



Instructions for Form CT-3.1

Investment and Other Exempt Income and Investment Capital

All citations are to New York State Tax Law articles and sections unless specifically noted otherwise.

Tax law

For current tax laws, see *New York State Tax Law* on our website at www.tax.ny.gov (search: *law*).

Tax regulations

For the full text of the adopted regulations, see *Corp Regulations Adoption* on our website at www.tax.ny.gov (search: *regulation*).

General information

Taxpayers must use Form CT-3.1 to calculate the amount of investment income and other exempt income subtracted from entire net income (ENI), in the calculation of the business income base as well as the amount of investment capital subtracted from total net assets in the calculation of the capital base.

For purposes of these instructions:

- a combined group is treated as a single corporation and calculates amounts on a combined basis, after the elimination of intercompany transactions and activities.
- gross other exempt income, gross investment income, gross exempt cross-article dividends, gross exempt controlled foreign corporation (CFC) income, and gross exempt unitary corporation dividends are the amount of each of these types of income **before** the 40% safe harbor reduction amount or any subtraction for the attribution of interest deductions.

Definitions

Other exempt income [§ 208.6-a and 20 NYCRR 3-4.6]

Other exempt income is the sum of exempt CFC income and exempt unitary corporation dividends.

It does **not** include:

- any amount treated as dividends per Internal Revenue Code (IRC) § 78.
- any income from a stock that is **itself** marked to market and the 8% fixed percentage method election for apportionment is in effect.

Exempt CFC income is the sum of the following types of income, minus any interest deductions directly or indirectly attributable to the income or the safe harbor reduction amount if the taxpayer made the election in Schedule A:

- Subpart F income and investment of earnings in U.S. property the taxpayer must include in federal gross income per IRC § 951(a), received from a unitary corporation **not** included in a combined return with the taxpayer; and
- 95% of the global intangible low-taxed income (GILTI) the taxpayer must include in gross income per IRC § 951(A)(a) without regard to the deduction under IRC § 250, that is received from a corporation that is **not** included in a combined return with the taxpayer.

Exempt CFC income amounts do **not** constitute exempt unitary corporation dividends or investment income.

Exempt unitary corporation dividends are dividends from a unitary corporation **not** included in a combined return with the taxpayer, minus any interest deductions directly or indirectly attributable to such income or the safe harbor reduction amount, if applicable.

Exempt cross-article dividends are dividends received from unitary corporations that are taxable under a franchise tax imposed by Article 9 or Article 33, or that would be taxable under those articles if subject to tax, minus any interest deductions directly or indirectly attributable to that income (the 40% safe harbor does not apply).

Investment capital [§ 208.5 and 20 NYCRR 3-4.1]

Investment capital means investments in stocks of non-unitary corporations that:

- satisfy the definition of a capital asset under IRC § 1221 at all times the taxpayer owned that stock during the tax year,
- the taxpayer holds for investment for more than one year, and
- the dispositions of which are, or would be, treated as generating long-term capital gains or losses under the IRC.

Investment capital also includes debt obligations or other securities that New York cannot tax the income or gain from as a result of U.S. constitutional principles found in decisions of the U.S. Supreme Court. Only entities domiciled outside New York State may claim this investment capital treatment. In the case of a combined return, the combined group must determine the investment capital on an entity-by-entity basis. Thus, while the designated agent may be domiciled in New York, the combined group may claim this type of investment capital for assets owned by other members of the combined group domiciled outside of New York.

Stocks acquired on or after January 1, 2015, must have **never** been held for sale to customers in the regular course of business after the close of the day on which they were acquired. For the stock of a dealer in securities to be eligible for capital gain treatment, the taxpayer must clearly identify those stocks as held for investment in the same manner as required under IRC § 1236(a)(1) whether or not the taxpayer is a dealer of securities subject to § 1236. Generally, identification must occur before the close of the day on which the stock was acquired, although floor specialists have seven business days.

At the time a taxpayer files its original return for the tax year, it may presume any stock that is a capital asset held on the last day of the tax year for less than one year will meet the one year holding period.

See Schedule F for rules relating to presumed investment capital that is not held for more than one year.

The following stock does **not** constitute investment capital:

- stock in a corporation that is conducting a unitary business with the taxpayer,
- stock in a corporation filing a combined return with the taxpayer per the commonly owned group election,
- stock issued by the taxpayer,
- reverse repurchase agreements, securities borrowing agreements, and their underlying securities, or

- with respect to a domestic international sales corporation (DISC) or a former DISC, investments in the stock, bonds, or other securities of a DISC or any indebtedness from a DISC.

If the taxpayer, or all the members of a combined group, own or control, directly or indirectly, less than 20% of the voting power of the stock of a corporation, the taxpayer may presume that corporation is **not** unitary for purposes of determining whether the stock constitutes investment capital.

Investment income [§§ 208.5, 208.6, and 20 NYCRR 3-4.5]

Investment income means income from investment capital, including capital gains in excess of capital losses, to the extent included in computing ENI, minus any interest deductions

directly or indirectly attributable to investment capital, gross investment income, or the safe harbor reduction amount, if applicable. It does **not** include any amounts treated as dividends pursuant to IRC § 78.

Limitations

Other exempt income, investment income, and gross investment income are subject to certain limitations outlined in *Table A: Summary of applicable limitations*.

Table A: Summary of applicable limitations	
Item	Description of limitation
Gross investment income	Limited to the greater of 8% of ENI or the amount of gross income that New York cannot constitutionally tax.
Other exempt income*	Limited to ENI. If you attribute interest deductions to gross other exempt income and the amount attributed exceeds gross other exempt income, the excess must be added back to ENI.
Investment income*	Limited to ENI minus other exempt income. Any attributable interest deductions that exceed gross investment income must be added back to ENI.
Investment capital (net of attributable liabilities)	The net average fair market value (FMV) of any particular item of investment capital cannot be less than zero.
* after the 40% safe harbor reduction or any subtraction for the attribution of interest deductions	

Specific instructions

When filing a combined return, enter the legal name and employer identification number of the group’s designated agent.

Schedule A: 40% safe harbor reduction election [§§ 208.6(b), 208.6-a(b) and 20 NYCRR 3-4.8]

Instead of subtracting the actual amount of directly or indirectly attributable interest deductions, taxpayers may make a revocable election to reduce the following by 40%:

- gross investment income, and
- gross other exempt income.

An election made for one type of income is also binding on the other type. In addition, this election applies to all members of the combined group.

The safe harbor reduction election does **not** apply to gross exempt cross-article dividends. Use Schedule B Part 2 for interest attribution for these dividends.

To revoke this election, file an amended return using actual attribution.

Schedule B: Other exempt income

Taxpayers that own any assets that could generate other exempt income must complete this schedule regardless of whether or not other exempt income is generated in a particular year.

Part 1

Line 1a: Enter 95% of the GILTI received from a corporation that is **not** included in a combined return with the taxpayer.

Line 1b: Enter any Subpart F income and investment of earnings in U.S. property received from a unitary corporation **not** included in a combined return with the taxpayer.

Line 2: Enter your total amount of gross exempt unitary corporation dividends other than gross exempt cross-article dividends reported on Part 2, line 6.

Parts 2, 3, and 4

Lines 10 and 11: Complete these lines **only** if the safe harbor reduction election is in effect; otherwise, continue with Part 3.

Lines 12 and 13: Complete these lines if **not** making the safe harbor reduction election; report interest deductions directly and indirectly attributable to the gross exempt CFC income reported in Schedule B, lines 1a and 1b.

Lines 15, 16, and 17: Do **not** include any interest deductions attributable to exempt cross-article dividends.

Schedule C: Investment income

This schedule must be completed by taxpayers that own any assets that could generate investment income, regardless of whether or not the asset generated income in a particular tax year.

Part 1

Line 3: Enter total income (including gains in excess of losses) generated from all investments identified in Schedule E, Part 1.

Lines 6 and 7: Enter dividend and other income generated from investments identified in Schedule E, Part 2.

Line 11: Enter dividend and other income generated from investments identified in Schedule E, Part 3.

Schedule E: Investment capital

Parts 1, 2, and 3

Total from additional sheets line: If you have more entries than will fit in the space provided in this schedule, submit additional sheets in the same format as in each part. Include the totals from all additional sheets on the applicable lines.

Total from partnerships line: Enter only **directly** owned investments in items A through G; include the sum of the proportionate part of partnership items from Form IT-204-CP, *New York Corporate Partner’s Schedule K-1*, on this line.

Complete Part 1 first, listing all **directly** owned assets that generated income being claimed as not taxable by New York under the U.S. Constitution. If an asset is listed in Part 1, it cannot also be listed in Part 2 or Part 3.

In Part 2, list all stocks **actually** held more than one year.

For Part 3, list all stocks **presumed** held more than one year. To qualify as presumed investment capital, the stock must still be owned at the time the taxpayer files its original return for the tax year.

Column A

Part 1: Provide identifying information, such as stock name; committee on uniform security identification procedures (CUSIP), or CUSIP international numbering system (CINS) number and lot number; or issuer and maturity date of bond.

Parts 2 and 3: Provide the stock name, CUSIP or CINS number, and lot number.

Column F: On any date, the FMV of stocks, bonds, and other regularly traded securities is the mean between the highest and lowest selling prices. Generally, calculate the average value quarterly, but alternative periods may be permitted if no distortion of average FMV results. If the security is not marketable, value it using generally accepted accounting principles (GAAP).

Column G: Enter all long-term and short-term liabilities, directly and indirectly attributable to each item of investment capital. Use the same method of averaging used to determine the average value of assets in column F.

Liabilities directly attributable to an asset include those that were incurred in connection with the acquisition or holding of that asset.

To determine the amount of liabilities indirectly attributable to **each** particular item of investment capital, complete *Column G worksheet: Calculation of liabilities indirectly attributable to a particular item of investment capital*.

Add the amounts from line L of the worksheet to the corresponding directly attributable liabilities and include the total in column G.

Column H: Determine the net average FMV of each item by subtracting column G from column F. The net average FMV of any particular item cannot be less than zero.

Lines 1, 2, and 3: In each part, add the amounts in columns F, G, and H; enter the totals on lines 1, 2, and 3, respectively. If none, enter **0** in the appropriate column. Then enter the totals on lines 1, 2, and 3 on Form CT-3, *General Business Corporation Franchise Tax Return*, or CT-3-A, *General Business Corporation Combined Franchise Tax Return*, Part 5, lines 16, 17, and 18, in columns A, B, and C, respectively.

(continued on next page)

Column G worksheet: Calculation of liabilities indirectly attributable to a particular item of investment capital			
A Total liabilities (see instructions below)	A		
B Liabilities directly attributable to investment capital (see instructions below)	B		
C Liabilities directly attributable to business capital (see instructions below)	C		
D Total liabilities directly attributable (add lines B and C)	D		
E Total liabilities indirectly attributable (subtract line D from line A)	E		
F Average FMV of investment capital before subtraction of attributable liabilities (from Schedule E, line 4, column F)	F		
G Average FMV of adjusted total assets (see instructions below)	G		
H Investment capital factor (divide line F by line G)	H		
I Liabilities indirectly attributable to total investment capital (multiply line E by line H)	I		
J Enter the average FMV of a particular item of investment capital before subtraction of attributable liabilities (see instructions below)	J		
K Investment capital factor for that particular item of investment capital (divide line J by line F)	K		
L Liabilities indirectly attributable to that particular item of investment capital (multiply line I by line K)	L		

Instructions

Line A: Enter the amount from Form CT-3, Part 4, line 6, column C; or from Form CT-3-A, Part 4, line 6, column D.

Line B: Enter the total average FMV of all liabilities directly traceable to the items of investment capital reported in Schedule E, Parts 1, 2, and 3.

Line C: Enter the total average FMV of all liabilities directly traceable to business capital.

Include the **lesser** of:

(a) the sum of the total average FMV of repurchase agreements and stock lending agreements, or

(b) the sum of the total average FMV of reverse repurchase agreements and stock borrowing agreements.

Note: Reverse repurchase agreements, securities borrowing agreements, and their underlying securities, are business capital. Repurchase agreements and stock lending agreements are liabilities directly traceable to business capital to the extent of the sum of the total value of reverse repurchase agreements and stock borrowing agreements.

Line G: Most taxpayers should enter the amount from Form CT-3, Part 4, line 5, column C; or from Form CT-3-A, Part 4, line 5, column D. However, if you have reverse repurchase agreements and/or stock borrowing agreements, you must reduce such amount by the lesser of:

(a) the sum of the total average FMV of reverse repurchase agreements and stock borrowing agreements, or

(b) the sum of the total average FMV of repurchase agreements and stock lending agreements.

Line J: For each item of investment capital listed in Schedule E, Parts 1, 2, and 3, column A, enter the amount from the respective line in column F.

Note: Complete lines J through L for each item of investment capital listed in Schedule E, and enter the line L amount in each respective line in column G.

Schedule F: Current year addback of prior year presumed investment capital and investment income [§ 208.5(d) and 20 NYCRR 3-4.4]

Using Schedule F calculate the addback of prior year presumed investment capital items that failed to meet the holding period presumption, as well as the related income.

If the taxpayer reported presumed investment capital items in the prior year, that ultimately were not held for more than one year, in the immediately succeeding tax year, the taxpayer must:

- increase total business capital by the amount included in investment capital on the prior year return for that stock, net of any liabilities attributable to that stock on the prior year return, and
- increase business income by the amount of income and net gains (not less than zero) from that stock included in investment income on the prior year return minus any interest deductions directly or indirectly attributable to the income or 40% of the gross investment income from that stock if the safe harbor reduction election had been made.

Instead of adding back amounts to the current year return, a taxpayer may file an amended return for the preceding tax year

to reflect the fact that the stock no longer qualifies as investment capital.

Part 1

List all prior year presumed investment capital items that did **not** meet the holding period requirement. **Note:** Enter only **directly** owned investments in items A through G; include the sum of the proportionate part of partnership items from Form IT-204-CP are included in the *Total from partnerships* line.

For all columns other than columns D and E, the information entered for each item of investment capital should be identical to the information reported on your prior tax year Form CT-3.1, Schedule E, Part 3, for that particular item of investment capital.

Part 2

Lines 2 and 3: Enter the requested information for the stocks identified in Part 1.

Need help? and Privacy notification

See Form CT-1, *Supplement to Corporation Tax Instructions*.