the gain is included in FTI). If purchase of the replacement QETI within the 365-day period occurs in the same tax year as the sale of the original QETI, or in the following tax year and before the date the corporation's franchise tax return is filed, take the deduction on that return. If purchase of the replacement QETI within the 365-day period occurs in the following tax year and on or after the date the corporation's franchise tax return is filed, you must file an amended return to claim the deduction. For more information, see TSB-M-98(7)C, *1998 Summary of Corporation Tax Legislative Changes*, pages 5 and 6.
- S-4** Victims or targets of Nazi persecution: Include the amount received (including accumulated interest) from an eligible settlement fund, or from an eligible grantor trust established for the benefit of these victims or targets, if included in your FTI. Do not include amounts received from assets acquired with such assets or with the proceeds from the sale of such assets (Tax Law, Article 1, section 13).
- S-5** Include the amount included in federal gross income as a result of IRC sections 847(5) and 847(6).
- S-6** Include the amount of unearned premiums on outstanding business at the end of the tax year included in premiums earned as a result of IRC sections 832(b)(4)(B), 832(b)(7)(B)(i) and 832(b)(8)(A)(i).
- S-7** Include the difference between the amount of discounted unpaid losses at the end of the tax year used in the computation of losses incurred as a result of IRC section 832(b)(5)(A), and the amount of unpaid losses at the end of the tax year that would have been used in such computation if such losses were not discounted for federal income tax purposes. Provide a copy of the loss reserves discount summary schedule used to compute discounted unpaid losses from federal Form 1120-PC, and a copy of *Schedule P, Analysis of Losses and Loss Adjustment Expenses, Part 1, Summary*, from the current year's *Annual Statement*.
- S-8** Include the amount by which losses incurred were reduced as a result of IRC section 832(b)(5)(B).
- S-9** Amount of related member royalty payment required to be subtracted pursuant to Tax Law section 1503(b)(14).

- S-10** Include the amount of any refund or credit of tax imposed under New York State Tax Law Article 23 or 33 that was properly included as income for federal income tax purposes, for which no exclusion or deduction was allowed in determining the taxpayer's ENI for any prior year.
- S-11** Enter in the first entry box the amount of refund of the qualified empire zone enterprise (QEZE) credit for real property taxes that is included in your LICTI or FTI and is being included on line 79.

Schedule H — Computation of premiums

An unauthorized insurance corporation is not subject to the additional premiums tax under section 1510 or the limitations under section 1505, and does not complete Schedule H.

An authorized life insurance corporation subject to Tax Law Article 33 is subject to the additional premiums tax under section 1510, the limitation on tax under section 1505(a)(2) and the floor limitation on tax under section 1505(b). For more information on the floor limitation on tax, see TSB-M-03(9)C, *Summary of Insurance Corporation Tax Legislative Changes Enacted in 2003*.

Use Schedule H to compute premiums due under sections 1510, 1505(a)(2), and 1505(b) and transfer them to the appropriate boxes on lines 6, 8, and 10. Report direct premiums on a written or paid-for basis, consistent with the basis required by the annual statement filed with the Superintendent of Financial Services. For purposes of computing Schedule H, the term *premium* includes all amounts received as consideration for insurance or reinsurance contracts, or contracts with HMOs for health services (except annuity contracts), including premium deposits, assessments, policy fees, membership fees, any separate costs by carriers assessed upon their policyholders, and all other consideration for such contracts.

Taxable premiums include gross direct premiums minus return premiums, reinsurance premiums, and dividends paid or credited.

Gross direct premiums — Include total gross premiums, deposit premiums and assessments, less returns thereon, on all policies, certificates, renewals, policies subsequently canceled, insurance and reinsurance executed, issued, or delivered on property or risks located or resident in New York State, and premiums written, procured, or received in New York State on business that cannot be specifically allocated or apportioned and reported as taxable premiums or which have not been used as a measure of a tax on business of any other state or states. Also include special risk premiums written, procured, or received in New York State on risks located or resident in New York State. When computing taxable premiums in column A, do not include premiums on annuity contracts, ocean marine insurance, and policies issued under Insurance Law section 4236. Also exempt from the tax on premiums are premiums on risks located outside the United States which were written, procured, or received in New York State, **except** for insurance written by foreign and alien title insurance corporations and accident and health insurance.

Note: Gross direct premiums do not include any premiums that New York State cannot tax according to federal law (including premiums received for a long-term care insurance policy under United States Code, Title 5, Chapter 90, and any premiums for federal group life insurance under United States Code, Title 5, Chapter 87).

Line 87 — Life insurance corporations that received more than 95% of their premiums from annuity contracts, ocean marine insurance, and policies issued under Insurance Law section 4236, enter **only** the New York portion of the amount of such premiums that **exceeds 95%** of all premiums received, if applicable. Life insurance corporations receiving 95% or less of their premiums from annuity contracts, ocean marine insurance, and policies issued under Insurance Law section 4236, enter **0** on line 87.

Deductions from gross direct premiums

- **Reinsurance premiums** — When computing gross direct premiums, you may deduct (1) reinsurance premiums, minus return premiums, that have been received by way of reinsurance from corporations or other insurers authorized to transact business in this state, and (2) reinsurance premiums assumed from unauthorized companies that relate to transactions authorized under Insurance Law section 2105 and that are subject to the premiums tax on excess-lines brokers under Insurance Law section 2118.
- **Dividends paid or credited** — You may deduct dividends on direct premiums and unused or unabsorbed portions of premium deposits paid or credited to policyholders. This deduction does not include deferred dividends paid in cash to policyholders on maturing policies or cash surrender values.

Schedule I — Computation of issuer's allocation percentage

Complete this schedule by entering New York gross direct premiums on line 89 and total gross direct premiums on line 90 as reported in your annual statement filed with the Superintendent of Financial Services for the tax year.

Tax Law section 1085(a) provides for a penalty of \$500 for failure to provide information needed to compute your issuer's allocation percentage.

Schedule J — Composition of prepayments

Lines 92 through 99 — 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 16.

Line 97 — Include overpayment credited from prior years. You may also include from last year's return any amount of refundable tax credits you chose to be credited as an overpayment.

Summary of tax credits claimed against current year's franchise tax

See instructions for lines 9b and 12.

Ordering of credits — Tax credits under Article 33 must be applied in the following order:

1. EZ capital tax credit
2. EZ and ZEA wage tax credits
3. Noncarryover credits that are not refundable
4. Carryover credits that are of limited duration
5. Carryover credits that are of unlimited duration
6. Refundable credits

Line 100 — Enter the total EZ capital tax credit and EZ and ZEA wage tax credits claimed that were used to reduce the tax due. The amount of these credits may not reduce the tax to less than the minimum tax of \$250. Enter in the appropriate boxes the total amount of the EZ and ZEA tax credits claimed. If you are required to recapture the EZ capital tax credit that was allowed in a previous reporting period, and the result is a negative credit amount on your credit claim form, enter this negative amount with a minus (-) sign in the applicable box.

Line 101 — Enter the total tax credits claimed, **excluding** the EZ and ZEA tax credits claimed on line 100, that were used to reduce the tax due. Generally, these credits may not reduce the tax below the \$250 minimum tax. However, the retaliatory tax credits and the fire insurance premiums tax credit may further reduce the tax due to zero. Enter in the appropriate boxes the total amount of each tax credit claimed. If you are required to recapture a tax credit that was allowed in a previous reporting period, and the result is a negative credit amount on your credit form, enter this negative amount with a minus (-) sign in the applicable box.

Fire insurance premiums tax credit — Credit for taxes on premiums for any insurance on loss or damage by fire under Insurance Law sections 9104 and 9105 or under the charters of the cities of Buffalo or New York. These taxes must have been paid or accrued during the tax year covered by this return. The fire insurance premiums tax credit is limited to the amount reported on line 11 less the EZ capital tax credit, EZ or ZEA wage tax credits, and any non carryover credits that are not refundable that are being claimed before this credit. The credit cannot be carried over to any other year. Attach the *Report of Premiums*, including *Supplementary Schedules I and II*, when claiming this credit.

Retaliatory tax credits — Attach Form CT-33-R, *Claim for Retaliatory Tax Credits*, to claim these credits. Do not claim the MTA surcharge retaliatory tax credit on this form.

Do not send the documentation for the retaliatory tax credit (retaliatory prints) with your return. Send the documentation to:

**NYS TAX DEPARTMENT
I/FDAB - AUDIT 9
W A HARRIMAN CAMPUS
ALBANY NY 12227**

Other credits — Enter in the *Other credits* box any credits being claimed on line 12 that are not specifically listed on Form CT-33 above line 101 and attach the appropriate form(s).

Line 102 — Enter the total amount of refund-eligible tax credits claimed on line 101. The retaliatory tax credits, QEZE credit for real property taxes, excelsior jobs program tax credit, the brownfield redevelopment tax credit,

the remediated brownfield credit for real property taxes, the environmental remediation insurance credit, the security officer training tax credit, the investment tax credit (ITC) for the financial services industry (if a qualified new business), the economic transformation and facility redevelopment program tax credit, and the Empire State jobs retention program credit are the only refund-eligible credits.