OTPA
New York State Department of Taxation and Finance
Office of Tax Policy Analysis
ANNUAL STATISTICAL REPORT

February 1998

1990-1994 New York State Corporate Tax Statistical Report

Franchise Tax on Business Corporations
Corporation and Utilities Tax
Franchise Tax on Banking Corporations
Franchise Tax on Insurance Corporations

George E. Pataki
Governor

Michael H. Urbach
Commissioner

Contents

Figures

Appendixes

Overview

This publication is the third in a series of corporate tax statistical reports to be published by the Department of Taxation and Finance's Office of Tax Policy Analysis (OTPA). The reports are intended to provide a detailed summary of corporate tax data to aid interested parties in their analysis of New York's corporate tax structure.

The tables in this report present tax statistics for Article 9-A (the franchise tax on business corporations), Article 9 (the corporation and utilities tax), Article 32 (the franchise tax on banking corporations), and Article 33 (the franchise tax on insurance companies). For each tax, a narrative discussion accompanies the tables.

This publication provides data users with current and historical data. For the corporation and utilities tax, and the bank and insurance taxes, the data time series begins with tax year 1990 and extends through 1994. The data presented include summaries of tax liability, the number of corporations subject to tax, information by principal business activity and on selected tax provisions.

Current year and historical summary level data on aggregate liability and the number of taxpayers are also presented for general business corporations taxable under Article 9-A. However, detailed trend analyses for tax years prior to 1992 are not available due to changes made in the data collection process for tax years 1990 and 1991. Future publications in this statistical series will continue the expanded data format used in 1992, 1993 and 1994 for 9-A taxpayers, with five year detailed data included after completion of the 1996 liability year study.

The statistics presented in this publication include the temporary business tax surcharge that applied to tax years beginning in 1990 and ending before July 1, 1997. The first two publications in this series of corporate tax statistical reports did not include the temporary tax surcharge.

Figure 1 illustrates tax liability by tax article for tax year 1994. Article 9-A represented the largest share of tax liability (40.2 percent) for the four selected tax articles, followed by Article 9 (38.5 percent). Article 32 and 33 represented the remaining 21.3 percent of 1994 tax liability for the four selected tax articles.

Figure 1: Selected Corporate Tax Articles - Percent of 1994 Tax Liability

Article 9-A: Franchise Tax on Business Corporations

The Article 9-A tables present tax statistics for Article 9-A taxpayers for the 1990-1994 tax years. The tables include data regarding the number of taxpayers and total tax liability by size of liability, primary basis of taxation and industrial sector.

Highlights

- Total tax liability decreased approximately 4.6 percent from 1993 to 1994.
- S corporations comprised just under 48 percent of all Article 9-A filers and accounted for just over 10 percent of the $1.7 billion in total Article 9-A post-credit liability.

- C corporations comprised the remainder, approximately 52 percent of all Article 9-A filers, and accounted for almost 90 percent of the $1.7 billion in total Article 9-A post-credit liability.

- The entire net income base continued to contribute the most to total liability. Entire net income base filers constituted only 9 percent of the total number of C corporation returns. However, this tax base contributed over 68 percent of total C corporation liability.

Article 9: Corporation and Utilities Tax

The Article 9 tables present tax statistics for Article 9 taxpayers for the 1990-1994 tax years. The tables include data regarding the number of taxpayers and total tax liability by industrial sector. The industry sectors include pipeline, telephone and telegraph, trucking, railroad, water/water transportation, electricity and natural gas, and a miscellaneous category.

Highlights

- Total tax liability increased by 30 percent from 1990 to 1994.

- The ranking of tax liability by tax law section did not change since 1990. Section 186-a taxpayers continued to incur the highest tax liability, followed by sections 186, 184 and 183 taxpayers.

- The tax law section with the most taxpayers does not represent the tax law section with the highest liability. In 1994, section 184 taxpayers represented the highest number when compared to total taxpayers, but the second lowest tax liability.

Article 32: Franchise Tax on Banking Corporations

The Article 32 tables present historical tax statistics by type of bank for the 1990-1994 tax years. The tables include the number of taxpayers and total tax liability, the distribution of tax liability by tax base, income statistics, and credits used by all Article 32 taxpayers. The types of banks include clearinghouse banks, foreign banks, commercial banks, savings banks, and savings and loan associations.

Highlights

- Total tax liability increased by nearly 50 percent between 1990 and 1994.

- Between 1990 and 1994, the most significant shifts in distribution of total tax liability occurred within the savings bank and savings and loan association (dropping from 21.2 percent to 7.7 percent) and clearinghouse and commercial categories (increasing from 39 percent to 64.9 percent).

- From 1990 through 1994, the portion of bank tax liability attributable to alternative-based taxes experienced a slight overall decrease. With the exception of foreign banks, all classifications of banks exhibited movement toward income-based liabilities. Clearinghouse and commercial banks experienced the most marked shift away from alternative-based liability.

Article 33: Franchise Tax on Insurance Companies

The Article 33 tables present tax statistics for the 1990-1994 tax years. The tables include tax liability before limitation and credits, the percent of total Article 33 tax liability derived from the premiums base, and the amount of adjustments for limitations and credits by type of insurer. Types of insurers include property and casualty insurers, life insurers, and accident and health insurers.

Highlights

- Total tax liability, before the 2.6 percent limitation on premiums and before the application of credits, increased by 36 percent between 1990 and 1994.

- Between 1990 and 1994, the value of the limitation on tax liability (2.6 percent of gross premiums) increased from $56.3 million to $117.5 million. Property and casualty insurers benefitted the most from the limitation.

- The amount of the tax credits used by Article 33 taxpayers increased by 100 percent between 1990 and 1994. This increase was almost entirely attributable to retaliatory credit use by life insurers.

Article 9-A: Franchise Tax on Business Corporations

Tax Structure

Article 9-A imposes a tax on corporations for the privilege of exercising a corporate franchise in the State. All domestic corporations (organized in New York State), and all foreign corporations (organized in another state or country) doing business, or employing capital, or owning or leasing property in a corporate or organized capacity, or maintaining an office in the State, become subject to the corporate franchise tax. Article 9-A applies to any general business corporation except those specifically exempt from the franchise tax and those subject to tax under other specified articles of the tax law.[1]

Corporations compute tax under four bases: allocated entire net income (ENI); allocated capital; allocated minimum taxable income (AMT); and fixed dollar minimum amounts. The corporation pays the tax computed on the base that yields the highest liability. An additional tax applies, based on the value of the corporation's subsidiary capital allocated to the State, which is taxed at the rate of 0.09 percent.

- A rate of 9 percent applies to the ENI base. A tax rate of 8 percent applies to qualified small business corporations with less than $200,000 of ENI. A graduated rate of between 8 and 9 percent applies to qualified small business corporations with ENI of $200,000 or more, but less than $290,000.

- A rate of 0.178 percent applies to the capital base. Allocated business and investment capital forms the capital base. The maximum tax equals $350,000.

- A rate of 5 percent applies to the minimum taxable income base. The AMT base equals entire net income adjusted to reflect certain federal tax preference items and adjustments and state-specific NOL modifications.

- Separate fixed dollar minimum amounts apply, based on a corporation's gross annual payroll, including general executive officers, during the applicable tax period. The amounts range from $325 to $1,500. A fixed amount of $800 applies to corporations whose gross property, receipts and payroll are each less than $1,000.

- Corporations allocate ENI, business capital and AMT income using a three factor-formula to proxy their economic presence in the State. Representative factors include owned and rented real and tangible personal property, business receipts and payroll (exclusive of general executive officers). Corporations allocate investment capital and income to New York based on the New York presence of the issuer of the investment instrument.

Significant Tax Law Changes Impacting Data Analysis

1990

The Article 9-A tax structure changed significantly over the last decade. Some of the changes that impacted the Article 9-A data analysis include:

- imposition of a differential tax on the income of electing New York S corporations, or a fixed dollar minimum, whichever produced the largest liability (1990);

- imposition of a temporary surcharge on corporate franchise tax liability (1990);

- expansion of the AMT base by restructuring the AMT base computation to more closely parallel the federal computation, including eliminating the deduction for prior accrued net operating losses (enacted as part of 1987 reform, effective in 1990).

Description of Data and Terms

This section of the report provides information on tax liability by type of corporate entity (C or S), tax basis, size of liability and industry classification.

It summarizes Article 9-A tax liability data for tax years 1990 through 1994. Tables 1 and 2 and Figures 2 and 3 present this data. This section also reviews 1994 liability data by basis of primary tax and industrial classification. Table 3 depicts the distribution of C corporation and S corporation taxpayers and their respective tax liabilities for the 1994 liability year. Figures 4 and 5 show the distribution of C corporation taxpayers and liability by basis of primary tax. Tables 4, 5, 6A, 6B and 6C depict this information for C corporations only, based on liability classification.

Finally, this section compares the 1993 and 1994 liability years for all industries. Table 6A summarizes data relating to changes among the various industries as to the distribution of taxpayers and amount and share of liability. Tables 6B and 6C provide additional details of the distributional changes for select industries.

To assist readers in interpreting the tables, the database and the terms used in the tables are discussed below.

Primary Tax Basis

The tax basis on which the taxpayer paid, after the application of all available credits. The law includes four bases: entire net income, capital, fixed dollar minimum and alternative minimum taxable income.

S Corporation Differential Tax

The entity level tax imposed by Article 9-A on corporations that elect S corporation status for federal and New York tax purposes. The S corporation first computed a franchise tax on its entire net income, determined as if it were a regular "C" corporation. The S corporation then applied a tax rate of 7.875 percent to that same entire net income base. The resulting difference in these two computations equaled the differential tax.

Overview of Statistics

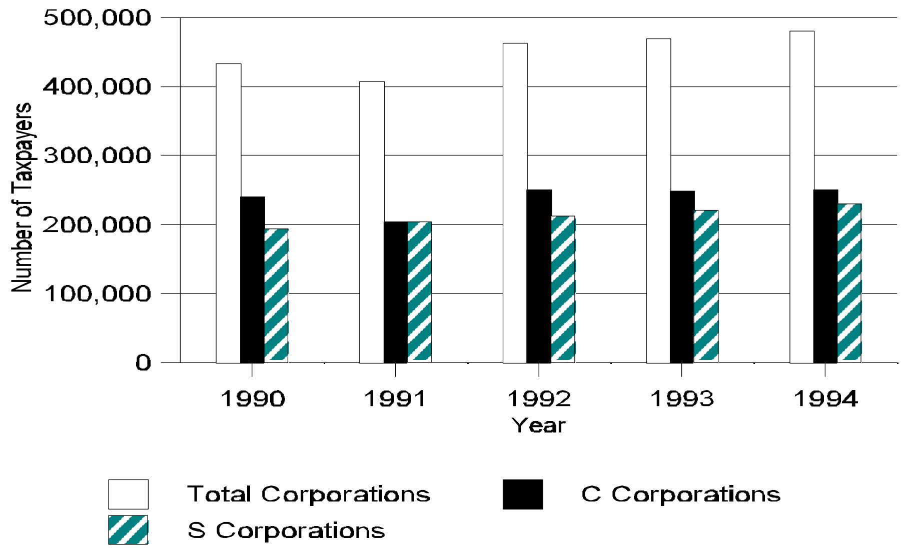
As Table 1 illustrates, the number of S corporation filers increased steadily during the period 1990-1994. S corporations accounted for almost half of all Article 9-A corporate franchise tax returns filed each year. The number of C corporation filers fluctuated somewhat during the same period. There were approximately 239,000 C filers in 1990, compared to just over 250,000 in 1994.

Table 1: Number of C and S Corporations for Liability Years 1990-1994

Liability Year	Total Corporations	C Corporations	S Corporations
1990	433,157	239,542	193,615
1991	407,295	203,397	203,898
1992	462,261	250,316	211,945
1993	469,017	248,328	220,689
1994	480,153	250,504	229,649

Note: Liability years 1990 and 1991 are estimated.

Figure 2: Distribution of Article 9-A Taxpayers for Liability Years 1990-1994



As Table 2 shows, total C and S corporation liability increased during the five-year period 1990 through 1994, rising from $1.3 billion in 1990 to almost $1.7 billion in 1994, an increase of $388 million.

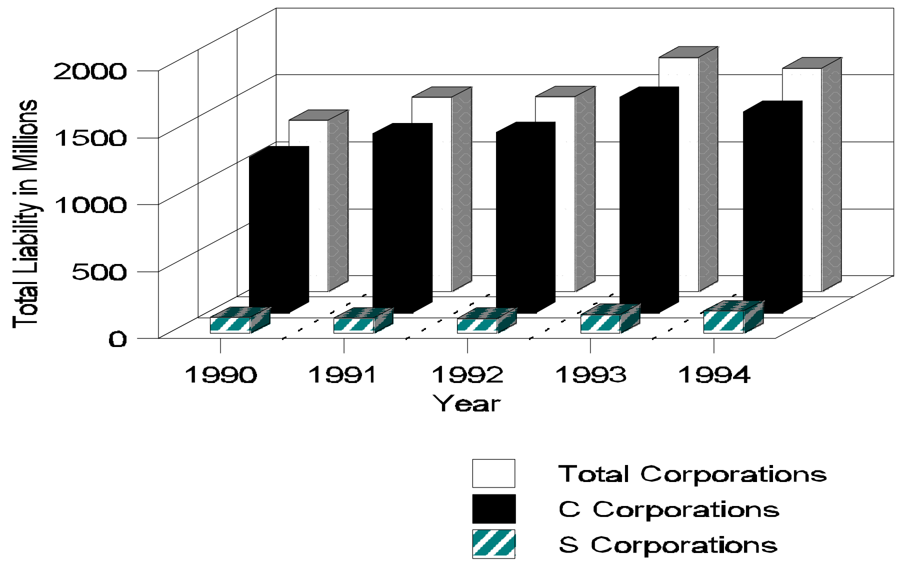
Table 2: Article 9-A Corporate Franchise Tax Liability - Tax Years 1990-1994 ($ Millions)

Year	1990	1991	1992	1993	1994
Liability	$1,280	$1,450	$1,456	$1,749	$1,668

Note: Liability years 1990 and 1991 are estimated.

Figure 3 depicts the distribution of tax liability between C and S corporations. As Figure 3 indicates, the Article 9-A tax liability for S corporations remained fairly constant from 1990 to 1994. In 1994, S corporations accounted for approximately $167 million in revenue.

Figure 3: Distribution of Article 9-A Liability for Liability Years 1990-1994



Highlights of the 1994 Tax Liability Year

Table 3 and Figures 4 and 5 depict the distribution of C corporation taxpayers and their respective tax liabilities for the 1994 tax liability year by basis of primary tax.

Table 3: Article 9-A Corporate Franchise Tax Liability by Primary Tax Basis (1994)

Type of Corporation	Base of Primary Tax	Number of Firms	Base Tax Liability After Credits 1/
C	Entire Net Income	43,076	$1,146,057,773
	Capital	16,002	76,169,453
	Fixed Dollar Minimum Tax	175,238	74,573,283
	5% of Minimum Taxable Income	16,188	203,348,932
C Total		250,504	$1,500,149,442
S	Entire Net Income & Fixed Dollar Minimum Filers	229,649	167,456,877
C & S Total		480,153	$1,667,606,319

1/ Total tax liability includes the temporary New York State corporate franchise tax surcharge and the tax on subsidiary capital paid by 3,050 corporations and valued at $33 million. Tax liability excludes the MTA surcharge.

S corporations comprised under 48 percent of all corporate tax filers. These corporations accounted for approximately 10 percent of the $1.7 billion in total Article 9-A post-credit tax liability. The majority of S corporation filers paid the fixed dollar minimum tax. C corporations comprised the remaining 52 percent of all Article 9-A filers. However, C corporations accounted for 90 percent of total post-credit liability.

Figures 4 and 5 illustrate that entire net income base filers, representing only 17.2 percent of the total number of C corporation tax returns filed, contributed 76.4 percent of total C corporation liability.

Figure 4: Distribution of C Corporation Taxpayers by Primary Tax Basis (1994)

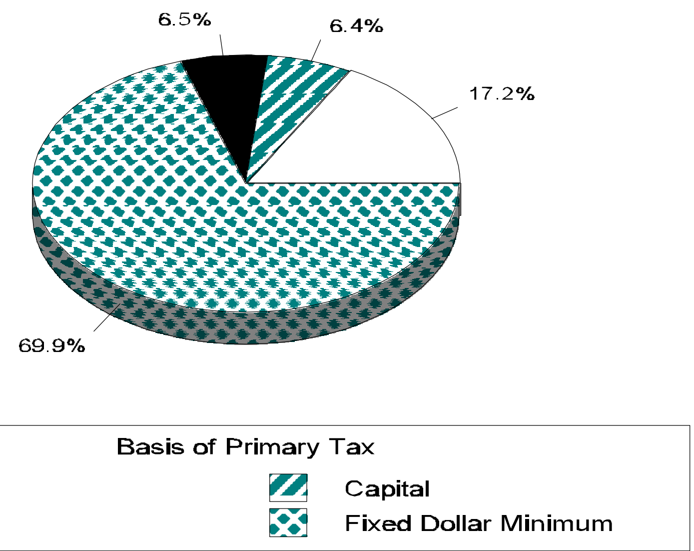
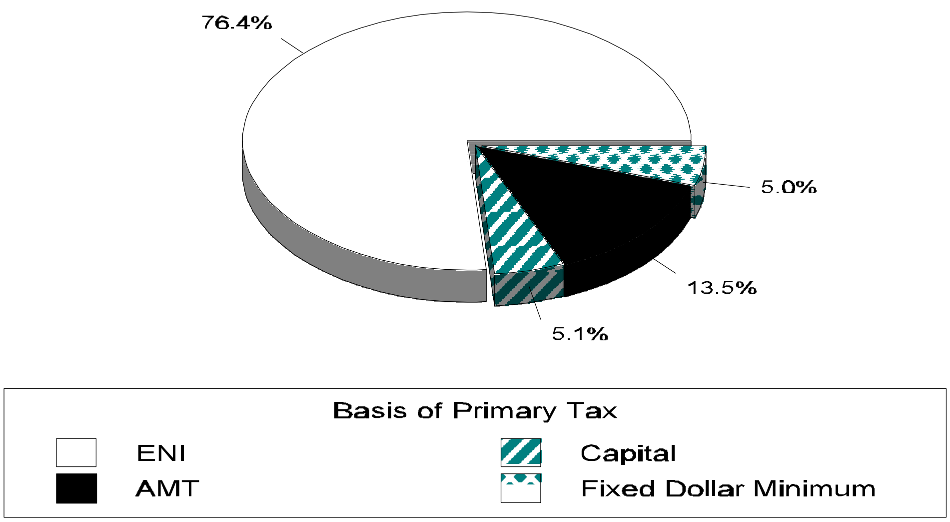


Figure 5: Distribution of C Corporation Liability Primary Tax Basis (1994)



Entire net income payers contributed most in Article 9-A revenues, generating almost $1.2 billion of total post-credit liability.

AMT payers, just over 6 percent of C corporation filers, paid 13.5 percent of total C corporation tax.

Capital base revenues remained relatively constant since 1990, primarily because of the base computation and liability cap ($350,000 annually).

Tables 4 and 5 show the distribution of C corporation taxpayers and corporate liability by primary tax basis. After excluding fixed dollar minimum filers, more than 96 percent of the remaining taxpayers incurred a liability of less than $50,000. Just over 78 percent fell below $5,000 in tax. Approximately 2.2 percent had annual liability in excess of $100,000.

Table 4: Distribution of C Corporation Taxpayers by Basis of Tax (1994)

	Basis							
	ENI		Capital		AMT		Total	
Liability ($)	Number	Percent	Number	Percent	Number	Percent	Number	Percent
325 - 999	14,273	33.13	8,768	54.79	7,810	48.25	30,851	40.99
1,000 - 4,999	17,095	39.69	5,468	34.17	5,824	35.98	28,387	37.72
5,000 - 9,999	4,664	10.83	893	5.58	1,042	6.44	6,599	8.77
10,000 - 49,999	4,709	10.93	712	4.45	1,076	6.65	6,497	8.63
50,000 - 99,999	993	2.31	82	0.51	202	1.25	1,277	1.70
100,000 - 499,000	1,035	2.40	79	0.49	186	1.15	1,300	1.73
500,000 - 999,999	154	0.36	-	-	28	0.17	182	0.24
1,000,000 and over	153	0.36	-	-	20	0.12	173	0.23
Total	43,076	100.00	16,002	100.00	16,188	100.00	75,266	100.00

Note: Liability ranges above $500,000 do not apply due to capital base tax limitation.

Table 5: Distribution of C Corporation Liability by Basis of Tax (1994)

	Basis							
	ENI		Capital		AMT		Total	
Liability ($)	Number	Percent	Number	Percent	Number	Percent	Number	Percent
325 - 999	9,584,815	0.84	5,835,961	7.66	5,073,889	2.50	20,494,666	1.44
1,000 - 4,999	45,545,363	3.97	13,486,851	17.71	13,961,873	6.87	72,994,087	5.12
5,000 - 9,999	39,697,480	3.46	7,303,784	9.59	8,170,935	4.02	55,172,199	3.87
10,000 - 49,999	117,688,191	10.27	17,541,942	23.03	25,074,037	12.33	160,304,171	11.24
50,000 - 99,999	79,215,702	6.91	7,054,947	9.26	15,580,098	7.66	101,850,747	7.14
100,000 - 499,000	243,925,822	21.28	24,945,966	32.75	42,805,893	21.05	311,677,681	21.86
500,000 - 999,999	122,036,261	10.65	-	-	20,397,930	10.03	142,434,191	9.99
1,000,000 and over	488,364,140	42.61	-	-	72,284,277	35.55	560,648,418	39.33
Total	1,146,057,774	100.00	76,169,453	100.00	203,348,932	100.00	1,425,576,160	100.00

Note: Liability ranges above $500,000 do not apply due to capital base tax limitation.

Comparison of the 1993 and 1994 Tax Liability Years

Table 6A depicts the distribution of taxpayers and tax liability for the 1993 and 1994 liability years by industry. It contains information for the entire net income, capital, alternative minimum taxable income and fixed dollar minimum tax bases. Most of the total C corporation liability, which includes the tax on allocated subsidiary capital, is paid under three bases: entire net income; allocated business and investment capital; and alternative minimum taxable income.

Table 6A: Percent Change in Distribution of 1993 and 1994 Corporation Taxpayers and Tax Liability by Industry

	Number of Taxpayers		Tax Liability a/		Share of Total (%)	
Industry	1993	1994	1993	1994	1993	1994
Agriculture	1,552	1,538	2,281,811	2,134,391	0.15	0.14
Mining	580	580	4,867,983	5,968,131	0.31	0.40
Contract Construction	15,289	15,565	3,756,906	34,881,625	2.09	2.33
Manufacturing	20,815	20,968	450,269,080	462,302,400	28.79	30.82
Transportation/Communications/ Public Utilities b/	6,528	6,720	65,616,986	76,209,893	4.19	5.08
Wholesale Trade (Durable)	12,702	12,973	70,717,518	79,409,061	4.52	5.29
Wholesale Trade (Nondurable)	11,320	11,609	68,199,861	68,031,944	4.36	4.54
Retail Trade	33,852	33,685	109,870,126	128,985,296	7.02	8.60
Finance, Insurance and Real Estate c/	45,125	46,927	518,578,020	383,941,105	33.15	25.59
Services	62,668	65,222	217,385,459	233,626,053	13.90	15.57
Not Classified d/	37,896	34,717	23,638,793	24,659,542	1.51	1.64
Total	248,327	250,504	1,564,182,543	1,500,149,441	100.00	100.00

a/ Total tax liability includes the temporary New York State corporate franchise tax surcharge and the tax on subsidiary capital paid by 3,050 corporations and valued at $33 million. Tax liability excludes the MTA surcharge.
b/ Excludes transportation, communications and public utility companies taxable under Article 9 of the Tax Law.
c/ Excludes banks taxable under Article 32 and insurance companies taxable under Article 33.
d/ Industry not classified represents those corporations whose returns did not indicate an industry code and an appropriate code could not be assigned based upon the information submitted with the returns.

As Table 6A illustrates, the respective shares of total C corporation liability borne by the various industries fluctuated only slightly. Notable exceptions included the manufacturing and FIRE sectors. Increasing by more than $12 million over 1993, manufacturer's share of total liability increased just over 2 percent. FIRE's share of total C corporation liability decreased by almost 8 percent. This decline represented a decrease in tax liability of $135 million over their 1993 liability year.

Tables 6B and 6C provide additional details of the distributional changes in number of taxpayers and respective liabilities for select industries for the 1993 and 1994 liability years.

Table 6B: Percent Change in Distribution of 1993 and 1994 Corporate Taxpayers for Selected Industries

	Number of Taxpayers			
	1993	1994	Increase (Decrease)	Percent Change
Manufacturing	20,815	20,968	153	0.74
Wholesale Trade (Durable)	12,702	12,973	271	2.13
Wholesale Trade (Nondurable)	11,320	11,609	289	2.55
Retail Trade	33,852	33,685	(167)	(0.49)
Finance, Insurance and Real Estate (FIRE) a/	45,125	46,927	1,802	3.99
Services	62,668	65,222	2,554	4.08

a/ Excludes banks taxable under Article 32 and insurance companies taxable under Article 33.

Table 6C: Percent Change in Distribution of 1993 and 1994 Corporate Tax Liability for Selected Industries

	Tax Liability			
Industry	1993	1994	Increase (Decrease)	Percent Change
Manufacturing	$450,269,080	$462,302,400	12,033,320	2.67
Wholesale Trade (Durable)	$70,717,518	$76,209,893	8,691,543	12.29
Wholesale Trade (Nondurable)	$68,199,861	$68,031,944	(167,917)	(0.25)
Retail Trade	$109,870,126	$128,985,296	19,115,170	17.40
Finance, Insurance and Real Estate a/	$518,578,020	$383,941,105	(134,636,915)	(25.96)
Services	$217,385,459	$233,626,053	16,240,594	7.47

a/ Excludes banks taxable under Article 32 and insurance companies taxable under Article 33.

Within the manufacturing sector, the number of taxpayers increased by less than 1 percent. However, manufacturing's contribution to total C liability increased by over 2 percent ($12.0 million).

The wholesale trade sector showed mixed results. The number of taxpayers increased for both wholesale-durable and wholesale-nondurable (2.13 percent and 2.55 percent, respectively). However, liability varied significantly. Wholesale-durable increased almost $9 million, a 12.29 percent increase over 1993. Wholesale-nondurable decreased by just under $200,000, a 1/4 of 1 percent drop from its 1993 level.

Within the retail sector, the number of taxpayers decreased by less than 1/2 of 1 percent while their tax increased by over 17 percent ($19 million).

The FIRE and services sectors showed continued growth in the number of taxpayers. The number of FIRE taxpayers increased by almost 4 percent, and FIRE liability decreased by almost 26 percent ($135 million). The number of services taxpayers increased by just over 4 percent, and services liability increased by almost 8 percent ($16 million).

Tables 7A and 7B compare, for the 1993 and 1994 tax liability years, the number of Article 9-A taxpayers by basis of tax and the distribution of tax liability among the various bases.

The total number of Article 9-A taxpayers increased from the 1993 level. C corporation filers increased by nearly 1 percent between 1993 and 1994. This increase was complimented by gains in the number of S corporation filers. The number of S corporation filers increased by 8,960, an increase of approximately 4.1 percent.

Total tax liability decreased somewhat, falling over 2.2 percent from its 1993 high of over $1.7 billion. The most significant tax base continued to be entire net income. Posting a 9.85 percent increase in the number of corporations paying on this base, in 1994 it generated over $1.1 billion (68.7 percent) of total C and S corporation liability. The next most significant tax base was alternative minimum taxable income. This base experienced a 6.95 percent decrease in filers and a 19.33 percent decrease in their contribution to total franchise tax liability. The remaining tax bases changed only slightly. For the most part, changes in the number of taxpayers mirrored changes in liability.

Table 7A: Article 9-A Corporate Taxpayers by Basis of Tax - 1993 and 1994

Type of Corporation	Basis of Primary Tax	Number of Firms 1993	Number of Firms 1994	Percent Change
C	Entire Net Income	39,214	43,076	9.85
	Capital	16,718	16,002	(4.28)
	Fixed Dollar Minimum Tax	174,997	175,238	0.14
	5% of Minimum Taxable Income	17,398	16,188	(6.95)
C Total		248,327	250,504	0.88
S	Entire Net Income & Fixed Dollar Minimum Filers	220,689	229,649	4.06
C and S Total		469,016	480,153	2.37

Table 7B: Article 9-A Corporate Franchise Tax Liability by Basis of Tax - 1993 and 1994

Type of Corporation	Basis of Primary Tax	Base Tax Liability After Credits 1993	Base Tax Liability After Credits 1994	Percent Change
C	Entire Net Income	$1,176,245,168	$1,146,057,773	(2.57)
	Capital	$65,840,607	$76,169,453	15.69
	Fixed Dollar Minimum Tax	$70,031,265	$74,573,283	6.49
	5% of Minimum Taxable Income	$252,065,505	$203,348,932	(19.33)
C Total		$1,564,182,545	$1,500,149,442	4.09
S	Entire Net Income & Fixed Dollar Minimum Filers	$141,161,831	$167,456,877	18.63
C and S Total		$1,705,344,376	$1,667,606,319	(2.21)

Note: Total tax liability includes the temporary New York State corporate franchise tax surcharge and the tax on subsidiary capital paid by 3,050 corporations and valued at $33 million. Tax liability excludes the MTA surcharge.

Endnotes

1. For a more detailed look at the Article 9-A corporate franchise tax structure, see “New York State Tax Structure: History and Comparative Analysis,” prepared by the New York State Department of Taxation and Finance, Office of Tax Policy Analysis, August 1994.

Article 9: Corporation and Utilities Tax

Tax Structure

Article 9 contains several separate taxes that apply to various general and specialized businesses operating in New York State. These taxes appear in separate sections of Article 9 as follows:[1]

- *Section 180* organization tax on domestic (New York State) corporations;
- *Section 181* license fee on foreign (out-of-state) corporations;
- *Section 183* franchise tax on transportation and transmission companies and associations;
- *Section 184* additional franchise tax on transportation and transmission companies and associations;
- *Section 185* franchise tax on agricultural cooperatives;
- *Section 186* franchise tax on waterworks companies, gas companies, electric or steam heating, lighting and power companies;
- *Section 186-a* gross receipts tax on the furnishing of utility services;
- *Section 186-e* excise tax on telecommunications services enacted in 1995; and
- *Section 189* franchise tax on businesses importing natural gas for their own consumption.

Significant Tax Law Changes Impacting Data Analysis

1990

Chapter 90 of the Laws of 1990 increased the franchise tax on telephone and telegraph businesses from 0.3 percent to 0.75 percent for taxable years beginning on or after January 1, 1990.

Chapter 190 of the Laws of 1990 amended section 186-a to provide that, beginning July 1, 1990, local exchange carriers could no longer exclude receipts from the sale of carrier access services to a long distance carrier. Instead, the law granted a deduction to long distance carriers for New York access charges paid to local exchange carriers.[2] The law also required long distance carriers to deduct access charges purchased in New York before apportionment of gross receipts to New York.

1993

Chapter 708 of the Laws of 1993 limited the section 186-a provisions requiring utilities to provide a 3 percent rate reduction to quantities sold or services rendered prior to 1994. The law also reduced from 97 percent to 96.5 percent the aggregate reductions to be applied as a credit against the section 186-a tax. This provision took effect for taxable years beginning on or after January 1, 1993.

1994

Chapter 576 of the Laws of 1994 amended section 186-a to require any person selling telephony or telegraphy or furnishing telephone or telegraph services, rather than a telephone or telegraph corporation, to include in its determination of gross income the revenue from interstate and foreign transmissions service.

Description of Data and Terms

Data Availability

This section provides summaries of taxpayer data concerning the major Article 9 taxes. Major Article 9 taxes include those imposed under sections 183, 184, 186, and 186-a. The remaining Article 9 taxes are not included herein.[3]

Data Description

For ease of presentation, some data (both number of taxpayers and tax liability) have been aggregated based on the product sold which is subject to Article 9. For example, the real estate industry has been combined with the electric and gas industry under section 186-a. This is because the real estate industry, which includes large New York City apartment complexes, resembles the electric and gas industry in providing metered heat and other services to tenants and other customers. Similarly, the hotel industry has been combined with the telephone and telegraph industry because it charges customers for placing telephone calls.[4]

Number of Taxpayers

This represents the actual number of tax returns filed for each tax year, although these data may not include some late filed returns, as previously noted. Data are compiled in the aggregate, by industry sector, for the selected tax sections of Article 9 included in the report. The data also include the respective shares that each industry sector represents in relation to the total number of taxpayers.

Liability Data

This represents the sum of the post-credit liability for each separate taxpayer filing a return. These data are shown in the aggregate, and for each industry sector, for the selected tax sections of Article 9. The data also include the respective shares that each industry sector represents in relation to all taxpayers.

Data Classification

Taxpayers are classified according to Principal Business/Professional Activity (PIA)[5] and Standard Industrial Classification (SIC) codes appropriate for their industry groups. Taxpayers self-report appropriate PIA or SIC codes on their tax returns. These codes identify the general type of business activity in which the entity is engaged (e.g., pipelines, telephone and telegraph, railroads, or electricity and gas). However, taxpayers often fail to provide this information.

In addition, these codes were revised several times in the last two decades. As a result, taxpayers frequently report outdated codes. For tax years 1990-1992, an initial attempt to place taxpayers into selected industry groups was performed by reviewing taxpayer names. Even then, a large number of taxpayers remained unidentified. These taxpayers were grouped with miscellaneous taxpayers in presenting these data. Beginning in tax year 1993, data collection techniques and methodologies improved significantly, especially in the area of classifying taxpayers with missing codes. Some taxpayers remain unidentified. As previously noted, these taxpayers were grouped with miscellaneous taxpayers.

The associated liability is quite small for those taxpayers who cannot be identified by industry group. Because some of the taxpayer universe remains unidentified, only general comparisons can be made between industry sectors for each particular tax. This caveat applies to both the number of taxpayers and liability data.

Overview of Statistics

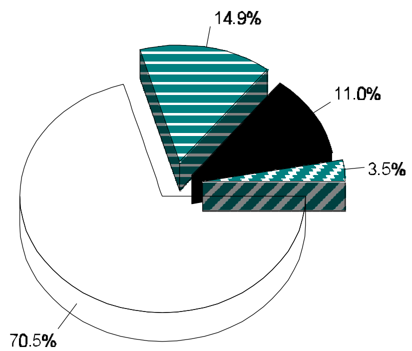
Total Liability Distribution by Tax Law Section

Figure 6 shows that the taxes imposed under sections 183, 184, 186 and 186-a resulted in a total liability of $1,226.3 million for tax year 1990. Section 186-a generated the largest amount of tax liability, totaling $864.4 million, representing 71 percent of total liability. Tax liability under section 186 accounted for $183.3 million, equaling 15 percent of the total. The next highest total liability was incurred by section 184 taxpayers. This amount equaled $135.5 million or a share of 11 percent. Section 183 taxpayers accounted for the smallest total tax liability of $43.1 million, representing 4 percent of total liability.

Total Article 9 liability, including the temporary business tax surcharge, increased 30 percent from $1,226.3 million to $1,595.5 million from tax years 1990 to 1994. Section 186-a represented the largest increase in tax liability to $1,189.3 million. This section still accounted for the largest share at 75 percent. Section 186 tax liability increased from $183.3 million in 1990 to $210.5 million in 1994. Its share of total liability decreased, however, to 13 percent. Tax liability under section 184 increased by slightly more than $15 million compared to 1990 levels. Its share of total liability also decreased slightly to 9 percent. Section 183 tax liability increased by less than $2 million in 1994 to $45 million, however, its share of total liability declined to 3 percent.

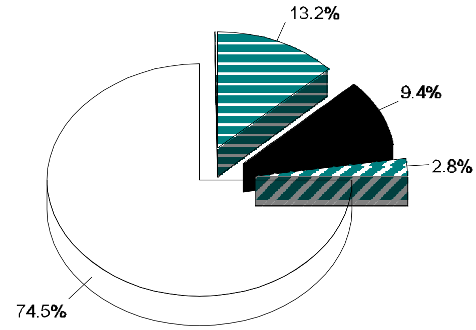
Figure 6: Selected Article 9 Taxes - Percent Liability Distribution by Tax Law Section - Tax Years 1990 and 1994
Total liability = $1,226.3 million (1990) and $1,595.5 million (1994)

Note: Figures include the temporary business tax surcharge (applicable tax years 1990-1994), but exclude the temporary MCTD surcharge (applicable tax years 1990-1994).
Totals may not add due to rounding.



1990

Section 183 ($43.1 million)
Section 184 ($135.5 million)
Section 186 ($183.3 million)
Section 186-a ($864.4 million)

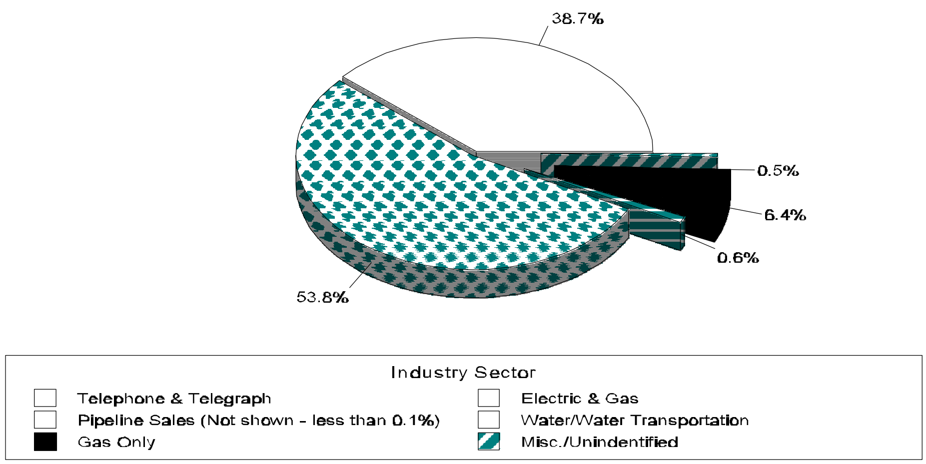


1994

Section 183 ($45 million)
Section 184 ($150.7 million)
Section 186 ($210.5 million)
Section 186-a ($1,189.3 million)

Figure 7 illustrates tax liability by industry for section 186-a taxpayers for tax year 1994. Section 186-a represented the largest section in terms of tax liability for all Article 9 taxpayers. The electric and gas industry comprised the largest share of tax liability, representing 54 percent. The telephone and telegraph sector represented the second largest share, equaling 39 percent. Taxpayers furnishing gas only services represented a much smaller percentage of total liability, totaling 6 percent. When combined, the remaining sectors comprised slightly more than 1 percent of total liability.

Figure 7: Section 186-a - Representing Largest Article 9 Tax Liability by Industry - 1994



Number of Taxpayers by Tax Law Section and Year

Figure 8 illustrates the number of taxpayers by tax law section and year, beginning in 1990. The number of section 186 taxpayers, representing the smallest number when compared to total taxpayers, increased from 192 in 1990 to 240 in 1994. Similarly, the number of section 186-a taxpayers increased from 1990 to 1994. During 1991 and 1992 the number of section 184 taxpayers declined slightly from previous levels. By 1994, however, this number exceeded 1993. Section 184 taxpayers represented the largest number of total taxpayers in 1994, equaling 5,632. The number of section 183 taxpayers also declined in 1991 and 1992. Showing a similar trend to section 184 taxpayers, this number began to increase in 1993 and continued through 1994.

Figure 8: Total Number of Article 9 Taxpayers by Tax Law Section and Year - 1990-1994

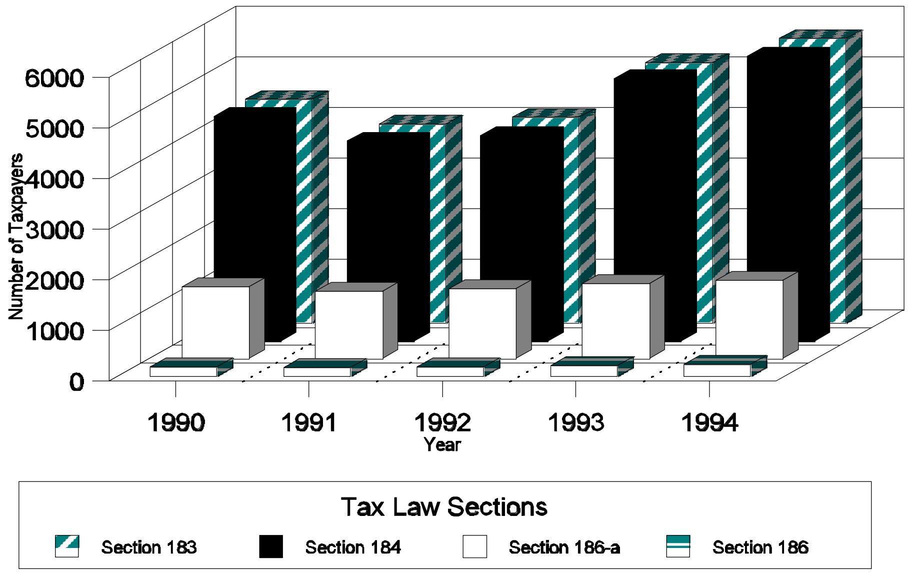
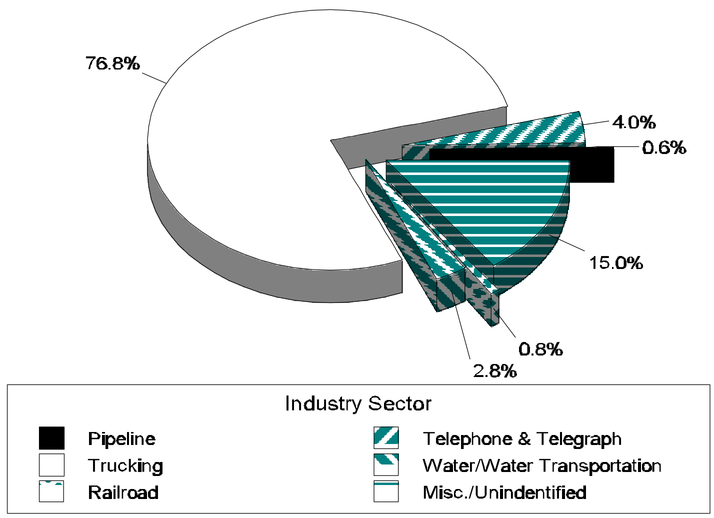


Figure 9 shows a breakdown of the number of section 184 taxpayers by industry sector for tax year 1994. Section 184 represented the greatest number of total taxpayers. The trucking industry overwhelmingly comprised the largest share of total section 184 taxpayers, equaling 77 percent. The next largest share, 15 percent, consisted of miscellaneous taxpayers. The remaining sectors comprised slightly more than 8 percent of total taxpayers.

Figure 9: Section 184 -
Article 9 Taxpayers by Industry
- 1994



Section 183 Franchise Tax on Transportation and Transmission Companies

The section 183 franchise tax on transportation and transmission companies applies to all companies principally engaged in providing these services.[6] The tax equals the higher of: 1.5 mills on each dollar of net value of issued capital stock in New York State; or 0.375 mills per dollar of par value for each 1 percent of dividends paid if the share of dividends paid on capital stock equals 6 percent or more; or a $75 minimum tax.

Number of Taxpayers

Section A of Table 8 presents the number of section 183 taxpayers by industry sector for tax years 1990 to 1994. Over this period, the total number of taxpayers increased from 4,422 to 5,624, an increase of 27 percent. The vast majority of section 183 taxpayers are trucking companies. In 1990, trucking accounted for 3,435 taxpayers (78 percent). This number increased by 860, or 25 percent, to 4,295 taxpayers in 1994; however, its share of total section 183 taxpayers decreased slightly to 76 percent.

The second largest taxpayer group included miscellaneous and unidentified taxpayers accounting for 15 percent of total section 183 taxpayers in 1994. The 236 telephone and telegraph companies represented 4 percent of these taxpayers. The remaining industry sectors consisted of water/water transportation (3 percent), railroads (0.8 percent), and pipelines providing transportation services (0.6 percent).

Tax Liability

Section B of Table 8 shows the total liability for section 183 taxpayers by industry sector for tax years 1990 to 1994. Total liability increased by 0.04 percent between 1990 and 1994 from $43.1 to $45 million. The most pronounced year-to-year decrease occurred from 1990 to 1991 when liability decreased from $43.1 million to $35.6 million (17 percent). However, liability subsequently recovered to $38.7 million in 1992 and increased in subsequent years.

The majority of section 183 tax liability was generated by the telephone and telegraph sector with 91 percent of the total in 1994. Based on liability, the next largest sectors were trucking (4 percent), railroads (2 percent), pipelines providing transportation (2 percent), and water transportation (1 percent). The miscellaneous and unidentified group made up 15 percent of the section 183 taxpayers, but accounted for only 0.2 percent of the tax.

Section 184 Additional Franchise Tax on Transportation and Transmission Corporations

The section 184 additional franchise tax on transportation and transmission companies applies to all companies principally engaged in providing these services. The tax rate equals 0.75 percent on gross earnings from all sources.

Number of Taxpayers

Section A of Table 9 shows the total number of section 184 taxpayers by industry sector from tax year 1990 to 1994. The total number of taxpayers shows a trend similar to section 183 during these tax years. This is because the universes of section 183 and 184 taxpayers are virtually identical. In 1990, there were 4,439 section 184 taxpayers versus 5,632 in 1994, an increase of 27 percent.

A small disparity existed between the aggregate number of section 183 and section 184 taxpayers in each tax year. In 1990, for instance, there were 17 more section 184 taxpayers than section 183 taxpayers. This difference increased to 21 in 1991 and then jumped to 39 in 1993. By 1994, the difference equaled 8. Conversely, there were 7 more section 183 taxpayers than section 184 taxpayers in tax year 1992.

The industry breakdown of section 184 taxpayers is also similar to that presented for section 183. The industry share of taxpayers remained relatively stable over time. In 1994, the largest single group of section 184 taxpayers was the trucking industry with 4,323 taxpayers (77 percent of the total). The miscellaneous and unidentified group at 15 percent (843 taxpayers) was the next largest. Only a small proportion of taxpayers were from the remaining groups: telephone and telegraph companies (4 percent), water/water transportation (3 percent), railroads (0.8 percent), and pipelines providing transportation (0.6 percent).

Tax Liability

Section B of Table 9 details how total section 184 liability changed from 1990 to 1994. Aggregate liability increased by 11 percent during the period.

In 1990, the telephone and telegraph sector accounted for 80 percent of section 184 liability. In 1991, this proportion increased to 82 percent. By 1994, telephone and telegraph company liability equaled $119.1 million of a total $150.7 million, or 79 percent.

The second largest industrial sector in terms of 1994 liability was trucking at $28 million (19 percent of the total). The remainder of section 184 liability was attributable to the following sectors: miscellaneous and unidentified (0.6 percent), pipelines (1 percent), water/water transportation (0.5 percent), and railroads (0.3 percent).

Trucking companies accounted for 76 percent of all taxpayers under section 183 (Table 8A) and 77 percent of all taxpayers under section 184 in tax year 1994. However, the industry accounted for 19 percent of total section 184 liability compared to 4 percent under section 183 (Table 8B). Many of these companies were small, single operator businesses that paid the minimum tax under section 183.

Section 186 Franchise Tax on Waterworks Companies, Gas Companies, Electric or Steam Heating, Lighting and Power Companies

Section 186 imposes a franchise tax on waterworks companies, gas companies, electric or steam heating, lighting and power companies. The tax rate equals 0.75 percent on the gross earnings from all sources on all companies principally engaged in providing the above services, or a combination thereof. In addition, a 4.5 percent tax applies on the amount of dividends paid in excess of 4 percent of the amount of paid-in capital employed in New York, subject to a $125 minimum.

Number of Taxpayers

Section A of Table 10 presents the number of section 186 taxpayers by industry sector for tax years 1990 through 1994. The total number of taxpayers increased over the period, rising from 192 in 1990 to 240 in 1994.

The largest group of taxpayers was consistently the water industry which accounted for 45 percent of section 186 taxpayers in 1994. The second largest sector was electric and gas companies at 27 percent. This group includes all of New York's investor-owned utilities that provide combined electric and gas service. The miscellaneous and unidentified group was the next largest, accounting for 14 percent of taxpayers. The remaining industry sectors were gas-only companies (12 percent), and pipelines selling natural gas (2 percent).

Tax Liability

Section B of Table 10 shows total section 186 liability by industry sector for tax years 1990 through 1994. Total liability increased by 15 percent over the period from $183.3 million to $210.5 million. The liability of electric and gas companies increased by over $32 million during the period. This increase was partially offset by a decrease in pipeline tax liability. Although electric and gas companies accounted for only 27 percent of all section 186 taxpayers in 1994, they represented 89 percent of total liability ($187.4 million).

The gas services-only sector accounted for the next largest proportion of total liability. Their tax liability was 9 percent in 1994. The remaining $3.5 million in liability was shared among pipelines selling natural gas (0.3 percent), water companies (0.9 percent), and miscellaneous and unidentified taxpayers (0.4 percent).

Section 186-a Tax on the Furnishing of Utility Services

The section 186-a tax applies to all companies furnishing utility services, regardless of whether or not the provider is principally engaged in that business. Utility services include gas, electricity, steam, water, refrigeration, and telephone or telegraph service. The tax equals 3.5 percent of gross receipts. Providers subject to the supervision of the Department of Public Service pay the tax on gross income from all sources. Other providers pay the tax on gross operating income from the sale or provision of utility services.

Number of Taxpayers

Section A of Table 11 presents the total number of section 186-a taxpayers by industry sector for tax years 1990 through 1994. The total number of taxpayers increased slightly by 126 taxpayers from 1,419 to 1,545 (0.09 percent). For 1994, 39 percent of total taxpayers fell into the miscellaneous and unidentified group. Second was the telephone and telegraph sector, which accounted for 37 percent (565 taxpayers) of all section 186-a taxpayers.

The electric and gas industry had 244 taxpayers (16 percent) in 1994. The remaining taxpayers were divided among water providers (6 percent), gas only providers (2 percent) and pipelines selling natural gas (0.3 percent).

The number of taxpayers that remitted section 186-a excise tax was significantly greater than the number of taxpayers that paid sections 186, 184 and 183 franchise taxes. This is because taxpayers subject to the section 186-a tax need not be principally engaged in providing utility services in order to be subject to the tax as is the case with sections 183, 184, and 186. For example, hotels, which charge their customers for placing telephone calls, would pay tax under section 186-a. These taxpayers have been combined with the telephone and telegraph taxpayers.

Tax Liability

Section B of Table 11 shows total section 186-a liability by industry sector for the tax years 1990 through 1994. Total liability increased over the period from $864.4 million to $1,189.3 million (38 percent). This increase was primarily attributable to two tax law changes.

First, effective July 1, 1990, in the telephone and telegraph industry sector, the tax law was changed to shift the deduction for access charges from local exchange carriers to long-distance (interexchange) carriers.[7] In the case of interstate and international revenues, the law was amended to permit the access deduction prior to, rather than after, apportionment of these revenues to New York State. This change, in and of itself, resulted in a revenue increase for 1990 and subsequent years.[8]

The second change in the tax law was an increase in the section 186-a tax rate from 3.0 percent to 3.5 percent effective January 1, 1991. As a result, total section 186-a revenue increased 25 percent from tax year 1990 to 1991 alone.

Electric and gas companies, combined with the telephone and telegraph sector, accounted for most of the 1994 total section 186-a liability (93 percent). They accounted for $639.5 million (54 percent) and $460.4 million (39 percent), respectively. The remaining liability was divided among gas only providers (6.4 percent), water providers (0.6 percent), miscellaneous and unidentified providers (0.5 percent), and pipelines selling natural gas (less than 0.1 percent).

Endnotes

1. See “New York State Tax Structure: History and Comparative Analysis,” prepared by the New York State Department of Taxation and Finance, Office of Tax Policy Analysis, August 1994, for more detail on this tax.

2. The New York State Court of Appeals ruled the access deduction method unconstitutional in 1994. See endnote 8 for a summary of the results of this ruling.

3. Consistent with prior statistical reports, data concerning the sections 180, 181, and 185 taxes are omitted from this report. The report also excludes data concerning the section 189 tax enacted in 1991. These taxes have a minimal impact on overall Article 9 liability. Finally, due to lack of available data, this report does not provide information on section 186-e.

4. Section 186-a constitutes a small portion of tax liability for the real estate and hotel industries. Such businesses are more commonly taxed under other Articles of the tax law.

5. The Internal Revenue Service (IRS) asks taxpayers to identify their principal business activity using these codes for federal tax purposes.

6. Aviation companies pay tax under Article 9-A.

7. Access fees are fees paid by long-distance carriers to local telephone companies to complete long-distance calls. These fees are deducted from gross receipts subject to tax under section 186-a.

8. However, this access deduction method was ruled unconstitutional by the New York State Court of Appeals in 1994. As a result of this ruling, legislation was enacted in 1995 to reform the corporate taxation of telecommunications services in New York State. Generally, the legislation provided that the section 184 additional franchise tax on transportation and transmission corporations and associations would apply only to companies principally engaged in a local telephone business. It also shifted the section 186-a 3.5 percent excise tax on receipts from telecommunications services to a new section 186-e. See “Improving New York State’s Telecommunications Taxes: A Background Study and Status Report,” prepared by the New York State Department of Taxation and Finance, Office of Tax Policy Analysis, August 1996, for a more detailed discussion of these tax law changes.

Article 32: Corporate Franchise Tax on Banking Corporations

Tax Structure

Article 32 levies a franchise tax on banking corporations doing business in the State.[1] The bank tax is computed on the highest of four alternative bases:

- 9 percent of allocated entire net income (ENI); or
- 3 percent of alternative income (ENI without regard to specified exclusions); or
- $250; or
- one-tenth, one twenty-fifth or one-fiftieth of a mill of taxable assets allocated to New York (depending on net-worth-to-asset ratio and percentage of assets secured by mortgages).

Calculation of the taxes based on allocated ENI begins with federal taxable income, which includes certain exclusions and deductions. Taxpayers then make several New York modifications and allocate their income to arrive at New York taxable income. These modifications include, for example, a bad debt deduction for large commercial banks, a deduction for the eligible net income of international banking facilities (IBFs), deductions for a portion of interest income from government obligations, and interest and dividend income from subsidiary capital.[2] Banks conducting business both inside and outside New York allocate their income and assets by applying a three-factor allocation formula consisting of payroll, deposits, and receipts. The receipts and deposits factors are double-weighted and only a fraction of the payroll factor is used.

Alternative entire net income differs from ENI, in that it does not include deductions for portions of subsidiary interest and interest on government obligations. In addition, the factors of the alternative income allocation formula are single weighted.

The tax on allocated taxable assets starts with the taxpayer's total assets. Taxable assets equal total assets less assets attributable to the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation. Taxpayers then apply an allocation percentage, which equals the percentage used for allocating ENI. The tax rate imposed on allocated taxable income equals:

Net Worth Ratio:	And the Percent of Mortgages Included in Total Assets:	Tax Rate:
Less than 4%	33% or more	0.00002
At least 4% but less than 5%	33% or more	0.00004
All others	All others	0.0001

Taxpayers may take credits against the highest tax liability, with the exception of the $250 minimum tax, to determine their after-credit liability. These credits include, for example, the job incentive credit and the special additional mortgage recording tax credit.

Description of Data and Terms

This section summarizes tax liability data for tax years 1990 through 1994. Tables 12 and 13 present this data.

Tables 12 through 15 provide summary data for five separate categories of banks and the total for all banks. The five categories are clearinghouse banks, foreign banks, commercial banks, savings banks, and savings and loan associations. However, to protect taxpayer confidentiality, the clearinghouse and commercial bank categories were combined, and savings banks and savings and loan associations were grouped together. Each table provides statistics profiling the three groups of taxpayers for the tax years 1990 through 1994. The tables are labeled as follows: number of taxpayers and total tax liability; distribution of tax liability by basis of tax; allocated entire net income; and credits used by Article 32 taxpayers.

To assist readers in interpreting the tables, the database and terms used in the tables are discussed below.

Number of Banks

For purposes of presentation, this count reflects each consolidated or combined group, or each bank filing separately as a single filing entity. This count refers to each filing entity as a single bank.

Clearinghouse Banks

Clearinghouse banks are financial institutions that are members of the New York Clearing House Association. As members of this Association, their functions include handling daily fund exchanges from other clearinghouse banks and settling exchanges.

Commercial Banks

Commercial banks are institutions that are not classified as clearinghouse banks, foreign banks, savings banks or savings and loan associations. Banks included in this category are domiciled in the United States.

Foreign Banks

Foreign banks, as defined in this database, are commercial banks headquartered outside the United States or its possessions with nexus in New York State.

Savings Banks

Savings banks are depository financial institutions that primarily accept consumer deposits and make home mortgage loans.

Savings and Loan Associations

Savings and loan associations are depository financial institutions that receive deposits primarily from consumers and hold most of their assets as home mortgage loans.

Alternative Bases

For confidentiality reasons, the taxable assets and alternative entire net income bases are aggregated in the tables. They are referred to in the tables as alternative bases.

Allocated Entire Net Income (ENI)

Allocated ENI refers to the New York portion of ENI. Taxpayers determine the amount of ENI attributable to New York using formula apportionment.

Tax Credits Used

The credit data are limited to credits used on the taxpayer's return. They do not reflect credits earned but not used, or balances of unused credits.

Job Incentive Credit

A credit is allowed to the owner or operator of a business establishment which has been certified for eligibility by the New York State Job Incentive Board (prior to April 1, 1983) or the State Tax Commission (subsequent to April 1, 1983). An eligible business facility is a facility which is located in an eligible area and creates or retains at least five jobs. This credit may not be carried forward to future taxable years. The credit expires for tax years beginning on or after January 1, 2000.

Mortgage Servicing Tax Credit

A credit is allowed for servicing mortgages acquired by the New York State Mortgage Agency. The credit value varies by dwelling size and the amount of the mortgage.

Special Additional Mortgage Recording Tax Credit

A corporation may claim a credit for the New York special additional mortgage recording tax paid on mortgages recorded on or after January 1, 1979. Taxpayers may carry forward the unused mortgage recording tax credit to future tax years. Mortgages on certain property, such as property in the Metropolitan Commuter Transportation District and Erie County, are ineligible for the credit.

Overview of Statistics

Number of Taxpayers and Total Tax Liability

Table 12 reports data on the number of taxpayers in each category, the amount of their total tax liability and the percent of the bank tax paid by each category.

Number of Taxpayers

This table shows that between the 1990 tax year and the 1991 tax year, the total number of banks increased from 821 to 831. The total number of banks dropped to 814 in the 1992 tax year, and to 803 in the 1994 tax year. Foreign banks and the clearinghouse/commercial bank category were the largest groups of Article 32 taxpayers between 1990 and 1994. The number of banks classified as foreign banks decreased from 360 in 1990 to 350 in 1994. The number of clearinghouse/commercial banks, however, increased during this period, from 325 to 355. Through 1994, foreign and clearinghouse/commercial bank groups each represented between 39 and 45 percent of the total number of Article 32 taxpayers.

The number of savings banks and savings and loan associations dropped from 136 in tax year 1990 to 98 in tax year 1994. This represented a decrease from approximately 17 percent of total Article 32 taxpayers to over 12 percent.

Total Tax Liability

Total tax liability increased nearly 50 percent, from $284.9 million to $426 million, between 1990 and 1994. A large portion of this change was attributable to an increase in clearinghouse and commercial bank liability, which rose by 149 percent from almost $111.1 million in 1990 to $276.5 million in 1994. The tax liability of savings banks and savings and loan associations fell by about 84 percent during this period. Between 1990 and 1993, the total tax liability of foreign banks increased by 37 percent, from $113.4 million to $155.3 million, and then dropped by 34 percent to $116.7 million in 1994.

Table 12

(See CorpTax97-Tables)

Total tax liability for all Article 32 taxpayers increased steadily from $284.9 million in the 1990 tax year to $591.5 million in the 1993 tax year. The tax liability of all categories of banks, except savings and loan associations, increased overall between 1990 and 1993. The largest percentage change in total liability occurred among clearinghouse and commercial banks, which increased by 230 percent, from $111.1 million to $366.5 million.

Between 1993 and 1994, total tax liability decreased sharply from $591.5 million to $426 million with all categories of banks experiencing a decrease in total tax liability. The largest percentage change in total tax liability occurred in the savings and savings and loan association category. This category decreased by 53 percent, from $69.6 million to $32.8 million. Clearinghouse and commercial banks and foreign banks each experienced a 25 percent decrease in total tax liability between 1993 and 1994.

Shares of Total Tax

Between 1990 and 1994, the most significant shifts in distribution of total bank tax liability occurred within the savings bank and savings and loan association, and clearinghouse/commercial bank categories. The portion of bank tax paid by savings banks and savings and loan associations dropped from 21.2 percent in 1990 to 7.7 percent in 1994. In contrast, total tax liability of clearinghouse/commercial banks increased from 39 percent in 1990 to nearly 65 percent in 1994.

A more modest shift occurred in the distribution of total bank tax liability of foreign banks. The tax liability of foreign banks, as a percentage of total tax liability, decreased from approximately 39.8 percent to 27.4 percent between 1990 and 1994.

Distribution of Tax Liability by Basis of Tax

Table 13 includes statistics regarding the distribution of tax liability by base of tax. The table lists the number of taxpayers paying on the income base, alternative bases (asset or alternative entire net income bases), and the minimum tax base, and the amount of tax liability paid under each base.

Basis of Tax

Table 13 shows that, from 1990 through 1994, there was an overall decrease in the portion of bank tax liability attributable to alternative based taxes. In 1990, Article 32 taxpayers paid $81.4 million in taxes based on assets and alternative entire net income. Asset-base taxpayers accounted for $80 million of this amount. Between the 1991 and 1994 tax years, alternative based liabilities ranged from $59 million to $78 million. Asset-base taxpayers represented almost 100 percent of alternative based liabilities.

In 1990, alternative base liability represented 28.6 percent of the total liability under the bank tax. Alternative base taxes dropped to 10 percent of total bank tax liability in 1993, increasing to 18.4 percent of total bank tax liability in 1994.

With the exception of foreign banks, all classifications of banks exhibited movement away from alternative based tax liabilities between 1990 and 1994. In terms of tax liability, the most significant shifts occurred among clearinghouse and commercial banks and foreign banks. In 1990, the alternative based liability of clearinghouse and commercial banks represented about 36 percent of their total bank tax liability. This portion decreased to 9 percent in 1994. The alternative based liability of foreign banks, as a percentage of total foreign bank tax liability, equaled about 34 percent in 1990. The alternative base dropped, as a portion of foreign bank liability, to over 16 percent in 1991. This percentage increased to just over 17 percent in 1992, and again increased to 27 percent in 1993. The sharpest increase occurred in 1994 when the alternative based liability of foreign banks, as a percentage of total foreign bank tax liability, jumped to 44.2 percent.

Allocated Entire Net Income

Table 14 provides data regarding the number of taxpayers with positive and negative allocated entire net income, the amount of total positive and negative allocated entire net income, and the average amount of positive and negative allocated entire net income. These statistics indicate the number and types of banks that reported income or losses and the amount of the income and losses for each tax year.

Table 13

(See CorpTax97-Tables)

Table 14
(See CorpTax97-Tables)

The trend in the amount of allocated entire net income and losses indicated an increase in New York income between 1990 and 1994 and an overall decrease in the amount of allocated losses during that period. During this period, the trend in allocated entire net income and losses paralleled the trend in total entire net income and losses.

The number of banks reporting positive allocated entire net income increased overall from 1990 through 1994. The amount of positive allocated entire net income increased from $2.2 billion in 1990 to $3.9 billion in 1994, peaking at $5.4 billion in 1993. The number of banks reporting negative allocated income decreased overall from 289 in 1990 to 258 in 1994.

Clearinghouse and commercial banks experienced substantial decreases in New York losses between 1990 and 1994. The number of clearinghouse banks experiencing losses decreased from 86 in 1990 to 71 in 1994. The amount of negative allocated entire net income decreased from $2.5 billion in 1990 to $607 million in 1994.

Tax Credits Used

Table 15 provides statistics about the total number of banks that used the special additional mortgage recording tax credit, the mortgage servicing credit, and the job incentive credit between 1990 and 1994. This table also shows the value of the credits used during this time period.

As displayed in Table 15, between 1990 and 1994, the special additional mortgage recording tax credit was used more frequently than other available credits. In 1990, the value of the credit used by 135 taxpayers equaled $11.7 million. In 1994, 123 taxpayers used this credit which totaled $15.6 million.

The mortgage servicing credit was the second most frequently used credit during this period. The number of taxpayers taking the mortgage servicing credit ranged from 77 to 67. Between 1990 and 1993, the amount of the credit used by these taxpayers ranged from $4.8 million to nearly $5 million, increasing to nearly $8 million in 1994.

Table 15: Credits Used by Article 32 Taxpayers - 1990-1994

	Tax Credits Used					
	Job Incentive Credit		Mortgage Servicing Credit		Mortgage Recording Tax Credit	
Tax Year	Number of Taxpayers	Amount of Credit Used	Number of Taxpayers	Amount of Credit Used	Number of Taxpayers	Amount of Credit Used
1990	17	$3,921,897	77	$4,749,036	135	$11,722,937
1991	11	4,620,826	75	4,973,361	131	12,506,005
1992	7	4,567,229	68	4,903,309	133	17,904,659
1993	d/	d/	69	4,797,158	124	16,123,070
1994	d/	d/	67	7,983,677	123	15,562,973

d/ = not disclosable

Between 1990 and 1992, the number of taxpayers that used the job incentive credit decreased from 17 to 7. However, the amount of the job incentive credit used increased from nearly $4 million to $4.6 million during this period. Data regarding the job incentive credit for the 1993 and 1994 tax years is not disclosable.

Endnotes

1. For a more detailed description of the corporate franchise tax on banking corporations, see "New York State Tax Structure: History and Comparative Analysis," prepared by the New York State Department of Taxation and Finance, Office of Tax Policy Analysis, August 1994.

2. For an analysis of how these deductions impact tax liability, please see "State of New York Tax Expenditure Report 1996-1997," prepared by the New York State Department of Taxation and Finance, in conjunction with the New York State Division of the Budget.

Article 33: Corporate Franchise Tax on Insurance Companies

Tax Structure

New York imposes a franchise tax on insurance companies under Article 33 of the Tax Law.[1] The franchise tax on insurance companies has two components. The first component of the tax is based on the higher of four alternative bases, plus a tax on subsidiary capital. The four bases and applicable tax rates include:

- 9 percent of allocated entire net income; or
- 0.16 percent of allocated business and investment capital; or
- 9 percent of allocated income and salaries; or
- a minimum tax of $250.

The second component of the Article 33 tax is a tax on gross premiums, less return premiums thereon, written on risks located or resident in New York. Different tax rates applied to premiums written by life insurers and property and casualty insurers. Premiums received by corporations licensed as life insurers, including premiums on accident and health contracts, were taxed at a rate of 0.8 percent. (Effective for taxable years beginning on or after January 1, 1998, this rate decreased to 0.7 percent.) Premiums written by corporations licensed as property and casualty insurers are taxed at the rate of 1.3 percent. However, premiums received by property and casualty insurers on accident and health contracts are taxed at the rate of 1.0 percent.

For corporations doing business within and without the State, the bases in the net income component of the tax are allocated to New York. The apportionment formula used includes weighted ratios of premiums (with a weight of nine) and wages (with a weight of one), earned or paid in New York to those earned or paid everywhere.

Taxpayers add the tax on gross premiums to the highest of the four alternative taxes (the income base), plus the tax on subsidiary capital. Taxpayers then subtract economic development zone credits. The remainder is “capped” at 2.6 percent of taxable premiums. (Effective for taxable years beginning on or after January 1, 1998, the cap equals 2.0 percent of gross premiums of life insurers.) This limitation on tax represents the maximum tax on insurance companies. Taxpayers then claim credits other than EDZ credits against the total liability.[2]

Description of Data and Terms

This section provides tax return data for the tax years 1990 through 1994 in Tables 16 through 19. The tables provide statistics for four separate categories of insurance companies and for all insurance companies. To assist readers in interpreting the data, definitions of many of the terms used in the tables are provided below.

Number of Taxpayers

For purposes of statistical presentation, these tabulations count each tax return (consolidated, combined group, or separate) as a single filing entity.

Life Insurance Companies

These include companies authorized by the Superintendent of Insurance to do an insurance business consisting of either insuring the lives of human beings or providing annuity contracts.

Property and Casualty Insurance Companies

These include companies authorized by the Superintendent of Insurance to write insurance against the loss of, or damage to, property.

Others

This category includes insurance companies authorized by the Superintendent of Insurance to write accident and health insurance, title insurance, mortgage and financial guaranty insurance, or reciprocal insurance.

Savings Banks

Officers and employees of savings banks may be authorized by the Superintendent of Insurance to negotiate, order, solicit, or procure applications or orders for life insurance or annuity contracts.

Domestic Companies

Domestic insurance companies are companies incorporated or organized in New York State.

Foreign Companies

Foreign insurance companies are companies incorporated or organized in any other state, U.S. possession, nation, territory, or province.

Limitation on Tax

Article 33 provides a "cap," or limitation, on total tax liability of an insurance company which equals 2.6 percent of gross premiums.

Fire Insurance Tax Credit

Taxpayers may take a credit for additional taxes on premiums written by corporations organized in another state or country for any insurance against loss or damage by fire, paid by foreign fire insurance companies and foreign mutual fire insurance companies. These taxes are imposed under the Insurance Law. Unused credits may not be carried forward.

Retaliatory Tax Credit

Taxpayers domiciled or organized in New York may take a credit for up to 90 percent of any retaliatory taxes paid to other states as a result of New York State-imposed taxes on insurers domiciled or organized in those other states. Taxpayers may elect to have the unused credit either refunded or carried forward to future tax years.

Job Incentive Credit

A credit is allowed to the owner or operator of a business establishment which has been certified for eligibility by the New York State Job

Incentive Board (prior to April 1, 1983) or the State Tax Commission (subsequent to April 1, 1983). An eligible business facility is one which is located in an eligible low-income area and creates or retains at least five jobs. The credit may not be carried forward to future taxable years.

Special Additional Mortgage Recording Tax Credit

Taxpayers may take a credit which is equal in amount to the special additional mortgage recording tax paid on mortgages recorded on or after January 1, 1979, on property which is located within New York. Mortgages on certain property, such as property in the Metropolitan Commuter Transportation District and Erie County, are ineligible for the credit. The unused credit may be carried forward and used in subsequent years.

Economic Development Zone Credits

Taxpayers may qualify for credits for certain investments and creating jobs in Economic Development Zones. Unused credits may be carried forward indefinitely.

Overview of Statistics

Tables 16 through 19 provide statistics regarding four categories of insurance companies subject to Article 33 for tax years 1990 through 1994. The four categories include life insurance companies, property and casualty insurance companies, other insurance companies (accident and health, title, mortgage and financial guaranty and reciprocal insurers), and savings banks.[3]

Tax Liability Before Limitation and Credits

Number of Taxpayers

As shown in Table 16, the number of insurance companies subject to Article 33 increased from 761 in 1990 to 791 in 1991, and dropped to 772 in 1994. Between 1990 and 1994, property and casualty insurers consistently represented between 66 and 70 percent of the Article 33 taxpayers. This group of taxpayers increased overall in number from 505 in 1990 to 540 in 1994. This increase was primarily due to foreign property and casualty insurers, which increased in number from 389 to 403 (see Table 17).

Table 16 also shows that life insurers were the second largest group of Article 33 taxpayers. From 1990 through 1994 tax years, life insurers decreased overall from 152 to 144 but continued to represent about 20 percent of all Article 33 taxpayers. During the same period, the two remaining categories of Article 33 taxpayers, others and savings banks, accounted for roughly 12 percent of the total.

Tax Liability Before Limitation and Credits

Table 16 also shows that, between 1990 and 1994, tax before the 2.6 percent limitation on premiums and credits increased from $461.1 million to $626.8 million. This represented a 36 percent increase during this period.

Between 1990 and 1994, the share of tax liability attributable to property and casualty insurers dropped from 63 percent to 61 percent. During this period, the percentage of total tax liability attributable to life insurers increased from nearly 31 percent to almost 34 percent. The tax liability of the remaining categories of insurers represented roughly 5 percent of total liability.

Tax Liability by Basis of Tax

Percentage of Tax from Premiums and "Income" Bases

As illustrated in Table 18, the premiums basis, as a percentage of total Article 33 tax liability before application of the tax limitation and credits, decreased overall from 64 percent in 1990 to 56 percent in 1994.

Between 1990 and 1994, the premiums basis, as a percentage of total tax liability, ranged from about 56 percent to 70 percent for property and casualty insurers. For life insurers, this percentage dropped from 56 percent in 1990 to 47 percent in 1994.

Tax Liability After Limitation and Credits

Tax Limitation

As shown in Table 19, the number of taxpayers whose tax liability was "capped" at 2.6 percent of gross premiums increased from 232 in 1990, peaked at 298 in 1993 and decreased to 277 in 1994. During this period, the value of the cap, or the limitation on tax liability, for all Article 33 taxpayers increased from $56.3 million in 1990 to $117.5 million in 1994. Property and casualty insurers, representing over 64 percent of the total value of the limitation in 1994, benefitted the most from the limitation.

Tax Credits

The number of taxpayers using credits increased from 296 in 1990 to 303 in 1991, dropped to 283 in 1993 and increased to 296 in 1994. The amount of credits used by Article 33 taxpayers equaled over $45 million in the 1990 tax year and decreased to $42 million in the 1991 tax year. Between 1991 and 1994, this amount of credits increased by 115 percent, to $90.9 million. This increase was almost entirely attributable to a huge increase in the amount of the retaliatory tax credit used by life insurers.

Retaliatory tax credits, which may be used only by domestic Article 33 taxpayers, represented a large portion of total credits used by life insurers between 1990 and 1994. In contrast, the retaliatory credit represented a smaller portion of the total amount of credits used by property and casualty insurers during the same period. This may be attributable to the high proportion of foreign to domestic property and casualty insurers.

Tax Liability After Tax Limitation and Credits

Table 19 also shows that tax liability after limitation and credits, including the temporary surcharge, equaled nearly $414 million in the 1990 tax year, and totaled over $481 million in the 1994 tax year.

Endnotes

1. For a more detailed description of the corporate franchise tax on insurance corporations, see "New York State Tax Structure: History and Comparative Analysis," prepared by the New York State Department of Taxation and Finance, Office of Tax Policy Analysis, August 1994.

2. Insurance companies may claim the following credits under Article 33: economic development zone wage and capital credits (Tax Law Sections 1511(g)(h)); life insurance company guarantee fund assessments (Tax Law section 1511(f)); special additional mortgage recording taxes paid (Tax Law Section 1511(e)); eligible business facilities (Tax Law Section 1511(d)); retaliatory taxes (Tax Law Section 1511 (c)); and fire insurance tax credits (Tax Law Section 1511(a)).

3. Tables 16 through 19 present statistics similar to those presented in the insurance tax liability table formerly included in the annual Statistical Report published by the Office of Tax Policy Analysis. These tables were last included in the 1988-89 Statistical Report for the 1986 tax year.

Appendix A: Data Sources

Appendix A explains the data sources used in this report.

Data Sources

Article 9-A

All tax statistics provided in this section of the report come from the Article 9-A Office of Tax Policy Analysis (OTPA) Study File. The study file includes data contained on Article 9-A corporate franchise tax returns for the liability year to which the study file pertains. This data file includes all timely filed and amended returns available at the time when the study file is created. No adjustments to the data are made for audit results.

Article 9

The data come from the Department of Taxation and Finance's Corporation Master Files for the tax years 1990-1994. A contracted processing bank provided the original data. All returns have been subjected to a basic calculations check necessary for verifying tax liability. However, the data are neither manually reviewed nor are missing data computed and added to the file. Therefore, these data are less reliable than that available from OTPA's other tax liability study files. Also, these data are extracted from the Department's Master File, as the file existed at a point in time, and may not include audit adjustments or amended or late filed returns.

Article 32

All tax statistics provided in this report come from data contained on bank tax returns. The tables are a tabulation of a database of all bank returns manually reviewed by OTPA. The data are collected and verified by OTPA for mathematical accuracy. Missing data are added where information exists. The database includes all timely filed and amended returns available at the time the database is created. There are no adjustments to the database for audit results. The statistics reflect surcharges (discussed in more detail below) imposed on bank tax liability.

Article 33

All tax statistics provided in this report are based solely on data as contained on insurance tax returns. The tables are derived from a database developed by OTPA. The report does not adjust the return data for audit results. The statistics reflect surcharges (discussed in more detail below).

Appendix B: Glossary

Appendix B provides a glossary of terms used in this report.

Liability Year - Articles 9A, 32, 33	Liability year corresponds to the corporate franchise tax return filing period. A liability year includes returns filed by taxpayers with business operating years that end on or after December 31, and end on or before November 30 of the subsequent year. For example, the 1993 liability year data used in this analysis encompasses tax years for calendar and fiscal year taxpayers with business operating years ending December 1993 through November 1994.
Liability Year - Article 9	All Article 9 taxpayers file on a calendar year basis.
MTA Surcharge	The report does not include the 17 percent temporary franchise tax surcharge imposed on taxpayers operating in the Metropolitan Commuter Transportation District (MCTD). The MCTD includes the counties of New York, Bronx, Kings, Queens, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester. Data users cannot determine the value of the MCTD surcharge from the statistical tables because tax liability data for business activity conducted in the MCTD is not readily available. Legislation enacted in 1994 (effective April 15, 1993) extended the MTA surcharge from December 31, 1993 to December 31, 1995.
Temporary Business Tax Surcharge	The tax statistics presented in this report include the temporary business tax surcharge. Beginning in 1990, the surcharge rate equaled 15 percent and applied to the post-credit liability of Articles 9-A, 9, 32 and 33 taxpayers. For Article 9 taxpayers, the surcharge was reduced to 12.5 percent beginning in tax year 1994. For Articles 9-A, 32 and 33 taxpayers, the surcharge was reduced to 12.5 percent for tax years ending after June 30, 1994 and before July 1, 1995. The surcharge decreased to

7.5 percent for tax years ending after June 30, 1995 and before July 1, 1996.

For Article 32 and Article 33 taxpayers, the tax statistics do not include the 2.5 percent surcharge that applied to pre-credit liability for tax years ending after June 30, 1989 and before July 1, 1990.

Appendix C: Detailed Article 9-A Summary Tables

See CorpTax97-Apndx C