



# Instructions for Form CT-3.2

## Subtraction Modification for Qualified Banks

# CT-3.2-I

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

### General information

Thriffs and community banks are eligible for three entire net income (ENI) modifications for:

- a captive real estate investment trust (REIT) calculated on Schedule B,
- qualified residential loan portfolios calculated on Schedule C, and
- community banks and small thriffs calculated on Schedule D.

Combined groups need to file only one Form CT-3.2 calculated on a combined basis for their group. However, multiple copies of Schedule E may need to be attached.

### Definitions

For purposes of these instructions, the definitions below apply.

A *thrift institution* is a savings bank, a savings and loan association, or other savings institution chartered and supervised as such under federal or state law [§ 208.9(r)(3)].

A *small thrift* is a thrift institution whose average value of assets during the tax year, or, if the taxpayer is included in a combined group that is filing a combined return, the assets of the combined reporting group, does **not** exceed \$8 billion [§ 208.9(s)(2-a)].

A *qualified community bank* is:

- a bank or trust company organized under or subject to Article 3 of the New York State Banking Law or comparable law of another state, or a national banking association; **and**
- a taxpayer whose average value of assets during the tax year, or, if the taxpayer is included in a combined group that is filing a combined return, the assets of the combined reporting group, does **not** exceed \$8 billion [§ 208.9(s)(2)].

*Total assets* are those assets that are properly reflected on a balance sheet, calculated in the same manner as is required by the banking regulator of the taxpayers included in the combined return. Assets will only be included if the income or expenses of the assets are properly reflected (or would have been properly reflected if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the calculation of the taxpayer's ENI for the tax year. Assets will not include deferred tax assets and intangible assets identified as goodwill. Tangible real and personal property, such as buildings, land, machinery, and equipment are valued at cost.

For leased assets that are not properly reflected on a balance sheet, only leased real property is included in total assets, and such real property is valued at the annual lease payment multiplied by eight.

Intangible property, such as loans and investments, are valued at book value exclusive of reserves.

Average assets are calculated using the assets measured on the first day of the tax year, and on the last day of each subsequent quarter of the tax year, or month, or day during the tax year.

For a combined return, intercorporate stockholdings and bills, notes, and accounts receivable, and other intercorporate indebtedness between the corporations included in the

combined return are eliminated when calculating the modification for qualified residential loan portfolios calculated on Schedule C.

### Specific instructions

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

#### Schedule A – Modification used in the current tax year

If you qualify for the modification in Schedule B, you **must** calculate it, and may not calculate or utilize either of the other two modifications. If you do **not** qualify for the modification in Schedule B, you may calculate and choose from either of the modifications in Schedule C or Schedule D.

If more than one member of a combined group is eligible for any of the modifications, all members must utilize the same modification [§ 210-C.4(g)].

#### Schedule B – Calculation of modification for a captive real estate investment trust (REIT) [§ 208.9(t) and 20 NYCRR 3-3.3(a)]

This modification can only be utilized by small thriffs and qualified community banks that:

- maintained a captive REIT as of April 1, 2014;
- maintained such captive REIT on the last day of the tax year for which they are reporting; **and**
- properly included such captive REIT in their combined return (Form CT-3-A) for the tax year.

The subtraction equals 160% of the dividends paid deductions allowed to that captive REIT for the tax year for federal income tax purposes.

**Note:** When you are calculating combined ENI you should **not** eliminate any intercompany dividends received from the combined captive REIT, as the § 208.9(t) modification accomplishes this.

If this schedule is applicable, complete this schedule in its entirety, but do **not** complete Schedules C, D, and E. If this schedule is **not** applicable to you, skip to line 3 and enter **0**, then continue with the rest of the form.

#### Schedule C – Calculation of modification for qualified residential loan portfolios [§ 208.9(r) and 20 NYCRR 3-3.3(b)]

This modification is available **only** to either a *thrift institution* or a *qualified community bank* that maintains a *qualified residential loan portfolio* as defined below. The subtraction equals the amount, if any, by which 32% of your ENI exceeds amounts deducted by you on your federal return under the Internal Revenue Code (IRC) §§ 166 and 585, less any amounts included in federal taxable income (FTI) as a result of a recovery of a loan.

A *qualified residential loan portfolio* is maintained by you if at least 60% of your total assets at the close of the tax year consist of the assets described in items (i) through (xii) below, with the application of the rule in item (xiii). If you are a member of a combined group, the determination of whether there is a qualified residential loan portfolio will be made by aggregating

the assets of the thrift institutions and qualified community banks that are members of the combined group.

Assets are:

- (i) cash, which includes cash and cash equivalents including cash items in the process of collection, deposit with other financial institutions, including corporate credit unions, balances with federal reserve banks and federal home loan banks, federal funds sold, and cash and cash equivalents on hand. Cash does not include any balances serving as collateral for securities lending transactions;
- (ii) obligations of the U.S. or of a state or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality or a government sponsored enterprise of the U.S. or of a state or political subdivision thereof;
- (iii) loans secured by a deposit or share of a member;
- (iv) loans secured by an interest in real property which is (or from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, and loans made for the improvement of residential real property or real property used primarily for church purposes. For purposes of this item, residential real property includes single or multi-family dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis;
- (v) property acquired through the liquidation of defaulted loans described in item (iv) above;
- (vi) any regular or residual interest in a real estate mortgage investment conduit (REMIC), as such term is defined in IRC § 860D, but only in the proportion which the assets of such REMIC consist of property described in any of the preceding items, except that if 95% or more of the assets of such REMIC are assets described in items (i) through (v), the entire interest in the REMIC shall qualify;
- (vii) any mortgage-backed security which represents ownership of a fractional undivided interest in a trust, the assets of which consist primarily of mortgage loans, provided that the real property which serves as security for the loans is (or from the proceeds of the loan, will become) the type of property described in item (iv) and any collateralized mortgage obligation, the security for which consists primarily of mortgage loans that maintain as security the type of property described in item (iv);
- (viii) certificates of deposit in, or obligations of, a corporation organized under a state law which specifically authorizes such corporation to insure the deposits or share accounts of member associations;
- (ix) loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities;
- (x) loans made for the payment of expenses of college or university education or vocational training;
- (xi) property used by the taxpayer in support of business which consists principally of acquiring the savings of the public and investing in loans;
- (xii) loans for which the taxpayer is the creditor and which are wholly secured by loans described in item (iv); and
- (xiii) the value of accrued interest receivable and any loss-sharing commitment or other loan guaranty by a governmental agency will be considered part of the basis in the loans to which the accrued interest or loss protection applies.

At the election of the taxpayer, the 60% can be applied on the basis of the average assets outstanding during the tax year, instead of the close of the tax year. The taxpayer can elect to calculate an average using the assets measured on the first day of the tax year and on the last day of each subsequent quarter, or month, or day during the tax year. This election may be made annually.

For purposes of item (iv), if a multi-family structure securing a loan is used in part for nonresidential use purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds 80% of the property's planned use (measured, at the taxpayer's election, by using square footage or gross rental revenue, and determined as of the time the loan is made).

For purposes of item (iv), loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if there is a reasonable assurance that the property will become residential real property within a period of three years from the date of acquisition of such land; but this does not apply to any tax year unless, within such three-year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under item (vi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding item under principles similar to the principle of such item (vi), except that if such REMICs are part of a tiered structure, they shall be treated as one REMIC for purposes of such item (vi).

**Line 4** – Enter the amount of assets described in (i) through (xii), with the application of the rule in (xiii) above. **Form CT-3-A filers:** Include assets for all members that are thrifts or qualifying community banks.

Calculate the assets in the same manner as is required by the banking regulator of the taxpayers included in the combined group that is filing the combined return.

**Line 5** – Enter the amount of total assets. **Form CT-3-A filers:** Include assets for all members that are thrifts or qualifying community banks.

**Line 6** – If the result is less than 60%, you do **not** qualify for this modification. Proceed directly to line 14 and enter **0**.

**Form CT-3 filers:** If the result is 60% or more, skip lines 7 through 10, and continue with line 11.

**Form CT-3-A filers:** If the result is 60% or more, continue with line 7.

**Lines 7, 8, and 9** – If you are in a combined group that is filing a **combined return**, this deduction is calculated on a combined basis. The ENI of the combined group is multiplied by a fraction, the numerator of which is the average total assets of all the thrift institutions and qualified community banks included in the combined return, and the denominator of which is the average total assets of all the corporations included in the combined return.

**Lines 10 through 14** – If Form CT-3 or CT-3-A, Part 3, line 5 is zero or a loss, skip lines 12 and 13, and enter **0** on line 14.

**Schedule D – Calculation of modification for community banks and small thrifts [§ 208.9(s) and 20 NYCRR 3-3.3(c)]**

This modification is available **only** to either a *qualified community bank* or a *small thrift institution*. The subtraction equals 50% of the amount calculated by multiplying the net

interest income from loans during the tax year by a fraction, the numerator of which is the gross interest income during the tax year from qualifying loans and the denominator of which is the gross interest income during the tax year from all loans.

For purposes of these instructions, *net interest income from loans* means gross interest income from loans less gross interest expense from loans. *Gross interest expense from loans* is determined by multiplying gross interest expense by a fraction, the numerator of which is the average total value of loans owned by the small thrift institution or qualified community bank during the tax year, and the denominator of which is the average total assets of the small thrift institution or qualified community bank during the tax year.

For purposes of these instructions, a *qualifying loan* is a loan that meets the following conditions:

- (i) the loan is originated by the qualified community bank or small thrift institution or purchased by the qualified community bank or small thrift institution immediately after its origination, in connection with a commitment to purchase made by the bank or thrift institution prior to the loan's origination;
- (ii) the loan is a small business loan or a residential mortgage loan, the principal amount of which is \$5 million or less, and either the borrower is located in this state as determined under § 210-A and the loan is not secured by real property, or the loan is secured by real property located in New York.
  - A *residential mortgage loan* is a loan which meets the definition of an asset as described in § 208(9)(r)(2)(A)(iv). See Schedule C instructions, clause (iv) under *Assets*.
  - A *small business loan* is a loan made to an active business that had an average of 100 or fewer full-time employees and \$10 million or less gross receipts in its immediately preceding tax year. (If the borrower applies in its first year of operations, these requirements are determined on the date of the loan application.) The borrower may not be part of an affiliated group, unless the group itself would have met the active business, employee, and gross-receipts requirements. An active business is one in which the value of the financial instruments held for investment does not exceed 50% of the value of its total assets. A loan made to an entity that meets these requirements at the time of the filing of the loan application is deemed to be a small business loan throughout the term of such loan.

A loan that meets the definition of a qualifying loan in a prior tax year remains a qualifying loan in tax years during and after which such loan is acquired by another corporation in the taxpayer's combined reporting group under § 210-C.

**Line 15 – Form CT-3 filers:** Enter the amount from Schedule E, line 11.

**Form CT-3-A filers:** See the instructions for Schedule E, *Calculation of total net interest income from qualifying loans*.

### **Schedule E – Calculation of total net interest income from qualifying loans**

**Form CT-3-A filers:** Complete this schedule on a separate basis for each entity in the combined group that is a qualified community bank or small thrift institution, and attach all such schedules. Enter the total of all Schedule E, line 11 amounts on Schedule D, line 15.

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

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