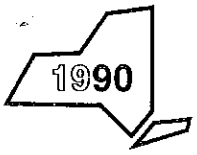

Instructions for Form CT-32-A

Combined Franchise Tax Return for Banking Corporations

Tax Law — Article 32

General Information

Each banking corporation or bank holding company is generally a separate taxable entity and must file its own tax return. However, a group of banking corporations and bank holding companies may be permitted or required to file a combined return to properly reflect the tax liability of these corporations under Article 32 of the Tax Law. If a combined return is permitted or required, you must file Forms CT-32-A and CT-32-B. In addition, each corporation in the combined group must file a separate Form CT-32.

If a banking corporation or bank holding company has been required or permitted to file a combined return, the corporation must continue to file a combined return until the facts affecting its combined reporting status materially change. If the facts materially change from the time the corporation was required or permitted to file on a combined return, the corporation must notify the Commissioner of Taxation and Finance of the change not later than 30 days after the close of its tax year. The Commissioner of Taxation and Finance will then notify the corporation whether it will be required or permitted to be included in a combined return.

When and Where to File

File your return within 2½ months after the end of your reporting period. Corporations reporting for the 1990 calendar year must file a return on or before March 15, 1991.

Mail returns to:

NYS Corporation Tax
Processing Unit
P.O. Box 1909
Albany, NY 12201-1909

If you cannot meet the filing deadline, ask for a six-month extension of time by filing Form CT-5.3 on or before the original due date.

Who May File Form CT-32-A

Corporations which may be permitted or required to file or to be included in a combined return

A banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity may be permitted or required to file or to be included in a combined return with the following:

— any banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity which owns or controls, directly or indirectly, 65% or more of its voting stock, and

— any banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity in which it owns or controls, directly or indirectly, 65% or more of the voting stock.

A banking corporation or bank holding company **not** exercising its corporate franchise or doing business in New York State in a corporate or organized capacity may be permitted or required to file or be included in a combined return with the following:

— any banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity which owns or controls, directly or indirectly, 65% or more of its voting stock, and

— any banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity in which it owns or controls, directly or indirectly, 65% or more of the voting stock.

The Commissioner of Taxation and Finance may permit or require the filing of a combined return by banking corporations or bank holding companies when 65% or more of the voting stock of each is owned or controlled, directly or indirectly, by the same interest, and at least one of the corporations is exercising its corporate franchise or doing business in New York State in a corporate or organized capacity.

A banking corporation or bank holding company which meets any of the 65% or more stock ownership requirements may be permitted or required to file or to be included in a combined return only if the Commissioner of Taxation and Finance determines that such filing is necessary to properly reflect the tax liability of such corporation or other corporations. In making his determination whether a combined return is necessary in order to properly reflect the tax liability of any one or more of the corporations, the Commissioner of Taxation and Finance will first determine whether the group of corporations under consideration is engaged in a unitary business. A corporation engaged in a unitary business with one or more of the corporations in the group may be permitted or required to file a combined return if the Commissioner of Taxation and Finance determines that:

— the corporation has intercorporate transactions with one or more of the corporations in the group which cause the improper reflection of the activity, business, income or assets within New York State of one or more of the corporations, or

— the corporation has an agreement, understanding, arrangement or transactions with one or more of the corporations in the group which cause the improper reflection of the activity, business, income or assets within New York State of one or more of the corporations.

Corporations required to file or to be included in a combined return

A banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity is **required** to file or to be included in a combined return with the following:

— any banking corporation or bank holding company, exercising its corporate franchise or doing business in New York State in a corporate or organized capacity, which owns or controls, directly or indirectly, 80% or more of the voting stock, and

— any banking corporation or bank holding company which is exercising its corporate franchise or doing business in New York State in a corporate or organized capacity in which it owns or controls, directly or indirectly, 80% or more of the voting stock.

However, a banking corporation or bank holding company exercising its corporate franchise or doing business in New York State in a corporate or organized capacity which meets the 80% or more stock ownership requirement may be excluded from a combined return, if the corporation or the Commissioner of Taxation and Finance shows that the inclusion of such a corporation in the combined return fails to properly reflect the tax liability of such corporation.

Tax liability may be deemed to be improperly reflected because of intercorporate transactions or some agreement, understanding, arrangement or transaction whereby the activity, business, income or assets of the corporation within New York State is improperly or inaccurately reflected.

Any combination of banking corporations and bank holding companies which meets the 80% or more stock ownership test is required to file a combined return and may make a written request for a preliminary review as to which corporations are to be included in the combined return. The request must comply with the requirements set forth in the instructions below that describe the procedures for requesting permission to file a combined return.

In no event may a banking corporation or bank holding company, which meets the 65% or more but less than 80% stock ownership requirement, file or be included in a combined return without the consent of the Commissioner of Taxation and Finance.

Corporations that cannot be included in a combined return:

— a banking corporation that elected under section 1452(d) of the Tax Law to be taxed under Article 9-A of the Tax Law for those years such election is in effect.

— a banking corporation whose largest tax is computed on taxable assets at the rate of 1/25 or 1/50 of a mill.

— a banking corporation or bank holding company whose accounting period differs from the accounting period adopted by the combined group.

— a banking corporation or bank holding company that does not meet the 65% or more stock ownership requirement.

Rules for Alien Corporations

— A banking corporation or bank holding company organized under the laws of a country other than the U.S. may not file a combined return with a banking corporation or bank holding company organized under the laws of the U.S., New York State or any other state.

Change in Composition of a Combined Group

Every banking corporation and bank holding company that is required to be included in a combined return or which has received the permission of the Commissioner of Taxation and Finance to be included in a combined return must continue to be included in the combined return unless it has been permitted or required to be excluded from the combined return.

Any corporation, except one that is required to be included in a combined return, that is included in a combined return without the prior consent of the Commissioner of Taxation and Finance may be excluded from the combined return and taxed on a separate basis.

Any corporation that is required to be included in a combined return or has obtained the consent of the Commissioner of Taxation and Finance to be included in a combined return but files on a separate basis may be taxed on a combined basis.

Requesting Consent to File a Combined Return

A request to the Commissioner of Taxation and Finance to file an initial combined return, except where a combined return is required to be filed, or to change the composition of an existing combined return must be made in writing and addressed to:

NYS Tax Department
COAB-Corporation Tax
W.A. Harriman Campus
Albany, NY 12227

This written request must be received by the Commissioner of Taxation and Finance not later than 30 days after the close of the tax year in question. The written request must include the following:

— the corporate organization chart of the requesting corporation setting forth the name of each corporation and the percentage of voting stock owned or controlled, directly or indirectly, by the requesting corporation and the name of each corporation which owns or controls, directly or indirectly, the voting stock of the requesting corporation and the percentage of such stock so owned;

— for each of the bank holding companies, banking corporations and other corporations which own or control, directly or indirectly, 65% or more of the voting stock of the requesting corporation or whose voting stock is 65% or more owned or controlled, directly or indirectly, by the requesting corporation or by the same interest as the requesting corporation,

the exact name,

address (including ZIP code),

employer identification number,

date of incorporation,

state or country of incorporation,

the date business began in New York State, if applicable, and in the case of a corporation described in section 1452(a)(9) of the Tax Law, a description of the activities in which the corporation is principally engaged which establishes that such activities are permissable activities within the contemplation of section 1452(a)(9) of the Tax Law;

— a statement providing details as to why only those corporations which are required to be included in a combined return, those corporations requesting permission to be included in a combined return and those corporations requesting permission to be excluded from a combined return will properly reflect the tax liability of the group of corporations and of each corporation to be included in the group and of each corporation to be excluded from the group;

— for at least the first nine months of the tax year covered in the request, using spread sheets if necessary, information that will clearly identify on a corporation-by-corporation basis, the nature and amount of each category of intercorporate transactions between each one of the corporations which meets the 65% or more stock ownership requirement with each of the other corporations which reflects:

- the source and amount of gross receipts and the portion derived from such transactions, and

- the source and amount of total services and other transactions of each corporation and the portion related to transactions with each of the other corporations, and

- any other data that shows the degree of involvement of the corporations with each other.

Unitary Business

In deciding whether a corporation is part of a unitary business, the Commissioner of Taxation and Finance will consider whether the activities in which the corporation engages are related to the activities of other corporations in the group, or whether the corporation is engaged in the same or related lines of business as other corporations in the group. It is presumed that corporations which are eligible to be included in a combined return meet the unitary business requirement.

Intercorporate Transactions

In deciding whether there are intercorporate transactions which cause the improper reflection of the activity, business, income or assets of a corporation within New York State, the Commissioner of Taxation and Finance will consider transactions directly connected with the business conducted by the corporations, such as:

— performing services for other corporations in the group,

— providing funds to other corporations in the group, or

— performing related customer services using common facilities and employees.

Service functions will not be considered when they are incidental to the business of the corporation providing such services. Service functions include, but are not limited to, accounting, legal and personnel services. It is not necessary that there be intercorporate transactions between any one member with every other member of the group. For purposes of the intercorporate transactions test, it is essential that each corporation have intercorporate transactions with one other combinable corporation or with a combined or combinable group of corporations.

Specific Instructions for Form CT-32-A

Line A - After completing your return, enter the amount of your payment. Your payment should be the full amount shown on line 16.

Schedule I

Minimum Tax

Line 4 - Each taxpayer included in the combined return, other than the taxpayer paying the combined tax, is required to pay the minimum tax of $250. When the combined tax is $250, the taxpayer paying the combined tax will also be required to pay the minimum tax of $250. A corporation which would not otherwise be taxable in New York State except for its inclusion in a combined return is **not** required to pay the minimum tax of $250.

Tax Surcharge

Line 8 - Section 1455-A of the Tax Law as amended by Chapter 190 of the laws of 1990 provides for a 15% tax surcharge on banking corporations taxable under Article 32. The 15% tax surcharge applies to tax years ending after June 30, 1990, and before July 1, 1992. It is computed **after** the deduction of any tax credits allowable under Article 32. The 15% tax surcharge cannot be imposed upon any taxpayer for more than 24 months.

Corporations which file as a member of a combined group should compute the 15% tax surcharge on Form CT-32-A, line 8, not on Form CT-32. See TSB-M-90(8)C for additional information.

Line 13 - When prepayments exceed total tax, line 11, proceed to overpayment section, lines 17a through 17e.

Late Filing and Late Payment — Interest and Penalty

Line 14 — Late Filing — Interest — If you do not pay the tax due on or before the due date (determined without regard to any extension of time), you must pay interest on the amount of the underpayment from the due date to the date paid. Determine the interest rate in accordance with Part 603 of the Tax Regulations. If you need assistance, call toll free (from New York State only) 1 800 CALL TAX (1 800 225-5829). From outside New York State call (518) 438-8581. Interest will be compounded daily.

Line 15a — Late Filing and/or Late Payment — Additional Charges — Additional charges for late filing are computed on the amount of tax less any payment made on or before the due date.

a. If you do not file a return when due or if the application for extension is invalid, add to the tax 5% per month up to 25% (section 1085 (a)(1)(A)).

b. If you do not file a return within 60 days of the due date, the addition to tax cannot be less than the smaller of $100 or 100% of the amount required to be shown as tax (section 1085 (a)(1)(B)).

c. If you do not pay the tax shown on a return, add to the tax ½% per month up to 25% (section 1085 (a)(2)).

d. The total of the additional charges in *a* and *c* may not exceed 5% for any one month except as provided for in *b* (section 1085 (a)). If you think you are not liable for these additional charges, attach a statement to your return explaining the delay in filing, payment, or both (section 1085).

Line 15b — Penalty for Underpaying Estimated Tax — Every corporation whose New York State franchise tax liability can reasonably be expected to exceed $1,000 must file a declaration of estimated tax, Form CT-400. A penalty will be imposed if a taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment payment of estimated tax, see Form CT-222, *Underpayment of Estimated Tax by Corporations*.

Metropolitan Transportation Business (MTB) Tax Surcharge

Line 18 — Any corporation taxable under Article 32 that does business in the Metropolitan Commuter Transportation District (MCTD) must file Form CT-32-M and pay an MTB tax surcharge. The MCTD includes the counties of New York, Bronx, Kings, Queens, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester. Corporations not doing business in the MCTD must disclaim liability for the MTB tax surcharge by answering *No* and do not need to file Form CT-32-M.

Schedules J through M

Enter the required information for up to four subsidiaries. If you have more than four subsidiaries, attach a separate sheet with the information.

Computation of Combined Tax

Each corporation included in the combined return is required to compute entire net income, alternative net income, and taxable assets on Form CT-32 as if it had filed its federal income tax return on a separate basis. When computing combined entire net income (Schedule K) and combined alternative net income (Schedule L) on Form CT-32-A, eliminated all intercorporate dividends and intercorporate transactions between the corporations included in the combined return. Intercorporate profits are deferred, capital losses are to be offset against capital gains and contributions are to be deducted as if the corporations in the group had filed a consolidated federal income tax return. When computing combined taxable assets (Schedule M) on Form CT-32-A, eliminate intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness between the corporations included in the combined return.

Combined taxable assets do not include the taxable assets of a corporation which has an outstanding net worth certificate issued to the Federal Savings and Loan Insurance Corporation in accordance with section 406(f)(5) of the Federal National Housing Act, as amended, (12 USC 1729(f)(5)) or issued to the Federal Deposit Insurance Corporation in accordance with section 13(i) of the Federal Deposit Insurance Act, as amended, (12 USC 1823(i)) for that portion of the tax year the certificate is outstanding. Each corporation whose total assets are comprised of 20% or more of interbank placements must exclude from total assets the first $500 million of interbank placements.

Computation of Combined Allocation Percentages

Each corporation included in the combined return is required to compute the entire net income allocation percentage, alternative entire net income allocation percentage and taxable assets allocation percentage on Form CT-32 as if it had filed its federal income tax return on a separate basis. When computing the combined allocation percentages (Schedule J) on Form CT-32-A, the payroll, receipts and deposits factors in each allocation percentage are computed as though the corporations included in the combined return were one corporation.

Eliminate intercorporate dividends and all other intercorporate transactions including intercorporate receipts and intercorporate deposits between the corporations included in the combined return. Attach a list of all intercorporate eliminations showing the amount of the intercorporate transactions and the corporations involved in each transaction.

IBF Adjustment to Entire Net Income, Alternative Entire Net Income and Allocation Percentages

If any corporation in a combined return modified entire net income and alternative entire net income pursuant to section 1453(f), all corporations in the combined return are deemed to have made such modification and are required to compute entire net income, alternative entire net income and the allocation percentages accordingly.

If any corporation in a combined return computed entire net income and alternative entire net income pursuant to section 1454(b)(2), all corporations in the combined return are deemed to have made such election and are required to compute entire net income, alternative entire net income and the allocation percentages accordingly.

Instructions for Form CT-32-B,

Computation of Combined Entire Net Income

The Department of Taxation and Finance must provide to the Legislature a wide range of statistical data from the CT-32 and CT-32-A returns filed annually by all banking corporations doing business in New York State.

Each combined group must complete Form CT-32-B to enable the department to gather this data.

The data supplied by this schedule will not be reported for individual banks; it will be submitted in a summary format.

Combine the figures from each line of the individual Form CT-32, Schedule B, for each member of the combined group and enter on the appropriate line on Form CT-32-B.

Also provide the data requested at the bottom of the schedule of Form CT-32-B pertaining to combined assets. The information should be taken from Form CT-32, Schedule D.

Change of Business Information — If there have been any changes in your business name, ID number, mailing address, business address, telephone number or owner/officer information, complete the enclosed Form DTF-95, *Change of Business Information*. If no form is enclosed, call toll free (from within New York State only) 1 800 462-8100. From areas outside New York State, call (518) 438-1073. If your address has changed, check the box next to the name and address on Form 32-A and complete and submit Form DTF-95.