NOTE: This version of the draft Part 6 regulation combines updates to the previously posted combined reporting draft regulations (Subpart 6-2) as well as updates to the remainder of Part 6. Regulations that are essentially restatements of statute, such as the secrecy provisions that were previously included in Subpart 6-5, or are obsolete are omitted.

Part 6 of Subchapter A of Chapter I of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York is being repealed and new Part 6 is being added to read as follows:

PART 6 REPORTS

Subpart

SUBPART 6-1

GENERAL REQUIREMENTS

Sec.

Section 6-1.1 Corporations required to file reports. (Tax Law, section 211(1))

Reports are required to be filed annually by:

(a) every corporation subject to tax, regardless of the amount of its business income, capital or receipts;

(b) every receiver, referee, trustee, assignee or other fiduciary, or other officer or agent appointed by any court that conducts the business of any corporation subject to tax under article 9-A;

(c) every corporation that continues in business after it is dissolved; and

(d) every taxable domestic international sales corporation (DISC).

Section 6-1.2 Short period reports. (Tax Law, section 211(1))

(a) A short period report is required in the case of:

(1) a newly organized taxpayer whose first accounting period is less than 12 months;

(2) a foreign corporation that becomes subject to tax in New York State subsequent to the commencement of its Federal accounting period;

(3) a taxpayer that dissolves, merges, consolidates or ceases to be subject to tax in New York State prior to the close of its accounting period for Federal income tax purposes;

(4) a taxpayer that changes its accounting period for Federal income tax purposes;

(5) a taxpayer that becomes part of or ceases to be part of a Federal consolidated group during the year; or

(6) a taxpayer that changes from one Federal consolidated group to another Federal consolidated group during the year.

(b) (1) When any corporation meets the requirements to be included in a combined report, it must be included in the combined group starting with the date it meets the requirements to be included in that combined report.

(2) A corporation that is subject to article 9-A and is a separate filer under article 9-A prior to being included in a new combined group is required to file a short period report that ends on the day prior to the day it meets the requirements to be included in that combined group.

(3) A corporation that continues to be subject to tax as a separate filer after it leaves its existing combined group is required to file a short period report for the period starting on the day it no longer meets the combined reporting requirement with the existing combined group and ending on the last day of the corporation's taxable year.

(4) When a corporation leaves one combined group ("combined group A") because it no longer meets the requirements to be included in that combined group, and then joins a new combined group ("combined group B"), its activities, income, loss, assets and receipts are included in the calculation of tax on the combined report of combined group A from the first day of its taxable year until the day immediately preceding the day it no longer met the requirements to be included in combined group A. Its activities, income, loss, assets and receipts are included in the calculation of tax on the combined report of combined group B from the day it met the requirements to be included in combined group B until the last day of the taxable year of combined group B.

Section 6-1.3 Reports where Federal income is changed. (Tax Law, section 211(3))

(a) General. If the amount of the taxable income of any corporation or of any shareholder of any corporation that has elected to be taxed under Subchapter S of chapter one of the IRC, as reported for Federal income tax purposes, is changed or corrected by a final determination of the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or if a renegotiation of a contract or subcontract with the United States results in a change in taxable income, the corporation is required to report the changed or corrected taxable income or the results of the renegotiation within 90 days, or 120 days in the case of a corporation making a combined report for the taxable year affected, after the final determination. The corporation must concede the accuracy of the determination or explain how it is erroneous.

(b) Final determination. Any deficiency notice issued (including a notice issued pursuant to a waiver filed by a corporation) pursuant to the provisions of the IRC is a final determination unless a timely petition to redetermine the deficiency is filed in the Tax Court of the United States. If a petition is filed, the judgment of the court of last resort is the final determination. The allowance by the Commissioner of Internal Revenue of a refund of any part of the tax shown on the taxpayer's Federal return or of any deficiency thereafter assessed, whether the refund is made on the commissioner's own motion or pursuant to the judgment of a court, is also a final determination. The allowance of a tentative carry-back adjustment in accordance with IRC section 6411 based on a net operating loss carry-back or a net capital loss carry-back must be treated as a final determination.

Section 6-1.4 Amended Federal return. (Tax Law, section 211(3))

Any corporation that files an amended return with the Internal Revenue Service must, within 90 days (or 120 days in the case of a corporation included in a combined report) thereafter, file an amended report with the Commissioner.

SUBPART 6-2

COMBINED REPORTS

Sec.

6-2.8 Other rules

Section 6-2.1 General. (Tax Law, Section 210-C)

(a) A combined report covering any taxpayer and another corporation or corporations is required where:

(1) the capital stock requirement is met; and

(2) the unitary business requirement is met.

(b) A group of commonly owned or controlled corporations may elect to file a combined report when the capital stock requirement is met. This election is referred to as the commonly owned group election.

(c) Each combined group must have a designated agent to act for the combined group. The designated agent must be a taxpayer under article 9-A and must be identified annually on an original, timely filed combined report or on a timely extension of time to file a report if an extension is requested. Once identified on an extension to file, if utilized, the designated agent cannot be changed on the original report filed for that period. If the designated agent is first identified on an original report, the designated agent cannot be changed by the filing of an amended report for the taxable year. Only the designated agent may act on behalf of all the members of the combined group in all matters relating to the combined group. The actions taken by the designated agent are binding on all members of the combined group.

(d) Each member of the combined group that is a taxpayer under article 9-A shall be jointly and severally liable for the tax due on the combined report for the combined group. The tax due on the combined report shall be the sum of (1) the highest of (i) the tax measured by the combined business income base tax, (ii) the tax measured by the combined capital base, or (iii) the fixed dollar minimum tax attributable to the designated agent of the combined group, and (2) the fixed dollar minimum tax attributable to each member of the combined group (other than the designated agent) that is a taxpayer under article 9-A. However, tax credits

cannot be used to reduce the fixed dollar minimum tax of any member of the combined group that is a taxpayer (other than the designated agent).

(e) For a combined group to be eligible for the preferential tax treatment available to qualified emerging technology companies, every member of the combined group must be a qualified emerging technology company.

Section 6-2.2 Capital stock requirement. (Tax Law, Section 210-C)

(a) A taxpayer and another corporation meet the capital stock requirement if:

(1) the taxpayer owns or controls, either directly or indirectly, more than fifty percent of the voting power of the capital stock of another corporation; or

(2) more than fifty percent of the voting power of the capital stock of the taxpayer is owned or controlled, either directly or indirectly, by another corporation; or

(3) more than fifty percent of the voting power of the capital stock of the taxpayer and more than fifty percent of the voting power of the capital stock of one or more other corporations are owned or controlled, either directly or indirectly, by the same interests. Whether or not the same interests test is met will be determined based on the facts and circumstances of each case. The same interests include, but are not limited to, one or more alien, foreign or domestic corporations, partnerships, trusts or individuals.

(b) "Capital stock of a corporation" means the issued and outstanding stock of the corporation.

(c) "Ownership" means actual or beneficial ownership, rather than mere record title as shown by the stock books of the corporation. To be considered the owner, the stockholder must have the right to vote and the right to receive any dividends declared.

(d) "Control" means all cases where one corporation directly or indirectly possesses the power to dictate or influence the management and policies of another corporation through the direct or indirect ownership of more than fifty percent of the voting power of the capital stock of that corporation. In addition, a corporation

controls the voting power of capital stock if it has been given the right to vote that stock by proxy or otherwise. The determination as to whether or not a corporation is controlled by or controls another corporation or is controlled by the same interests will be determined by the facts in each case.

(e) "Voting power of capital stock of a corporation" means the shares of stock, under the applicable law, corporate charter, articles of incorporation, or shareholder agreements, which have the power to elect the board of directors of the corporation. In determining whether the stock owned by a person or entity possesses a certain percentage of the total combined voting power of all classes of stock of a corporation entitled to vote, consideration will be given to all the facts and circumstances of each case. A share of stock generally will be considered as possessing the voting power accorded to that share by the corporate charter, by-laws, or share certificate. If there is any agreement, whether express or implied, that a stockholder will not vote its stock in a corporation, the formal voting rights possessed by that stock may be disregarded in determining the percentage of the total combined voting power possessed by that stockholder in the corporation. Moreover, if a stockholder agrees to vote its stock in a corporation in the manner specified by another stockholder in the corporation, the voting rights possessed by the stock owned by the first stockholder may be considered to be possessed by the stock owned by the other stockholder. For contingent voting rights, the stock is deemed to possess voting power only when the contingency occurs, and the rights become exercisable.

(f) (1) The ownership test is applied before the control test. Direct ownership is examined before indirect ownership, and direct control is examined before indirect control. However, the capital stock requirement may be satisfied through direct or indirect ownership, direct or indirect control or through a combination of direct or indirect ownership or control.

(2) The following examples are intended to illustrate the indicia of ownership and control set forth above. Generally, the examples are meant to illustrate either ownership or control since both do not need to be met concurrently in order for the capital stock requirement to be met.

Example 1: The taxpayer, X Corporation, owns 40 percent of the capital stock with voting rights of Y Corporation. The remaining capital stock of Y Corporation with voting rights is owned by three employees of X Corporation. These employees have agreed in writing to sell their stock to X Corporation when they leave the corporation. As part of the agreement, the employees have given X Corporation their voting proxy. Thus, X Corporation controls more than fifty percent of the voting power of the capital stock of Y Corporation. X and Y Corporations satisfy the capital stock requirement to be included in a combined report.

Example 2: The taxpayer, R Corporation, has issued 900 shares of common stock with voting rights equal to one vote per share. These shares are owned by P Corporation. R Corporation has also issued 1000 shares of preferred stock. These shares possess voting rights equal to one-tenth of one vote (.10) per share of preferred stock. Those shares are owned by Q Corporation. Even though P Corporation owns less than 50 percent of the number of voting shares (900 shares out of a total of 1900 shares), it owns more than 50 percent of the voting power of the capital stock of R Corporation (900 votes out of a total of 1000 votes). Thus, P Corporation and R Corporation satisfy the capital stock requirement to be included in a combined report. While Q Corporation owns more than 50 percent of the number of shares of R Corporation (1000 shares out of a total of 1900 shares), it only owns one-tenth of the voting power of the capital stock of R Corporation (100 votes of a total of 1000 votes). Q Corporation does not satisfy the capital stock requirement to be included in a combined report with P Corporation and R Corporation.

Example 3: The taxpayer, Corporation A, owns 51 percent of the capital stock of Corporation B. Corporation B in turn owns 51 percent of the capital stock of Corporation C. The capital

stock in both corporations has voting rights. By owning 51 percent of the capital stock with voting rights of Corporation B, Corporation A controls more than 50 percent of the voting power of the capital stock of Corporation B. Because Corporation A controls more than 50 percent of the voting power of the capital stock of Corporation B, it also controls indirectly more than 50 percent of the voting power of the capital stock of Corporation C. Corporations A, B and C satisfy the capital stock requirement to be included in a combined report.

Example 4: The taxpayer, Corporation A, is a 60 percent partner of Partnership Y, and is the general partner of Partnership Y. Partnership Y owns 40 percent of the capital stock with voting rights of Corporation B. Thus, Corporation A indirectly owns only 24 percent of the voting power of the capital stock of Corporation B (60 percent multiplied by 40 percent). However, because Corporation A holds more than a 50 percent interest in Partnership Y and has the power to manage the affairs of the partnership under the operating agreement, it can control how Partnership Y votes its stock in Corporation B. Thus, Corporation A controls indirectly the voting power of the capital stock owned by Partnership Y. In this case, because Partnership Y owns only 40 percent of the voting power of the capital stock of Corporation B, Corporation A controls indirectly only 40 percent of the voting power of the capital stock of Corporation B. Because Corporation A does not own or control, directly or indirectly, more than 50 percent of voting power of the capital stock of Corporation B, Corporation A and Corporation B do not satisfy the capital stock requirement to be included in a combined report.

Example 5: The taxpayer, Corporation A, has a 60 percent membership interest in Limited Liability Company Y, which is treated as a partnership for tax purposes. Limited Liability

Company Y owns 80 percent of the capital stock with voting rights of Corporation B. Corporation A is considered a managing member of Limited Liability Company Y, since the terms of the operating agreement do not impose limitations on the corporate member's participation in the management either equivalent to or more stringent than the limitations on the participation in the control of the business of a limited partnership imposed on limited partners under article 8-A of the New York Partnership Law. Since Corporation A is a managing member of Limited Liability Company Y, which in turn has greater than 50 percent voting power of the capital stock of B, Corporation A has the authority to direct how Limited Liability Company Y uses its voting power in Corporation B. Thus, Corporation A controls indirectly more than 50 percent of the voting power of the capital stock of Corporation B, and Corporations A and B satisfy the capital stock requirement to be included in the combined report.

Example 6: The taxpayer, Corporation A, is an 80 percent limited partner of Partnership Y. Partnership Y owns 40 percent of the capital stock with voting rights of Corporation B. Corporation A also directly owns 22 percent of the capital stock with voting rights of Corporation B. Even though Corporation A has an 80 percent interest in Partnership Y, Corporation A is a limited partner and cannot control how Partnership Y votes its stock in Corporation B. Thus, Corporation A does not control indirectly 40 percent of the voting power of the capital stock of Corporation B, and so that 40 percent is not combined with the 22 percent of the voting power of the capital stock of Corporation B that Corporation A controls directly through its ownership of Corporation B stock to determine if Corporation A controls more than 50 percent of the voting power of the capital stock of

Corporation B. As a result, Corporations A and B do not meet the capital stock requirement and therefore cannot be included in a combined report.

Example 7: The taxpayer, Corporation A, is a 60 percent general partner of Partnership Y. Partnership Y owns 40 percent of the capital stock with voting rights of Corporation B. Corporation A also directly owns 30 percent of the capital stock with voting rights of Corporation B. By combining its direct and indirect ownership of the stock of Corporation B, Corporation A owns, directly and indirectly, 54 percent of the voting power of the capital stock of Corporation B (30 percent plus 60 percent multiplied by 40 percent). Because Corporation A directly or indirectly owns more than 50 percent of the voting power of the capital stock of Corporation B, Corporations A and B satisfy the capital stock requirement to be included in a combined report.

Example 8: The taxpayer, Corporation A, owns 100 percent of the voting power of the capital stock of Corporation B. Corporation B owns 51 percent of the voting power of the capital stock of Corporation C. Corporation C owns 40 percent of the voting power of the capital stock of Corporation D. Individual X owns 100 percent of the voting power of the capital stock of Corporation A and also owns 20 percent of the voting power of the capital stock of Corporation D. Corporations A, B, C and D satisfy the capital stock requirement to be included in a combined report because they are all directly or indirectly controlled by the same interests (Individual X).

Example 9: The taxpayer, Corporation A, owns 60 percent of the capital stock with voting rights of Corporation C and 60 percent of the capital stock with voting rights of Corporation D. Corporation B, also a taxpayer, owns 40 percent of the capital stock with voting rights of Corporation C and 40 percent of the capital stock with voting rights of Corporation D.

Corporations C and D each own 30 percent of the capital stock with voting rights of Corporation E. Corporation B directly owns the remaining 40 percent of the capital stock with voting rights of Corporation E. Corporation A directly owns more than 50 percent of the voting power of Corporations C and D. Corporation A, acting indirectly through its control of Corporations C and D, controls Corporation E. Corporation B directly and indirectly owns 64 percent of the voting power of the capital stock of Corporation E (B's 40 percent ownership of C multiplied by C's 30 percent ownership of E plus B's 40 percent ownership of D multiplied by D's 30 percent ownership of E plus B's direct ownership of 40 percent of E). Corporations A, B, C, D and E satisfy the capital stock requirement to be included in a combined report.

Example 10: Individuals A, B, C and D each own 25 percent of the voting stock of Corporations S and T. Because more than 50 percent of the ownership of the voting stock of both corporations is owned by the same interests, Corporations S and T satisfy the capital stock requirement to be included in a combined report.

Section 6-2.3 Unitary business requirement. (Tax Law, Section 210-C)

(a) General. For purposes of this Subchapter, the term "unitary business" shall be construed to the broadest extent permitted under the U.S. Constitution as interpreted by the U.S. Supreme Court, the courts of this state and the New York State Tax Appeals Tribunal.

(b) Attributes of a unitary business.

(1) A unitary business is characterized by a flow of value as evidenced by functional integration, centralized management and economies of scale.

(i) Functional integration is characterized by transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes, but is not

limited to, transfers or pooling with respect to the business's products or services, technical information, marketing information, distribution systems, purchasing and intangibles. The use of market-based or arm's length pricing for such transactions does not negate the presence of functional integration.

(ii) Centralized management exists when directors, officers, and/or other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralized management may exist even when day-to-day management responsibility and accountability have been decentralized, so long as the management has an operational role with respect to the business activities, such as participation in overall operational strategy for the business.

(iii) Economies of scale refers to a relationship among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralized management.

(2) Functional integration, centralized management and economies of scale should be analyzed in conjunction with one another for their cumulative effect. The determination of a unitary business depends on all of the facts and circumstances of each case.

(c) Presumptions. Without limiting the scope of a unitary business, a unitary business will be presumed in the following factual scenarios. The taxpayer or the commissionermay overcome the presumption that the corporations in question are engaged in a unitary business by the presentation of clear and convincing evidence. If the activities of the corporations do not give rise to one of the presumptions set forth below, the presence of a unitary business will be determined based on all of the facts and circumstances of the case without the application of a presumption in favor of or against a finding of a unitary business.

(1) Horizontal integration. Corporations that satisfy the capital stock requirement are presumed to be engaged in a unitary business when their primary activities are in the same general line of business.

(2) Vertical integration. Corporations that satisfy the capital stock requirement are presumed to be engaged in a unitary business when the corporations are engaged in different steps in a vertically structured enterprise.

(3) Strong centralized management. Corporations that satisfy the capital stock requirement, and that might otherwise be considered as engaged in more than one unitary business, are presumed to be engaged in one unitary business where there is strong central management coupled with the existence of centralized departments or affiliates for such functions as financing, advertising, research and development, or purchasing.

(4) Newly-formed corporations. A newly-formed corporation is presumed to be engaged in a unitary business with its forming corporation or corporations in the taxable year of the newly-formed corporation that includes the date the corporations satisfy the capital stock requirement and starting from that date.

(5) Newly-acquired corporations. A newly-acquired corporation is presumed to be engaged in a unitary business with its acquiring corporation in the first taxable year that the corporations satisfy the capital stock requirement and starting in that year, if the corporations are engaged in a relationship described in paragraph 1, 2 or 3 of this subdivision.

(6) Passive holding companies. If a passive holding company and one or more operating companies together satisfy the capital stock requirement, the passive holding company is presumed to be engaged in a unitary business with the operating company or companies.

(d) The following examples are intended to illustrate the presumptions set forth above. For purposes of the illustrations, the corporations referred to in the examples satisfy the capital stock requirement.

Example : 11 Corporations A and B sell natural and organic foods at their retail stores located throughout the United States. Corporation C sells the same types of foods at its retail

stores located in Canada. Corporations A, B and C are presumed to be engaged in a unitary business.

Example 12: Corporation A is engaged in the exploration of oil. Corporation B extracts the oil found by Corporation A. Corporation C processes the oil extracted by Corporation B. Corporation D sells the oil processed by Corporation C. Corporations A, B, C and D are presumed to be engaged in a unitary business.

Example 13: Corporations A, B and C manufacture and sell children's apparel to customers located throughout the United States. Corporations D and E operate a chain of restaurants located in New York and Florida. Corporation F provides centralized purchasing, advertising and finance services to Corporations A, B, C, D and E. The executive officers of Corporation F are also actively engaged in the operations of Corporations A, B C, D and E. Corporations A, B, C, D, E and F are presumed to be engaged in one unitary business.

Example 14: Corporation A contributes all of its intellectual property to Corporation B for 100 percent of Corporation B's capital stock. Corporations A and B are presumed to be engaged in a unitary business in the first taxable year in which they satisfy the capital stock requirement.

Example 15: Corporation A acquires 51 percent of the capital stock of Corporation B. Corporation B distributes the products manufactured by Corporation A such that Corporations A and B are part of a vertically structured business apart from satisfying the capital stock requirement. Corporations A and B are presumed to be engaged in a unitary business in the first taxable year that includes the acquisition.

Section 6-2.4 Combined group composition.

(a) If the commonly owned group election is not in effect, the following steps must be taken annually to determine if a combined report is required and if so, which corporations to include in the combined group:

(1) A taxpayer must first identify all of the corporations with which it is engaged in a unitary business. This includes domestic, foreign and alien corporations.

(2) Of the group of corporations determined in paragraph (1) of this subdivision, a taxpayer must exclude any corporation that does not meet the capital stock requirement.

(3) Of the corporations remaining after paragraph (2) of this subdivision, any corporation prohibited from being included in a combined report must be excluded. The corporations remaining constitute the combined group for the taxable year.

(b) If the commonly owned group election is in effect, the following steps must be taken annually to determine which corporations to include in the combined group:

(1) A taxpayer must first identify all of the corporations that meet the capital stock requirement. This includes domestic, foreign and alien corporations.

(2) Of the corporations determined in paragraph (1) of this subdivision, any corporation prohibited from being included in a combined report must be excluded. The remaining corporations constitute the combined group for the taxable year.

(3) The commonly owned group has no relationship to the taxpayer's Federal consolidated group and may in fact include corporations that are not, or cannot be, included in a Federal consolidated group with the taxpayer or corporations that are included in one or more consolidated groups.

Section 6-2.5 Filing combined reports. (Tax Law, Section 210-C)

(a)(1) As provided in this Subpart, a group of corporations may be required or, in the case of the commonly owned group election, permitted to file on a combined basis. To file on a combined basis, the designated agent of the group must file a completed combined report. The first year the designated agent

of the group files on a combined basis, and each year thereafter in which the composition of the group changes, the designated agent of the group must include the following information with the report:

(i) the exact name, address, employer identification number and state of incorporation, or in the case of an alien corporation, country of incorporation, of each corporation included in the combined report, including the designated agent; and

(ii) information showing that each of the corporations meets the capital stock requirement for the taxable year.

(2) In addition, the following information may be required to be submitted for the taxable year at another time, such as in conjunction with an audit:

(i) a statement providing details as to why a filed combined report includes only the corporations listed in subparagraph (1)(i) of this subdivision that meet the capital stock requirement and the details as to why the corporations listed pursuant to subparagraph (1)(ii) of this subdivision are excluded from that combined report;

(ii) except in the case of a combined report filed using the commonly owned group election, information establishing that each of the corporations included in the report meets the unitary business requirement with respect to the other corporations in the group; and

(iii) the exact name, address, employer identification number and state of incorporation or, in the case of an alien corporation country of incorporation, of all corporations that meet the capital stock requirement for the taxable year, but are not included in the combined report.

(b) Generally, the filing of a combined report or the inclusion of a corporation in or the exclusion of a corporation from a combined report is subject to revision or disallowance on audit.

Section 6-2.6 Corporations prohibited from filing a combined report. (Tax Law, Section 210-C) (a) The following corporations are prohibited from being included in a combined report under article 9-A, including a combined report under the commonly owned group election:

(1) a corporation that is taxable under a franchise tax imposed by article 9 or article 33;

(2) a corporation that would be taxable under a franchise tax imposed by article 9 or article 33 if subject to tax;

(3) a real estate investment trust (REIT) that is not a captive REIT, provided the REIT must be included in a combined report with its qualified REIT subsidiary;

(4) a regulated investment company (RIC) that is not a captive RIC, provided the RIC must be included in a combined report with its subsidiary;

(5) a New York S corporation; or

(6) an alien corporation that under any provision of the IRC is not treated as a "domestic corporation" as defined in IRC section 7701 and has no effectively connected income for the taxable year.

(b) If a corporation is subject to tax under article 9-A solely as a result of its ownership of a limited partner interest in a limited partnership, as described in section 1-3.2(a)(7) of this Subchapter or its membership interest in a limited liability company that is equated to the interest of a limited partner, as described in section 1-3.2(a)(8) of this Subchapter, and none of the corporation's related corporations are subject to tax under article 9-A, the corporation shall not be required or permitted to file a combined report with such related corporations. For purposes of this Subpart, the term "related corporations" means corporations that meet the capital stock requirement and the unitary business requirement.

Section 6-2.7 Commonly owned group election. (Tax Law, Section 210-C)

(a) (1) Subject to the restrictions in section 6-2.7 of this Subpart, a taxpayer may elect to treat as its combined group all corporations that meet the capital stock requirement (such corporations are collectively

referred to as the "commonly owned group"). If the election is made, all of the corporations that are members of the commonly owned group are bound by the election and will be treated as the members of a single combined group for combined reporting purposes, regardless of whether:

(i) these corporations are included in more than one Federal consolidated return filed by more than one Federal consolidated group, or

(ii) these corporations in fact are engaged in one or more unitary businesses.

(2) Upon making the election, the commonly owned group must calculate the combined group's combined business income, and combined capital of all members of the commonly owned group, and the fixed dollar minimum base tax of all taxpayers in the commonly owned group.

(3) Upon making the election, the commonly owned group is deemed to be engaged in a single unitary business for all purposes, including for purposes of calculating business and investment capital, business and investment income and the apportionment factor.

Example 16: Corporation A is in the business of producing paper, packaging and office supplies. It has three wholly owned subsidiaries. Corporation B is in the business of producing school supplies. Corporation C is in the business of selling the paper, packaging, office and school supplies produced by Corporations A and B. Corporation D is in the business of operating an electronic legal research service that it sells to law firms. In 2015 and 2016, Corporations A, B and C properly file a combined report as a unitary business and Corporation D properly files a separate report. The dividends Corporation A receives from Corporation D are properly treated as exempt investment income on the combined report as income received from stock in a non-unitary corporation. In 2017, Corporation A makes the commonly owned group election and Corporations A, B, C and D file a combined report. On that report, the dividends Corporation A receives from Corporation

D are properly eliminated in computing combined business income. In 2018, Corporation A sells all of its stock in Corporation D to a third-party, realizing a capital gain on the sale. Corporation A's capital gain on the sale of its stock in Corporation D is treated as a capital gain from the sale of a unitary subsidiary and is properly reported as business income on the combined report of the commonly owned group.

(b) Mechanics of making the election. A commonly owned group election must be made by the designated agent of the combined group, acting on behalf of all the corporations in the commonly owned group. The election must be made on an original, timely filed report, determined with regard to extensions for time for filing. Any commonly owned group election made on a report that is filed late will be invalid and ineffective.

(c) Effect of election in subsequent tax years. A commonly owned group election is binding for and applicable to the taxable year for which it is made and for the next six taxable years (if the first year is not a short taxable year) or the next seven taxable years (if the first year is a short taxable year). The election is binding on all corporations that meet the capital stock requirement and continues in place regardless of whether any Federal consolidated group to which members of the combined group belong discontinues the filing of a Federal consolidated return. Any corporation that enters a commonly owned group by acquisition or creation during the time that the commonly owned group election is in effect must be included in the combined group beginning with the taxable year during which the corporation enters the group, and the corporation entering the group shall be considered to have consented to the application of the election and to have waived any objection to its inclusion in the combined group. The disposition of or the failure to meet the capital stock requirement of one or more members of a combined group will not sever an election for the remaining members of the group and the departing member or members are not bound by the election. However, reverse acquisition rules based on the Federal rules set forth in 26 CFR 1.1502-75(d)(3) will be applied in determining whether a corporation

is bound by a commonly owned group election. The entrance or departure of a corporation from the commonly owned group does not change the effective periods as defined in subdivision (d) of this section.

(d) Revocation, renewal of election. A commonly owned group election, once made, cannot be revoked until after it has been effective for seven taxable years (if the election is not made on a short period return) or eight taxable years (if the election is made on a short period return), such periods hereinafter referred to as the "effective period". When an election is made, it will continue to be automatically renewed after the effective period for another effective period indefinitely, unless the designated agent of the commonly owned group, acting on behalf of all the corporations included in the commonly owned group. affirmatively revokes the election at the end of the effective period. In the case of a revocation, a new election will not be permitted in any of the three taxable years immediately following the revocation. A revocation will be effective for the first taxable year (whether or not that taxable year is a short taxable year) after the completion of the effective period for which the prior election was in place and must be made by the designated agent on an original, timely filed combined report, determined with regard to extensions for time for filing, for that first subsequent taxable year. Every corporation that is a member of the commonly owned group is bound by such revocation. If a commonly owned group election is affirmatively revoked after the effective period, the election will terminate for the subsequent taxable year, and no commonly owned group election by any member of that commonly owned group will apply for that year and the subsequent two taxable years (if revoked on a report that is not a short period report) or the subsequent three taxable years (if revoked on a report that is a short period report). In such cases, the designated agent of that commonly owned group may make a new election beginning in the third or fourth taxable year after the revocation.

(e) In determining the effective periods described in this section, short taxable years will not be considered or counted. However, the election or revocation may be made on a report for a short taxable year.

Example 17: Corporation A is a calendar year taxpayer for Federal income tax purposes. On April 1, 2015, Corporation A, which has 25 wholly owned subsidiaries, purchases an office building in New York State. Prior to April 1, 2015, neither Corporation A nor any of its subsidiaries had nexus with New York. Thus, Corporation A's first taxable year in New York is a short taxable year (4/1/15-12/31/15). Corporation A, as the designated agent, makes the commonly owned group election on its first report and includes all of its 25 wholly owned subsidiaries in a combined report. Although the commonly owned group election can be made on the short period 2015 report, such period does not count in determining the seven-year period for which the election is in effect. As such, the commonly owned group election will apply from April 1, 2015 until the tax year ending on December 31, 2022, assuming there are no other short taxable years during this time period.

Section 6-2.8 Other rules. (Tax Law, Section 210-C)

(a) For rules regarding when REITS or RICS should be included in a combined report, see Subpart 10-4 of this Subchapter.

(b) A combinable captive insurance company, as defined in section 2(11) , is required to be included in a combined report if more than 50 percent of the voting power of its capital stock is owned or controlled directly or indirectly by a corporation subject to tax under article 9-A or a corporation required to be included in a combined report under article 9-A.

SUBPART 6-3

FORM OF REPORTS

Sec.

6-3.1 Form of reports

6-3.2 Form of reports on combined basis

Section 6-3.1 Form of reports. (Tax Law, sections 211(1), (2), (2-a), (3), 1085(n))

(a) Reports are required to be filed on the forms and in the manner prescribed by the commissioner. The forms and instructions are available from the Department and may be downloaded from the Department's website. To the extent allowed or required by the Commissioner, reports shall be filed electronically.

(b) A change in Federal taxable income must be reported on an amended New York State report and must be accompanied by a copy of the Federal amended return or the Federal revenue agent's report, and copies of all other related information.

(c) Every taxpayer must submit such other reports and other information that the commissioner may require in the administration of article 9-A.

(d) Every report must include a certification that the statements in the report are true. The certification must be made by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer of the taxpayer authorized to act in that capacity. The fact that an individual's name is signed on the certification of the report is prima facie evidence that the individual is authorized to sign and to certify the report on behalf of the corporation.

Section 6-3.2 Form of reports on combined basis. (Tax Law, section 211(1))

(a) In all cases where a combined report is required or permitted, a combined franchise tax report must be submitted by the designated agent responsible for paying the combined tax. In addition, each member of the combined group must submit such other reports and other information that the commissioner may require.

(b) It is not necessary that all corporations in the combined group have the same accounting period. (See Subpart 2-1 of this Subchapter for information relating to accounting periods.) Where a corporation’s taxable year is different from that of the designated agent, the applicable taxable year of such corporation to be included

in the combined group is the taxable year that ends within the taxable year of the designated agent. Only amounts from the months included in the combined report are used in the computation of tax for the period. The commissioner may permit or require a corporation to use a different accounting period where appropriate.

(c) Each member of a combined group, including non-taxpayer members, annually must file an information return with the Department. This required form includes a detailed schedule of information needed to compute the combined group's tax and the fixed dollar minimum base of each member, including but not limited to the member's business and investment capital and business apportionment line items. This required form also must include the employer identification number (EIN) of the designated agent.

SUBPART 6-4

TIME AND PLACE FOR FILING REPORTS

Sec.

Section 6-4.1 Time for filing reports[1]. (Tax Law, section 211(1))

(a) Reports must be filed at the times set forth in this section.

(1) Every calendar-year taxpayer, except a taxable DISC and a New York S corporation, must file its annual report on or before the 15th day of April following the close of its calendar year.

(2) Every fiscal-year taxpayer, except a taxable DISC, must file its annual report on or before the 15th day of the fourth month following the close of its fiscal year.

[1] Rules in this section reflect the current statutory rules and do not reflect the statute as it existed before the changes made by Part Q of Chapter 60 of the Laws of 2016 to change the filing deadlines.

(3) Every taxpayer, except a taxable DISC, using a 52-53 week accounting period must file its report on or before the 15th day of the fourth month following the date on which its fiscal year is deemed to have ended. A 52-53 week accounting period that ends within seven days from the last day of any calendar month will be deemed to have ended on the last day of that month.

(4)(i) Where a corporation that is not part of a Federal consolidated group becomes part of such a group on a day other than the first day of its Federal taxable year (determined without reference to its membership in the group), such taxpayer is required to file a Federal short period return for the period from the first day of its taxable year through the end of the day on which it becomes such a member. (26 CFR 1.1502-76[b].) Section 6-1.2 (b)(1) of this Part requires, in such an instance, that the taxpayer file a short period report for purposes of article 9-A covering the period covered by the Federal short period return (to the extent that it is subject to article 9-A during that period). Where the due date for the Federal short period return is established pursuant to 26 CFR 1.1502-76(c)(1), or where the Federal short period return is required pursuant to 26 CFR 1.1502-76(c)(2) to be filed on or before the 15th day of the fourth month following the close of what would have been the taxpayer's Federal taxable year, determined without regard to such membership, then the due date for the article 9-A short period report shall be the due date for the Federal short period return. This provision does not apply in the case of Federal amended short period returns described in 26 CFR 1.1502-76(c)(2). The due date for the article 9-A amended report, for the same short period covered by such Federal amended return (to the extent that it is subject to article 9-A during such period), is prescribed by section 6-1.4 of this Part.

(ii) Where a taxpayer ceases to be part of a Federal consolidated group, including the case where it leaves one Federal consolidated group to join another, an article 9-A short period report is required to be filed by section 6-1.2 (b)(2) of this Part, covering the period from the beginning of its taxable year for article 9-A purposes up to the date it leaves the group. Such report shall be filed on or before the 15th day of the fourth

month following the close of its taxable year under article 9-A determined without regard to its cessation of membership in such Federal consolidated group.

(5) In the case of an election made pursuant to IRC section 338, the old target (within the meaning of 26 CFR 1.338-1[c][13]) may be required to file a final report that is a short period report. In such event, the corporation, if a taxpayer, must file a short period report for purposes of article 9-A covering the same period as the Federal short period return (to the extent that it is subject to article 9-A during such period). Such report shall be filed by the due date for the Federal short period return as prescribed by 26 CFR 1.338-1(e)(6), except that this provision shall not apply to an amended return described in 26 CFR 1.338-1(e)(6)(ii)(D). The due date for the article 9-A amended report, for the same short period covered by such Federal amended return (to the extent that it is subject to article 9-A during such period), is prescribed by section 6-1.4 of this Part.

(6) In the case of an S corporation termination year, the S short year and the C short year are treated as short taxable years but the due date of the report for the S short year is the same as the due date of the report for the C short year.

Section 6-4.2 Time for filing reports of corporations ceasing to exercise franchise or be subject to tax. (Tax Law, section 211(1))

(a) A domestic corporation that ceases to exercise its franchise is required to file a report on the date of cessation or at such other times as the commissioner may require covering each year or period for which no report was filed. The report is required in any such case whether the corporation continues in existence and remains subject to article 9-A or is dissolved and ceases to be subject to tax.

(b) A foreign corporation that ceases to do business in New York State or to employ capital, or to own or lease property in this State in a corporate or organized capacity, or to maintain an office in this State, or to derive receipts from activity in this State and, thus, ceases to be subject to tax under article 9-A, or any corporation that ceases to be subject to tax under article 9-A because of a change of classification, is required to

file a report on the date of cessation, or date of change of classification, or at such other time as the commissioner may require, covering each year or period for which no report was filed.

(c) If a corporation that is taxed on the basis of a combined report ceases to be subject to tax under article 9-A but continues to be included in the next combined report, it need not file a separate report at the time of cessation.

Section 6-4.3 Extension of time for filing reports. (Tax Law, section 211(1))

(a) An automatic six-month extension of time for filing an annual report will be granted if an application for automatic extension is filed and a properly estimated tax is paid on or before the due date of the report for the taxable period for which the extension is requested. Failure to meet any of the requirements in this section makes the application invalid and any report filed after the due date will be treated as a late filed report.

(b) An automatic six-month extension of time for filing a combined report will be granted to a group of corporations filing a combined report provided an application for automatic extension is filed and properly estimated tax is paid on or before the due date of the report for the taxable period for which the extension is requested. Failure to meet any of the requirements in this section makes the application invalid and any report filed after the due date will be treated as a late filed report. To obtain an automatic extension, an application must be filed by the designated agent for the combined group. However, each taxpayer member corporation of a new combined group also must file a separate application to extend the time to file for the first period for which the new combined group actually files a combined report. In addition, each taxpayer member corporation being newly added to an existing combined group must also file a separate application to extend the time to file the report for the first period for which they are actually included in the combined group's report. Corporations included in the combined report that are not subject to tax are not required to file a separate application to extend the time to file. The applicant must submit the following information:

(1) The name of each corporation included in the combined group.

(2) The employer identification number of each corporation in the combined group.

(3) For any appropriate corporation, the beginning and ending dates of any taxable year of less than 12 months.

(4) The fixed dollar minimum tax for each member of the combined group that is taxable in New York State.

(5) From the report filed for the taxable year immediately preceding the taxable year for which the extension is being requested, the sum of any overpayment requested to be credited to the next period, plus any tax credits to be applied to the next period.

(6) If a corporation made any separate estimated tax installment payments for the taxable year for which the extension is being requested, the total amount for that corporation.

(7) If a payment was made on an extension filed for the taxable year for which the extension is being requested, the corporation which filed the form and the amount of payments it made, if any.

(8) Any prepayments made by the designated agent, as applicable.

The designated agent for the combined group must pay with the application the properly estimated combined tax plus a tax measured by the fixed dollar minimum for each of the other taxpayers included in the combined group.

(c) On or before the expiration of the automatic six-month extension of time for filing a report, the commissioner may grant additional three-month extensions of time for filing reports when good cause exists. No more than two additional three-month extensions of time for filing a report for any taxable year may be granted. An application for each additional three-month extension must be made in writing before the expiration of the previous extension. Additional extensions of time for filing a New York S Corporation franchise tax return will not be granted. Additional extensions of time for filing by a combined group must be requested in

one application by the designated agent for the combined group. The applicant must submit the following information:

(1) its complete corporate name;

(2) its employer identification number;

(3) its file classification number;

(4) the reason for requesting the additional extension; and

(5) in the case of an application by a combined group, a list showing the corporate name, employer identification number, file classification number and taxable period of each of the other corporations properly included as part of the combined group.

(d) Any extension of time for filing a report granted under this Subpart will not extend the time for the payment of any tax due. (However, see section 7-1.2 of this Subchapter for extensions of time for payment of tax. Also, see section 2392.1 of this Title for provisions relating to the existence of reasonable cause for purposes of not imposing the addition to tax for failure to pay the amount of tax shown on a report where there are valid extensions of time to file.)

Section 6-4.4 Place for filing reports.

Reports must be filed electronically or mailed to the most recent address provided in the report instructions or on the New York State Department of Taxation and Finance website. Every corporation that: (1) prepares tax documents without the assistance of a tax professional; (2) uses approved e-file tax software or a computer to prepare, document, or calculate its report, extension, mandatory first installment or estimated tax payment; and (3) has broadband internet access, must file electronically.