



Transitional Filing Provisions for Taxpayers Affected By Corporate Tax Reform Legislation

This memorandum explains transitional filing provisions for the 2014 and 2015 tax years for Article 32 and Article 9-A taxpayers affected by the corporate tax reform legislation that was signed into law as part of the 2014-2015 New York State budget (Part A of Chapter 59 of the Laws of 2014).

Significant changes were made to the Tax Law as a result of corporate tax reform that require transitional tax filing provisions for the affected corporations. This memorandum discusses the tax filing changes applicable to:

- Article 32 (franchise tax on banking corporations),
- Article 9-A (franchise tax on general business corporations),
- metropolitan business tax surcharge (MTA surcharge),
- New York S corporations,
- estimated tax payments,
- domestic corporations subject to the organization tax, and
- foreign corporations subject to the license and maintenance fees.

For more information about corporate tax reform, see our Web site at www.tax.ny.gov.

2014 transitional filing provisions for Article 32 franchise tax filers

Effective for tax years beginning on or after January 1, 2015, Article 32 of the Tax Law is repealed and corporations previously subject to tax under Article 32 are subject to tax under Article 9-A of the Tax Law. As a result, these corporations will no longer file Article 32 tax returns, but will file Article 9-A tax returns instead.

For tax years beginning before 2015, use the following provisions for filing 2014 Article 32 franchise and MTA surcharge returns. For tax years beginning after 2014, follow the information provided for Article 9-A taxpayers under the heading ***2015 transitional filing provisions for Article 9-A franchise tax filers*** on page 2.

- For any 12-month tax year that began before January 1, 2015, including fiscal tax years, complete an Article 32 franchise tax return (and MTA surcharge return, if applicable) according to the Tax Law in effect before January 1, 2015¹.
- On the last Article 32 return filed, if the corporation will be subject to New York State franchise tax or included in a combined group filing a New York State combined tax return in 2015, mark an **X** in the box that indicates the corporation will be filing under Article 9-A for 2015. **Do not mark** an **X** in the final return box **unless** the corporation is no longer subject to any franchise tax in New York or will **not** be included in any combined group filing a New York State tax return.
- For short tax years that began in 2014, use the 2014 Article 32 tax form regardless of when the tax year ends.
- Any amount of overpayment of franchise tax or MTA surcharge claimed on a taxpayer's last return filed under Article 32 of the Tax Law will be treated as an overpayment of franchise tax or surcharge under Article 9-A of the Tax.

2015 transitional filing provisions for Article 9-A franchise tax filers

For tax years beginning on or after January 1, 2015, all corporations subject to tax under Article 9-A (including corporations previously taxable under Article 32) must file using the following forms, as applicable:

- Form CT-3, *General Business Corporation Franchise Tax Return*
- Form CT-3-A, *General Business Corporation Combined Franchise Tax Return*
- Form CT-3-S, *New York S Corporation Franchise Tax Return*
- Form CT-3-M, *General Business Corporation MTA Surcharge Return*

Form CT-4, *General Business Corporation Franchise Tax Return Short Form*, has been discontinued.

The MTA surcharge was made permanent for Article 9-A. The rates, apportionment method, and rules regarding the imposition of the MTA surcharge, including nexus and the tax base, for Article 9-A taxpayers have changed. For more information regarding these changes, see the department's Web [site](#).

Corporations must use a 2015 tax form for tax years beginning on or after January 1, 2015, and before January 1, 2016. **Any** tax return submitted on an incorrect form, or on a form for a prior year, will **not** be processed, and will **not** be considered timely filed. As a result, penalties and interest may be incurred.²

¹ Fiscal year taxpayers with a 12-month tax year that begins in 2014 but ends in 2015 are **not** permitted to file a short period return solely as a result of corporate tax reform.

² An exception to this rule applies to certain New York S corporations filing for a short period beginning on or after January 1, 2015. See the *New York S corporation short period returns* section, [below](#).

Fiscal year taxpayers. Changes to the Tax Law as a result of corporate tax reform do **not** affect a fiscal tax year beginning before January 1, 2015. Fiscal year taxpayers with a 12-month tax year that begins in 2014 but ends in 2015 are **not** permitted to file a short period return for 2014 solely as a result of corporate tax reform.

Filing combined reports when members have different tax years. When a member of a combined group has a tax year that differs from that of its designated agent, the member's tax year that ends within the designated agent's tax year is included in the combined report. However, any corporation with a fiscal tax year that begins in 2014 and ends in 2015 may not be included in a designated agent's 2015 calendar year combined report.

Taxpayers using a 52-53 week accounting period. If a corporation reports on the basis of a 52-53 week accounting period, and that period starts within seven days from the first day of a calendar month, its tax year is deemed to begin on the first day of such calendar month. For these corporations, if the 52-53 week accounting period starts within seven days from January 1, 2015, the tax year will be deemed to have begun on January 1, 2015. Therefore, the Tax Law changes resulting from corporate tax reform will apply, and the return must be filed using the applicable 2015 form.

New York C corporation short period returns. If a New York C corporation taxpayer is filing a tax return for a short period that begins on or after January 1, 2015 (for a reason other than [terminating the New York or federal S election](#) or [corporate dissolution](#)), and the 2015 tax form is not available on the department's Web [site](#) at the time the New York C corporation is required to file the return, **do not** file using the 2014 tax form. Instead, the New York C corporation must file a request for an extension of time to file for the short period, and wait until the 2015 tax form becomes available. If an additional three-month extension is necessary, provide the following explanation on Form CT-5.1, *Request for Additional Extension of Time to File*: "2015 form not yet available."

New York S corporation short period returns. If a New York S corporation taxpayer is filing a tax return for a short period that begins on or after January 1, 2015 (for a reason other than [terminating the New York or federal S election](#) or [corporate dissolution](#)), and the 2015 Forms CT-3-S and CT-34-SH are not available on the department's Web [site](#) at the time the S corporation is required to file the return, the S corporation must file a Form CT-5.4, *Request for Six-Month Extension to File New York S Corporation Franchise Tax Return*, and wait until the 2015 forms become available. If, within 30 days of the expiration of the 6-month extension of time to file, the 2015 Forms CT-3-S and CT-34-SH are still not available on the department's Web [site](#), the S corporation may file its return using the 2014 Forms CT-3-S and CT-34-SH by crossing out the year 2014 and writing in the year 2015. This provision only applies to short period CT-3-S filers who have filed a valid 6-month extension. **This instruction does not apply to CT-3 or CT-3-A filers.**

If a New York S corporation is filing a 2015 short period return, a 2014 Form CT-3-S-ATT, *Attachment to Form CT-3-S* may **not** be used for a period that begins on or after January 1, 2015. The New York S corporation must provide a 2015 Form CT-3-S-ATT to its shareholders when it becomes available on the department's Web [site](#).

Terminating New York or federal S election. If a New York S corporation is terminating its federal or New York S election on a day other than the first day of the tax year, the tax year is divided into two tax periods (an S short year and a C short year). The corporation must file a Form CT-3-S for the New York S short year and a Form CT-3 or CT-3-A for the New York C short year. The due date of the New York S corporation short year return (Form CT-3-S) is the same as the New York C corporation short year, even though they are treated as separate short tax years.

Corporate dissolutions. If a corporation wishes to dissolve prior to the close of a tax year that, for federal income tax purposes, begins on or after January 1, 2015, and before December 31, 2015, and the 2015 form is not yet available on the department's Web [site](#), **it should not file a 2014 return.** Instead, the corporation must make a payment of its estimated final tax due. The payment should be estimated based on the corporation's final estimated tax liability under the 2015 corporate tax reform rules and submitted in conjunction with an affidavit signed by an officer of the corporation. The affidavit should describe, in detail, the calculation of the final tax due and include a statement affirming to file a final return no later than 30 days after the 2015 form has been made available on the department's Web [site](#). The estimated final tax payment and signed affidavit should be sent to the following address:

The New York State Department of Taxation and Finance
Corporation Tax Dissolution Unit
WA Harriman Campus
Albany, NY 12227

If you have any questions about this procedure, please call the Department of Taxation and Finance, Corporate Dissolution Unit at (518) 485-2639.

Filing dates, estimated tax payments, and extensions of time to file

The filing dates, estimated tax calculations, and rules regarding requests for additional time to file for Article 9-A taxpayers were **not** amended as a result of corporate tax reform. However, when determining the amounts of the second, third, and fourth estimated tax and tax surcharge payments for tax year 2015, the effects of corporate tax reform and changes to the computation of the MTA surcharge should be taken into consideration. For information on these rules, see Tax Law sections 211.1, 213, 213-a, and 20 NYCRR Subpart 6-4, and Part 7.

Mandatory first installment of estimated tax for 2015. The mandatory first installment for a tax year beginning on or after January 1, 2015, is paid with the applicable 2014 tax return³ at the time it is filed or with the applicable extension form⁴ if you request an extension of time to file your return. The mandatory first installment must be based on the tax or properly estimated tax shown on your 2014 filing. **Law changes that take effect for tax years beginning on or after January 1, 2015, are not required to be taken into consideration for this payment.**

Mandatory first installment of MTA surcharge for 2015. The mandatory first installment of MTA surcharge for a tax year beginning on or after January 1, 2015, is paid with the applicable 2014 MTA surcharge return⁵ at the time it is filed, or with the applicable extension, if you request an extension of time to file your return⁶. The mandatory first installment should be based on the MTA surcharge or properly estimated MTA surcharge shown on the 2014 filing. **Changes to the computation of the MTA surcharge for tax years beginning on or after January 1, 2015, are not required to be taken into consideration for this payment.**

Second, third, and fourth installments of estimated franchise tax and MTA surcharge. The remaining installments of estimated franchise tax and MTA surcharge for 2015 should be paid with Form CT-400, *Estimated Tax for Corporations*, on the dates determined in accordance with 20 NYCRR section 7-2.3. When determining the amount of the second, third, and fourth payments for tax years that begin on or after January 1, 2015, **the effects of corporate tax reform and changes to the computation of the MTA surcharge should be taken into consideration and reflected in these estimated payments.** To determine the amount of estimated tax and tax surcharge due in these installments, subtract the first installment payment from the estimated tax and tax surcharge due, and divide the result by three.

Article 9, Section 180 - Organization Tax and Taxes on Changes of Capital for Domestic Corporations

The organization tax and taxes on changes of capital imposed on domestic corporations under Article 9, section 180, of the Tax Law have been repealed for tax years beginning on or after January 1, 2015. Additionally, the recomputation of the organization tax is not required for any changes in capital structure that occur on or after January 1, 2015.

These taxes were previously collected when a *Certificate of Incorporation* was filed with the New York State Department of State. The New York State Department of State will still be collecting its separate \$125 fee with the filing of the *Certificate of Incorporation*.

See the Department of State's Web [site](#), Business Corporation Law sections 104-A and 402, and section 108 of [Part A of Chapter 59](#) of the Laws of 2014 for more information.

³ Form CT-3, CT-4, CT-3-A, CT-3-S, CT-32, or CT-32-S.

⁴ Form CT-5, CT-5.3 or CT-5.4.

⁵ Form CT-3M/4M or CT-32-M

⁶ Form CT-5, CT-5.3 or CT-5.4.

Article 9, Section 181 - License and Maintenance Fees for Foreign Corporations

The license and maintenance fees imposed on foreign corporations under Article 9, section 181, of the Tax Law have been repealed for tax years beginning on or after January 1, 2015. Foreign corporations no longer need to file Form CT-240, *Foreign Corporation License Fee Return* or Form CT-245, *Maintenance Fee and Activities Return*, for tax years beginning on or after January 1, 2015. Additionally, recomputation of the license fee is not required for changes in capital structure that occur on or after January 1, 2015. Any license or maintenance fees properly paid for tax years prior to 2015 will not be refunded.

Any amount of overpayment of license and maintenance fees on foreign corporations imposed by section 181 of the Tax Law, as of the first tax year beginning on or after January 1, 2015, is treated as if it were an overpayment under Article 9-A of the Tax Law for purposes of application against the tax liability or estimated tax if the corporation files a Form CT-3, CT-3-A, CT-3-M or CT-3-S.

(Tax Law: Part A of Chapter 59 of the Laws of 2014; sections 211.1, 213, 213-a, 213-b, 1460, 1461, 1462, and 1463; **Business Corporation Law:** sections 104-A and 402; **Regulations:** sections 2-1.4, 6-1.2, 6-3.2(b), 17-1.4, and 21-1.2, Subpart 6-4, and Part 7)

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.