



Important Notice

Utility and TTD corporations now subject to tax under Article 9-A of the Tax Law: Supplement for the 1999 Forms CT-3, CT-3-A, CT-3-S, and CT-3-S-A

Governor Pataki's Energy Tax Plan has (1) repealed the franchise tax on utility corporations under section 186 of the Tax Law, and (2) exempted from the franchise taxes under sections 183 and 184 of the Tax Law those corporations that are principally engaged in the transportation, transmission, or distribution of gas, electricity, or steam (TTD corporations). Corporations formerly paying those taxes are now subject to the franchise tax on general business corporations under Article 9-A of the Tax Law.

In some unusual cases, a utility or TTD corporation that is a subsidiary of a banking corporation or bank holding corporation will become subject to tax under Article 32 of the Tax Law, Franchise Tax on Banking Corporations, rather than Article 9-A.

This notice only applies to utility and TTD corporations which are fiscal-year taxpayers with tax years ending in 2000. These taxpayers will have a short Article 9-A tax year beginning on January 1, 2000, and ending on the same date in 2000 as their fiscal year ends for federal income tax purposes. These taxpayers will file an Article 9-A return using 1999 Forms CT-3, CT-3-A, CT-3-S, or CT-3-S-A. (Taxpayers subject to the franchise tax on banking corporations under Article 32 will file using 1999 Forms CT-32, CT-32-A, or CT-32-S.) The return is due within 2 ½ months after the end of the fiscal year. If the filing date falls on a Saturday, Sunday, or legal holiday, then the return is due on or before the next business day. Article 9-A taxpayers should use the existing instructions for those forms, along with the supplemental instructions below. These taxpayers may not file the short Forms CT-4 or CT-4-S.

Utility and TTD corporations having calendar tax years will file Article 9-A (or Article 32) returns for the first time using 2000 forms.

This notice also applies to transferees of utility property in tax-free transactions. (See instructions for Schedule E.)

Fiscal-year utilities and TTD corporations subject to Article 9-A should use the following information to supplement the instructions to the 1999 Form CT-3, CT-3-A, CT-3-S, or CT-3-S-A. Utilities and TTD corporations subject to Article 32 should call us at our Business Tax Information Center: 1 800 972-1233.

Supplemental instructions

General information

Utility corporations — Effective January 1, 2000, the repeal of the franchise tax on utility corporations under section 186 of the Tax Law has caused these utility corporations to become subject to the franchise tax on business corporations under Article 9-A of the Tax Law.

Exception: A *continuing section 186 taxpayer* will remain subject to tax under section 186 until December 31 of the contract termination year unless that taxpayer makes an irrevocable election not to be subject to tax under section 186. The election should be made by filing a franchise tax return under Article 9-A, Forms CT-3, CT-3-A, CT-3-S, or CT-3-S-A (or under Article 32, Forms CT-32, CT-32-A, or CT-32-S), on the date or extended date the return is due.

A *continuing section 186 taxpayer* is a utility corporation (a) that is primarily engaged in the business of co-generation with respect to a tax year ending on December 31, 1999 (either directly or by reason of membership in a partnership which is so engaged), (b) that was subject to tax under Tax Law section 186 (but not under Tax Law section 186-a) for a tax year ending on December 31, 1999, and (c) that is a party to a total output contract.

A *total output contract* is a contract that is binding on its parties as of January 1, 2000, until the contract termination year, and that provides for the sale of all electricity produced for sale by the taxpayer.

A *contract termination year* is the calendar year containing the termination date of the total output contract as the contract was in effect on January 1, 2000, without regard to any extensions agreed to or created after January 1, 2000.

TTD corporations — Effective January 1, 2000, corporations principally engaged in the transportation, transmission, or distribution of gas, electricity, or steam (TTD corporations) will no longer be subject to tax under sections 183 or 184 of the Tax Law. These corporations now are subject to the franchise tax on business corporations under Article 9-A. TTD corporations must file a final CT-184 franchise tax return and, if subject to the metropolitan transportation business tax surcharge (MTA surcharge), final CT-183-M and CT-184-M MTA surcharge returns on March 15, 2000, covering the year 1999. However, since the tax under section 183 is paid in advance, these corporations do **not** need to file the CT-183 franchise tax return that was originally due on March 15, 2000.

If the CT-183 return, originally due on March 15, 2000, has already been filed, a credit or refund may be claimed by filing Form CT-8, *Claim for Credit or Refund of Corporation Tax Paid*. The claim must be filed within three years from the time the original return was filed or two years from the time the tax was paid, whichever is later, or if no report was filed, within two years from the time the tax was paid. If the claim is not filed within the three-year period but is filed within the two-year period, the amount of credit or refund cannot exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. However, any amounts shown on the CT-183 as mandatory first installment and overpayments applied to estimated tax will not be refunded and will be used as your mandatory first installment and estimated tax under Article 9-A (see the *Transition provisions* section on page 3).

Short periods

Utility and TTD corporations whose fiscal year ends in 2000 will have a short taxable year under Article 9-A beginning January 1, 2000 and ending on the same date in 2000 as their fiscal year ends for federal income tax purposes. These taxpayers must prorate the bases and allocation percentages for the period they are subject to tax under Article 9-A. Items to be prorated include: entire net income; minimum taxable income; fixed dollar minimum; business investment and subsidiary capital; business allocation percentage; and, the alternative business allocation percentage. In general, these items are prorated to correspond with the period covered by the report. For additional information about short periods, see Appendix C on page 10 for sections of the Business Corporation Franchise Tax regulations relating to short periods.

Net operating losses

Utility and TTD corporations which are taxable under Article 9-A may claim a net operating loss deduction in the same manner as other Article 9-A corporations. However, these corporations are limited to net operating losses sustained in years that they are taxable under Article 9-A.

Modifications for qualified public utilities

A *qualified public utility* is a taxpayer that was subject to ratemaking supervision by the New York State Department of Public Service on December 31, 1999, and was subject to tax under section 186 of Article 9 of the Tax Law for the tax year ending on December 31, 1999.

Utility corporations that are qualified public utilities do not make the Article 9-A depreciation modifications which disallow the Internal Revenue Code (IRC) section 168 ACRS/MACRS deduction and allow a New York depreciation deduction using any method under IRC section 167. Do not complete Form CT-399.

Utility corporations that are qualified public utilities are required to make adjustments for depreciation and federal gain or loss on transition property, and for regulatory assets when computing entire net income. See Appendix A on page 5 and attach a completed Schedule E, Part I to your 1999 Form CT-3, CT-3-A, CT-3-S, or CT-3-S-A.

Modifications for qualified power producers and qualified pipelines

A *qualified power producer* is a taxpayer that was not subject to ratemaking supervision by the New York State Department of Public Service on December 31, 1999, and was subject to tax under section 186 of Article 9 of the Tax Law for the tax year ending on December 31, 1999 on account of being principally engaged in the business of supplying electricity. A *qualified pipeline* is a taxpayer that was subject to ratemaking supervision by the Federal Energy Regulatory Commission or the New York State Department of Public Service on December 31, 1999, and was subject to tax under sections 183 and 184 of Article 9 of the Tax Law for the tax year ending on December 31, 1999 on account of being principally engaged in the business of pipeline transmission.

Qualified power producers and qualified pipelines do not make the Article 9-A depreciation modifications which disallow the IRC section 168 ACRS/MACRS deduction and allow a New York depreciation deduction using any method under IRC section 167. Do not complete Form CT-399.

Qualified power producers and qualified pipelines are required to make adjustments for depreciation when computing entire net income. See Appendix A on page 5 and attach a completed Schedule E, Part II to your 1999 Form CT-3, CT-3-A, CT-3-S, or CT-3-S-A.

Receipts from services performed for transporting or transmitting gas through pipes

For purposes of determining the amount of receipts to include in the numerators of the Article 9-A receipts factors of both the business allocation percentage and the alternative business allocation percentage, the amount of receipts from transporting or transmitting gas through pipes arising in New York State is determined as follows: Multiply the total receipts from transporting or transmitting gas through pipes by a fraction, the numerator of which is the number of transportation units within New York State, and the denominator of which is the total number of transportation units both within and outside of New York State. A *transportation unit* is the transportation of one cubic foot of gas over a distance of one mile. See Appendix B on page 9 and attach a completed worksheet to your 1999 Form CT-3, CT-3-A, CT-3-S, or CT-3-S-A.

Transition provisions

Utility and TTD corporations should use the following transition provisions for their first Article 9-A tax year:

- **Estimated tax and extensions of time to file** — For purposes of Article 9-A safe harbors for estimated tax and extensions of time to file, the *tax shown on the return of the taxpayer for the preceding tax year* is the tax shown on the taxpayer's return under section 186, or the sum of the taxes shown on the taxpayer's returns under sections 183 and 184, for the tax year ending on December 31, 1999. For section 186, this is the tax shown on the CT-186 franchise tax return due on March 15, 2000. For section 183, this is the tax shown on the CT-183 franchise tax return due on March 15, 1999. (However, if the taxpayer has filed the CT-183 return that was originally due on March 15, 2000, the tax shown on that return should be used.) For section 184, this is the tax shown on the CT-184 franchise tax return due on March 15, 2000. Also, the amount of MTA tax surcharge for a taxpayer's previous tax year is the surcharge shown on the taxpayer's return under section 186-b or the sum of the surcharges shown on the taxpayer's returns under sections 183-a and 184-a for the tax year ending on December 31, 1999, that was due on March 15, 2000. For additional information about declarations and payments of estimated tax, see subparts 7-2 and 7-3 of the Business Corporation Franchise Tax regulations.
- **Overpayments of Article 9 tax** — For purposes of application of overpayments of Article 9-A tax against tax liability or estimated tax, any amount of overpayment of tax or a tax surcharge claimed on a taxpayer's return under sections 186, 186-b, 183, 183-a, 184, or 184-a for the tax year ending on December 31, 1999, is treated as if it were an overpayment under Article 9-A. For section 183, this is the amount of overpayment of tax claimed on the CT-183 return due on March 15, 1999. (However, if the taxpayer has filed the CT-183 return that was originally due on March 15, 2000, the overpayment of tax claimed on that return will be used.) For sections 183-a, 184, 184-a, or 186, this is the amount of overpayment of tax or tax surcharge claimed on the CT-183-M, CT-184, CT-184-M, or CT-186 return due on March 15, 2000.
- **Mandatory first installment** — Any amount of mandatory first installment of estimated tax shown on a taxpayer's return under sections 186, 186-b, 183, 183-a, 184, or 184-a for the tax year ending on December 31, 1999, is treated as if it were a mandatory first installment under Article 9-A of the Tax Law. For section 183, this is the amount of mandatory first installment shown on the CT-183 return due on March 15, 1999. (However, if the taxpayer has filed the CT-183 return that was originally due on March 15, 2000, the mandatory first installment shown on that return will be used.) For sections 183-a, 184, 184-a, or 186, this is the amount of mandatory first installment shown on the CT-183-M, CT-184, CT-184-M, or CT-186 return due on March 15, 2000.
- **Credit carryovers** — Any portion of the following credits under Article 9 of the Tax Law — the special additional mortgage recording tax credit under section 187 (Form CT-43), the credit for employment of persons with disabilities under section 187-a (Form CT-41), and the alternative fuels credit under section 187-b (Form CT-40) — that is not applied against the tax due under Article 9 for any tax year ending on or before December 31, 1999, may be claimed as a special additional mortgage recording tax credit, a credit for employment of persons with disabilities, and an alternative fuels credit, respectively, under Article 9-A of the Tax Law.

Appendix A

Forms CT-3, CT-3-A, CT-3-S, and CT-3-S-A

Schedule E-Qualified public utilities and transferees, qualified power producers, and qualified pipeline corporations

Schedule E, Part I-Adjustments for qualified public utilities and transferees

See the line item instructions for each item below before completing this schedule.

Other additions		
1 Federal depreciation deduction for transition property	1	
2 Federal loss on the sale of transition property	2	
3 New York gain on the sale of transition property	3	
4 Add lines 1, 2, and 3 (<i>enter here and include on Form CT-3, CT-3-A, or CT-3-S, line 8; or Form CT-3-S-A, line 7</i>).....	4	
Other subtractions		
5 New York depreciation deduction for transition property	5	
6 New York loss on the sale of transition property	6	
7 Federal gain on the sale of transition property	7	
8 Transition property basis adjustment carryover to gain transactions	8	
9 Transition property basis adjustment carryover to loss transactions	9	
10 New York regulatory asset deduction	10	
11 Add lines 5 through 10 (<i>enter here and include on Form CT-3, CT-3-A, or CT-3-S, line 15; or Form CT-3-S-A, line 14</i>).....	11	

Schedule E, Part II-Adjustments for qualified power producers and qualified pipeline corporations

Other additions		
12 Federal depreciation deduction for transition property (<i>enter here and include on Form CT-3, CT-3-A, or CT-3-S, line 8; or Form CT-3-S-A, line 7</i>).....	12	
Other subtractions		
13 New York depreciation deduction for transition property (<i>enter here and include on Form CT-3, CT-3-A, or CT-3-S, line 15; or Form CT-3-S-A, line 14</i>).....	13	

Instructions for Schedule E

Schedule E — Qualified public utilities and transferees, qualified power producers, and qualified pipeline corporations

General

Qualified public utility corporations must adjust entire net income to reflect modifications for depreciation and federal gain or loss on transition property, and for regulatory assets, pursuant to section 208.9(c-2) of the Tax Law. Complete Schedule E, Part I.

Transferees (whether or not qualified public utilities) of transition property from a qualified public utility in a tax-free transaction must adjust entire net income to reflect modifications to federal gain or loss subsequently recognized on the transition property, pursuant to section 208.9(c-2) (6)(B)(iv) of the Tax Law. Complete Schedule E, Part I, lines 8 and 9.

Qualified power producers and qualified pipeline corporations must adjust entire net income to reflect modifications for depreciation on transition property, pursuant to section 208.9(c-3) of the Tax Law. Complete Schedule E, Part II.

A qualified public utility is a taxpayer that:

- was subject to ratemaking supervision by the New York State Department of Public Service on December 31, 1999, and
- was subject to tax under section 186 of Article 9 of the Tax Law for the tax year ending on December 31, 1999.

A qualified power producer is a taxpayer that:

- was not subject to ratemaking supervision by the New York State Department of Public Service on December 31, 1999, and
- was subject to tax under section 186 of Article 9 of the Tax Law for the tax year ending on December 31, 1999, on account of being principally engaged in the business of supplying electricity.

A qualified pipeline is a taxpayer that:

- was subject to ratemaking supervision by the Federal Energy Regulatory Commission or the New York State Department of Public Service on December 31, 1999, and
- was subject to tax under sections 183 and 184 of Article 9 of the Tax Law for the tax year ending on December 31, 1999, on account of being principally engaged in the business of pipeline transmission.

Transition property is property placed in service by a qualified public utility, qualified power producer, or qualified pipeline before January 1, 2000, for which a depreciation deduction is allowed under section 167 of the IRC. Property is transition property only with respect to the taxpayer which owns it on January 1, 2000, and is not transition property in the hands of a subsequent transferee. (However, see the instructions for Schedule E, Lines 8 and 9 for a basis adjustment which may inure from transition property.)

Book basis of transition property is the cost of the property less the accumulated depreciation on the property determined on the taxpayer's books and records in accordance with generally accepted accounting principles.

New York basis of transition property is the cost of the property less the aggregate of the New York depreciation deductions allowed on the property under Article 9-A of the Tax Law. This aggregate is the sum of the amounts on line 5 of Schedule E with respect to the property for all taxable years ending after 1999.

Schedule E, Part I

Adjustments for qualified public utilities and transferees

Complete this part if you are a qualified public utility. Use lines 1 through 11 to compute the adjustments for entire net income.

Transferees: if you are not a qualified public utility but you are a transferee of transition property from a qualified public utility, use only lines 8, 9, and 11 to compute the adjustments for entire net income.

Other additions

Line 1

Transition property- federal depreciation — Enter the amount deducted on your federal return for depreciation of transition property. See line 5 to compute the New York depreciation deduction.

Line 2

Transition property-federal loss — If transition property is sold or otherwise disposed of at a loss for federal income tax purposes, the amount of the loss must be recalculated for New York using book basis in place of federal tax basis for the property. Enter here the amount of loss deducted on your federal return and see line 6 to recalculate the loss for New York.

Line 3

Transition property-New York gain — If transition property is sold or otherwise disposed of at a gain for federal income tax purposes in a taxable year ending before 2010 (or at any time thereafter if the property is a nuclear electric generating facility), the amount of the gain must be recalculated for New York using New York basis in place of federal tax basis for the property. However, this recalculation can only reduce the federal gain to zero, it cannot produce a New York loss. Enter here the New York gain on transition property calculated using New York basis. If recalculation of the federal gain using New York basis yields a loss, the New York gain is zero. See line 7 to subtract the federal gain.

Other subtractions

Line 5

Transition property-New York depreciation — In place of the federal depreciation deduction entered on line 1, enter the amount of depreciation expense on transition property shown on your books and records for the tax year and determined in accordance with generally accepted accounting principles.

Line 6

Transition property-New York loss — In place of the federal loss entered on line 2, compute the New York loss on the sale or other disposition of transition property by using book basis instead of federal tax basis.

Line 7

Transition property-federal gain — Enter the amount of gain included on your federal return from the sale or other disposition of transition property. See line 3 to recalculate the gain for New York.

Lines 8 and 9

Transition property basis adjustment carryover — If transition property is disposed of in a nonrecognition transaction (original disposition), such as a tax-free reorganization or a trade-in for replacement property, a basis adjustment on the transition property carries over to the transferee of the property, or to the replacement property, in order to reduce the gain or increase the loss in a subsequent recognition transaction involving the property which was formerly transition property or the replacement property.

Line 8

Federal gain — If the former transition property or the replacement property is sold at a gain for federal income tax purposes in a taxable year ending before 2010 (or at any time thereafter if the property is a nuclear electric generating facility), the gain is reduced, but not below zero, by the New York basis differential. The *New York basis differential* is the amount by which the New York basis of the property exceeds its federal tax basis on the date of the *original disposition*. Enter here the New York basis differential of the former transition property or the replacement property sold at a federal gain this year, but not more than the amount of differential necessary to bring the federal gain to zero.

Line 9

Federal loss — If the former transition property or the replacement property is sold at a loss for federal income tax purposes, the loss is increased by the amount of the book basis differential. The *book basis differential* is the amount by which the book basis of the property exceeds its federal income tax basis on the date of *original disposition*. Enter here the book basis differential of the former transition property or the replacement property sold at a federal loss this year.

Line 10

Regulatory assets — Enter the amounts recognized as expense on your books and records for the tax year that were recognized as expense for federal income tax purposes in a tax year ending on or before December 31, 1999, and where: (A) such amounts represent expenditures that, when made, were charged to a deferred debit account or similar asset account on your books and records; (B) the recognition of expense on your books and records is matched by revenue stemming from a procedure or adjustment allowing the recovery of such expenditures; and (C) such revenue is recognized for federal income tax purposes in the tax year.

Schedule E, Part II

Adjustments for qualified power producers and qualified pipeline corporations

Complete this part if you are a qualified power producer or a qualified pipeline corporation, and you claim a depreciation deduction on transition property for federal income tax purposes. Use lines 12 and 13 to compute the adjustments for entire net income.

Other additions

Line 12

Enter the amount deducted on your federal return for depreciation of transition property.

Other subtractions

Line 13

In place of the federal depreciation deduction entered on line 12, compute a New York depreciation deduction by treating all of your transition property as a single asset placed in service on the first day of the Federal tax year that ends in 2000. The New York basis for depreciation is the net book value of your transition property on the first day of the federal tax year that ends in 2000 (or on the later date in 1999 that the property is placed in service). To compute the New York deduction, use net book value, the straight-line depreciation method, a 20-year life, and a salvage value of zero.

For qualified power producers, net book value is the cost of your transition property minus the accumulated depreciation shown on your books and records, and determined in accordance with generally accepted accounting principles.

For qualified pipeline corporations, net book value is the cost of your transition property minus the accumulated depreciation shown on your books and records, and determined in accordance with the regulatory reports filed with the Federal Energy Regulatory Commission or the New York State Department of Public Service.

Appendix B

Forms CT-3, CT-3-A, CT-3-S, and CT-3-S-A

Worksheet for allocating receipts from the service of transporting or transmitting gas through pipes

This worksheet is used to determine the portion of your total receipts from the service of transporting or transmitting gas through pipes that are attributable to New York State.

	A New York State	B Everywhere
1 Revenue miles (<i>see instructions</i>).....	1	
2 Allocation percentage (<i>divide line 1, column A, by line 1, column B</i>)	2	%
3 Total receipts from transporting or transmitting gas through pipes (<i>enter here and on Form CT-3, line 131, column B, or Form CT-3-A, line 145, or Form CT-3-S-ATT, line 10, column B, or Form CT-3-S-A, line 107</i>)	3	
4 Total receipts from transporting or transmitting gas through pipes attributable to NYS (<i>multiply line 3, column B, by line 2, column A; enter here and on Form CT-3, line 131, column A, or Form CT-3-A, line 144, or Form CT-3-S-ATT, line 10, column A, or Form CT-3-S-A, line 106</i>)	4	

Instructions for worksheet

Worksheet for allocating receipts from the service of transporting or transmitting gas through pipes

Line 1

Enter in column A the number of transportation units within New York State; and, enter in column B the total number of transportation units both within and outside of New York State. A *transportation unit* is the transportation of one cubic foot of gas over a distance of one mile.

Appendix C

Selected sections of the Business Corporation Franchise Tax regulations

Section 3-2.9 Adjusting entire net income to period covered by report. (Tax Law, Section 208(9)(h))

(a) Except as provided for in subdivision (e) of this section, if the entire net income required to be reported under article 9-A of the Tax Law is for a period different from the period covered by the taxpayer's Federal income tax return, the taxpayer's entire net income must be prorated to correspond with the period covered by the report under article 9-A of the Tax Law. The prorated entire net income is computed as follows:

- (1) adjust Federal taxable income in the manner set forth in sections 3-2.3, 3-2.4, 3-2.5 and 3-2.6 of this Subpart;
- (2) divide the entire net income by the number of calendar months, or major parts thereof, covered by the return for Federal income tax purposes; and
- (3) multiply the result by the number of calendar months, or major parts thereof, covered by the report under article 9-A of the Tax Law.

Example: A calendar year taxpayer was organized in 1989 under the laws of another state where it carried on its business. It began to do business in New York State on March 14, 1991. It files its return for Federal income tax purposes for the calendar year 1991. Its Federal taxable income was \$70,000. In computing its New York State entire net income for the period March 14, 1991 to December 31, 1991, its Federal taxable income for its taxable year 1991 (\$70,000) is first adjusted as required in sections 3-2.3, 3-2.4, 3-2.5 and 3-2.6 of this Subpart. The taxpayer's entire net income after such adjustments was \$78,000. Entire net income must be divided by 12 and the result multiplied by 10 (the number of months from March to December), resulting in a prorated entire net income of \$65,000.

(b) The business allocation percentage must also be adjusted for the period the taxpayer is entitled to allocate its business income. The method for adjusting the business allocation percentage is described in section 4-6.4 of this Title.

(c) The method of computing entire net income set forth in subdivision (a) of this section applies to taxpayers reporting on either a calendar year or a fiscal year basis for Federal income tax purposes.

(d) If in the opinion of the Commissioner, the method described in this section does not properly reflect the taxpayer's entire net income for purposes of article 9-A of the Tax Law during the period covered by its report, the Commissioner may determine entire net income solely on the basis of the taxpayer's income during such period.

(e) In the case of a New York S termination year, as defined in section 1-2.25 of this Title, entire net income shall be assigned to the S short year, as defined in section 1-2.23 of this Title, and the C short year, as defined in section 1-2.24 of this Title, in accordance with section 208(9)(h)(2) of article 9-A of the Tax Law.

Section 3-3.7 Adjustment of capital to period covered by report. (Tax Law, Section 210(2))

(a) If a period covered by a report is other than 12 calendar months, the amount of business capital and the amount of investment capital are each determined by multiplying its average value (see section 3-3.4 of this Subpart), by the number of calendar months or major parts thereof included in such period, and dividing the product by 12.

Example 1: A foreign corporation begins to do business in New York State on June 10, 1992, and reports on a calendar year basis. The average value of its total investment capital for such year was \$60,000, and the average value of its total business capital was \$240,000. The amount of each class of capital, for purposes of computing the tax for taxable year 1992, is determined by multiplying each of the above amounts by seven (the months of June to December, inclusive) and dividing the product by 12, resulting in investment capital of \$35,000 and business capital of \$140,000.

(b) The business allocation percentage must also be adjusted for the period covered by the report. The method for adjusting the business allocation percentage is described in section 4-6.4 of this Title.

Section 3-4.4 Adjusting minimum taxable income to period covered by report. (Tax Law, Section 208(8-B)(e))

(a) If the minimum taxable income required to be reported under article 9-A of the Tax Law is for a period different from the period covered by the taxpayer's Federal income tax return, the taxpayer's minimum taxable income must be prorated to correspond with the period covered by the report under article 9-A of the Tax Law. The prorated minimum taxable income is computed as follows:

(1) Divide minimum taxable income, as determined in section 3-4.2 of this Subpart, by the number of calendar months, or major parts thereof, covered by the return for Federal income tax purposes; and

(2) Multiply the result by the number of calendar months, or major parts thereof, covered by the report under article 9-A of the Tax Law.

(b) The method of computing minimum taxable income set forth in subdivision (a) of this section applies to taxpayers reporting on either a calendar year or a fiscal year basis for Federal income tax purposes.

(c) If in the opinion of the Commissioner, the method described in this section does not properly reflect the taxpayer's minimum taxable income for purposes of article 9-A of the Tax Law during the period covered by its report, the Commissioner may determine minimum taxable income solely on the basis of the taxpayer's income during such period.

Section 3-5.2 Short period fixed dollar minimum. (Tax Law, Section 210(1)(d))

If the taxable period to which any amount determined pursuant to section 3-5.1 of this Subpart applies is less than 12 months, such amount shall be reduced by:

(a) 25 percent if the period for which such taxpayer is subject to tax is more than six months but not more than nine months; or

(b) 50 percent if the period for which such taxpayer is subject to tax is not more than six months.

Section 3-6.5 Adjustment of subsidiary capital to period covered by report. (Tax Law, Section 210(2))

If a period covered by a report is other than 12 calendar months, the amount of subsidiary capital is determined by multiplying its average value (see section 3-6.4 of this Subpart), by the number of calendar months or major parts thereof included in such period, and dividing the product by 12.

Section 4-6.4 Short period business allocation percentage and short period alternative business allocation percentage. (Tax Law, Section 210(8))

- (a) A taxpayer which is subject to tax for a period less than its taxable period for Federal income tax purposes computes its business allocation and alternative business allocation percentage only for the period it is subject to tax in New York State.
- (b) Except for corporations principally engaged in the conduct of aviation or in the conduct of a railroad or trucking business, the business income and business capital for the short period are allocated by a business allocation percentage and the alternative business income for the short period is allocated by an alternative business allocation percentage, both determined by a three-factor formula consisting of:
- (1) tangible property (see Subpart 4-3 of this Part) for the period for which it is subject to tax in New York State; however, the taxpayer may compute its tangible property values by placing them on an annual basis and by prorating these values for the period for which it is subject to tax in New York State;
 - (2) receipts (see Subpart 4-4 of this Part) for the period for which it is subject to tax in New York State; and
 - (3) payroll (see Subpart 4-5 of this Part) for the period for which it is subject to tax in New York State.

See section 4-2.2(b) of this Part for method of computing the business allocation percentage. See section 210(3-a)(a) of the Tax Law for method of computing the alternative business allocation percentage.

- (c) The business income, business capital and alternative business income of a corporation principally engaged in the conduct of aviation for the short period are allocated by a business allocation percentage determined pursuant to section 210(3)(a)(7)(A) of the Tax Law.
- (d) The business income, business capital and alternative business income of a corporation principally engaged in the conduct of a railroad or trucking business for a short period are allocated by a business allocation percentage determined pursuant to section 210(3)(a)(8) of the Tax Law.
- (e) The short period business allocation percentage and the short period alternative business allocation percentage must be applied to business income and business capital and alternative business income, respectively, which have been prorated to represent business income and business capital and alternative business income for the period for which the taxpayer is subject to tax in New York State. Prorated business income, prorated business capital and prorated alternative business income are computed as follows:
- (1) divide business income, business capital or alternative business income before allocation by the number of months covered by the taxpayer's Federal return; and
 - (2) multiply the figure determined in paragraph (1) of this subdivision by the number of months for which the taxpayer is subject to tax in New York State.

Example 1: A corporation incorporated in the State of Delaware in 1990 became subject to tax in New York State on July 2, 1997. The taxpayer reports on a fiscal year ending November 30th. The short period business allocation percentage, computed as described in subdivision (b) of this section, is 20

percent. It had business income of \$24,000 for the 12-month period covered by the Federal return. The taxpayer's allocated business income is \$2,000, computed as follows:

$$\text{\$24,000 divided by 12 (months) = \$2,000}$$

$$\text{\$2,000 x 5 (months) = \$10,000}$$

$$\text{\$10,000 x 20\% = \$2,000}$$

(f) A taxpayer must submit complete details with its report showing how it computed each factor of the business allocation percentage and alternative business allocation percentage for the period it is subject to tax in New York State, if for less than a full year. If, in the opinion of the Commissioner, the prorated business income or the prorated alternative business income for the period for which the taxpayer is subject to tax in New York State does not properly reflect the business income or alternative business income for such period, the Commissioner may determine business income or alternative business income solely on the basis of the taxpayer's business income or alternative business income during such period.