2017 New York Laws
TAX - Tax
Article 9-A - (Tax) FRANCHISE TAX ON BUSINESS CORPORATIONS
208 - Definitions.
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208. Definitions. As used in this article:

9. The term "entire net income" means total net income from all sources, which shall be presumably the same as the entire taxable income, which, except as hereinafter provided in this subdivision,

(i) the taxpayer is required to report to the United States treasury department, or

(ii) the taxpayer would have been required to report to the United States treasury department if it had not made an election under subchapter s of chapter one of the internal revenue code, or

(iii) the taxpayer, in the case of a corporation which is exempt from federal income tax (other than the tax on unrelated business taxable income imposed under section 511 of the internal revenue code) but which is subject to tax under this article, would have been required to report to the United States treasury department but for such exemption, or

(iv) in the case of an alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code is effectively connected with the conduct of a trade or business within the

United States as determined under section 882 of the Internal Revenue Code.

(a) Entire net income shall not include:

(3) bona fide gifts,

(4) income and deductions with respect to amounts received from school districts and from corporations and associations, organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, for the operation of school buses,

(5) (i) any refund or credit of a tax imposed under this article, article twenty-three, or former article thirty-two of this chapter, for which tax no exclusion or deduction was allowed in determining the taxpayer's entire net income under this article, article twenty-three, or former article thirty-two of this chapter for any prior year, or (ii) any refund or credit of a tax imposed under sections one hundred eighty-three, one hundred eighty-three-a, one hundred eighty-four or one hundred eighty-four-a of this chapter;

(6) any amount treated as dividends pursuant to section seventy-eight of the internal revenue code;

(7) that portion of wages and salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of section two hundred eighty-C of the internal revenue code.

(9) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which is included in the taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(10) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer could have excluded from federal taxable income had it not made the election provided for in such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(11) the amount deductible pursuant to paragraph (j) of this subdivision; and

(12) upon the disposition of property to which paragraph (j) of this subdivision applies, the amount, if any, by which the aggregate of the amounts described in subparagraph ten of paragraph (b) of this subdivision attributable to such property exceeds the aggregate of the amounts described in paragraph (j) of this subdivision attributable to such property; and

(14) The amount deductible pursuant to paragraph (l) of this subdivision.

(16) In the case of a taxpayer subject to the modification provided by subparagraph sixteen of paragraph (b) of this subdivision, the amount required to be recaptured pursuant to subsection (d) of section 179 of the internal revenue code with respect to property upon which such modification was based.

(17) for taxable years beginning after December thirty-first, two thousand two, the amount deductible pursuant to paragraph (n-1) of this subdivision.

(18) the amount of income or gain included in federal taxable income of a taxpayer that is a partner in a qualified entity or is a qualified

entity that is located both within and without a New York state innovation hot spot, to the extent that the income or gain is attributable to the operations of a qualified entity at or as part of the New York state innovation hot spot as provided in section thirty-eight of this chapter.

(19) the amount computed pursuant to paragraph (r), (s) or (t) of this subdivision, but only the amount determined pursuant to one of such paragraphs.

(b) Entire net income shall be determined without the exclusion, deduction or credit of:

(1) in the case of an alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code, (i) any part of any income from dividends or interest on any kind of stock, securities or indebtedness, but only if such income is treated as effectively connected with the conduct of a trade or business in the United States pursuant to section 864 of the internal revenue code, (ii) any income exempt from federal taxable income under any treaty obligation of the United States, but only if such income would be treated as effectively connected in absence of such exemption provided that such treaty obligation does not preclude the taxation of such income by a state, or (iii) any income which would be treated as effectively connected if such income were not excluded from gross income pursuant to subsection (a) of section 103 of the internal revenue code;

(2) any part of any income from dividends or interest on any kind of stock, securities or indebtedness,

(3) taxes on or measured by profits or income paid or accrued to the United States or any of its possessions, territories or commonwealths, including taxes in lieu of any of the foregoing taxes otherwise generally imposed by any possession, territory or commonwealth of the United States,

(3-a) taxes on or measured by profits or income, or which include profits or income as a measure, paid or accrued to any other state of the United States, or any political subdivision thereof, or to the District of Columbia, including taxes expressly in lieu of any of the foregoing taxes otherwise generally imposed by any other state of the United States, or any political subdivision thereof, or the District of Columbia;

(4) taxes imposed under this article and article thirty-two as in effect on December thirty-first, two thousand fourteen and sections one hundred eighty-three, one hundred eighty-three-a, one hundred eighty-four and one hundred eighty-four-a of this chapter,

(4-a)(A) in those instances where a credit for the special additional mortgage recording tax credit is allowed under subdivision nine of section two hundred ten-B of this article, the amount allowed as an exclusion or deduction for the special additional mortgage recording tax

imposed by subdivision one-a of section two hundred fifty-three of this chapter in determining the entire taxable income which the taxpayer is

required to report to the United States treasury department, and (B) unless the credit allowed pursuant to subdivision nine of section two hundred ten-B of this article is reflected in the computation of the gain or loss so as to result in an increase in such gain or decrease of such loss, for federal income tax purposes, from the sale or other disposition of the property with respect to which the special additional mortgage recording tax imposed pursuant to subdivision one-a of section two hundred fifty-three of this chapter was paid, the amount of the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of this chapter which was paid and which is reflected in the computation of the basis of the property so as to result in a decrease in such gain or increase in such loss for federal income tax purposes from the sale or other disposition of the property with respect to which such tax was paid.

(6) any amount allowed as a deduction for the taxable year under section 172 of the internal revenue code, including carryovers of deductions from prior taxable years.

(8) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer claimed as a deduction in computing its federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(9) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer would have been required to include in the computation of its federal taxable income had it not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(10) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code, property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four and property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine, the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code;

(11) upon the disposition of property to which paragraph (j) of this subdivision applies, the amount, if any, by which the aggregate of the amounts described in such paragraph (j) attributable to such property exceeds the aggregate of the amounts described in subparagraph ten of this paragraph attributable to such property.

(15) Real property taxes paid on qualified agricultural property and deducted in determining federal taxable income, to the extent of the amount of the agricultural property tax credit allowed under subdivision eleven of section two hundred ten-B of this article.

(16) In the case of a taxpayer which is not an eligible farmer as defined in paragraph (b) of subdivision eleven of section two hundred ten-B of this article, the amount of any deduction claimed pursuant to section 179 of the internal revenue code with respect to a sport utility vehicle which is not a passenger automobile as defined in paragraph 5 of subsection (d) of section 280F of the internal revenue code.

(17) for taxable years beginning after December thirty-first, two thousand two, in the case of qualified property described in paragraph two of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in paragraph (q) of this subdivision, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), which was placed in service on or after June first, two thousand three, the amount allowable as a deduction under section 167 of the internal revenue code.

(18) Premiums paid for environmental remediation insurance, as defined in section twenty-three of this chapter, and deducted in determining federal taxable income, to the extent of the amount of the environmental remediation insurance credit allowed under such section twenty-three and subdivision nineteen of section two hundred ten-B of this article.

(19) The amount of any deduction allowed pursuant to section one

hundred ninety-nine of the internal revenue code.

(20) The amount of any federal deduction for taxes imposed under article twenty-three of this chapter.

(20-a) The amount of any federal deduction for the excise tax on telecommunication services to the extent such taxes are used as the basis of the calculation of the tax-free NY area excise tax on telecommunication services credit allowed under subdivision forty-four of section two hundred ten-B of this article.

(21) The amount of any federal deduction for real property taxes to the extent such taxes are used as the basis of the calculation of the real property tax credit for manufacturers allowed under subdivision forty-three of section two hundred ten-B of this article.

(22) the amount of any deduction for charitable contributions allowed under section one hundred seventy of the internal revenue code to the extent such contributions are used as the basis of the calculation of the farm donations to food pantries credit under subdivision fifty-two of section two hundred ten-B of this article.

(c-1)(1) Notwithstanding any other provision of this article, in the case of a taxpayer which is a foreign air carrier holding a foreign air carrier permit issued by the United States department of transportation pursuant to section four hundred two of the federal aviation act of nineteen hundred fifty-eight, as amended, and which is qualified under subparagraph two of this paragraph, entire net income shall not include, and shall be computed without the deduction of, amounts directly or indirectly attributable to, (i) any income derived from the international operation of aircraft as described in and subject to the provisions of section eight hundred eighty-three of the internal revenue code, (ii) income without the United States which is derived from the operation of aircraft, and (iii) income without the United States which is of a type described in subdivision (a) of section eight hundred eighty-one of the internal revenue code except that it is derived from sources without the United States. Entire net income shall include income described in clauses (i), (ii) and (iii) of this subparagraph in the case of taxpayers not described in the previous sentence.

(2) A taxpayer is qualified under this subparagraph if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered (if not in the same country as its major base of operations) are not subject to any income tax or other tax based on or measured by income or receipts imposed by such foreign country or countries or any political subdivision thereof, or if so subject to such tax, are provided an exemption from such tax equivalent to that provided for herein.

(c-2) Adjustments by qualified public utilities. (1) In the case of a taxpayer which is a qualified public utility, entire net income shall be

computed with the adjustments set forth in this paragraph.

(2) Definitions. (A) Qualified public utility. The term "qualified public utility" means a taxpayer which: (i) on December thirty-first, nineteen hundred ninety-nine, was subject to the ratemaking supervision of the state department of public service, and (ii) for the year ending on December thirty-first, nineteen hundred ninety-nine, was subject to tax under former section one hundred eighty-six of this chapter.

(B) Transition property. The term "transition property" means property placed in service by the taxpayer before January first, two thousand, for which a depreciation deduction is allowed under section one hundred sixty-seven of the internal revenue code.

(3) Federal depreciation disallowed. With respect to transition property, the deduction for federal income tax purposes for depreciation shall not be allowed.

(4) New York depreciation. With respect to transition property, a deduction shall be allowed for the depreciation expense shown on the books and records of the taxpayer for the taxable year and determined in accordance with generally accepted accounting principles.

(5) Regulatory assets. A deduction shall be allowed for amounts recognized as expense on the books and records of the taxpayer for the taxable year, which amounts were recognized as expense for federal income tax purposes in a taxable year ending on or before December thirty-first, nineteen hundred ninety-nine, where: (A) such amounts represent expenditures which, when made, were charged to a deferred debit account or similar asset account on the books and records of the taxpayer, and where (B) the recognition of expense on the books and records of the taxpayer is matched by revenue stemming from a procedure or adjustment allowing the recovery of such expenditures, and where (C) such revenue is recognized for federal income tax purposes in the taxable year.

(6) Basis for gain or loss. (A) Recognition transactions. (i) General rule - book basis. Except as provided in subclause (ii) of this clause, where transition property is sold or otherwise disposed of in the taxable year in a transaction of the type requiring recognition of gain or loss for federal income tax purposes, the basis for determining the amount of such gain or loss under this article shall be the cost of the property less the accumulated depreciation on the property determined on the books and records of the taxpayer in accordance with generally accepted accounting principles.

(ii) Qualified gain - New York basis. Where a sale or disposition described in subclause (i) of this clause results in recognition of gain for federal income tax purposes, and where either (I) such recognition occurs in a taxable year ending after nineteen hundred ninety-nine and before two thousand ten, or (II) such recognition is with respect to a nuclear electric generating facility, the basis for determining the

amount of such gain under this article shall be the cost of the property less the aggregate of the New York depreciation deductions on the property determined under subparagraph four of this paragraph.

(iii) No conversion of gain to loss. In the event that the basis determined under subclause (ii) of this clause results in determination of a loss on the sale or disposition of the property, no gain or loss shall be recognized under this article with respect to such sale or disposition.

(B) Nonrecognition transactions. (i) Carryover basis. (I) where transition property is disposed of ("original disposition") in a transaction of a type requiring deferral of recognition of gain or loss for federal income tax purposes, and where (II) there is a subsequent recognition of gain or loss for federal income tax purposes ("clause B gain or loss"), the amount of which is determined by reference, in whole or in part, to the basis of such transition property ("underlying transition property"), then (III) the amount of such clause B gain or loss under this article shall be adjusted as provided in subclause (ii) or (iii) of this clause.

(ii) General rule - book basis adjustment. Except as provided in subclause (iii) of this clause, the amount of clause B gain shall be reduced, or the amount of clause B loss increased, by the amount by which the book basis of the underlying transition property on the date of original disposition (determined using the provisions of subclause (i) of clause (A) of this subparagraph) exceeds the federal income tax basis of such property on such date.

(iii) Qualified gain - New York basis adjustment. Where clause B gain either (I) occurs in a taxable year ending after nineteen hundred ninety-nine and before two thousand ten, or (II) is with respect to a nuclear electric generating facility, the amount of such gain under this article shall be reduced, but not below zero, by the amount by which the New York basis of the underlying transition property on the date of original disposition (determined using the provisions of subclause (ii) of clause (A) of this subparagraph) exceeds the federal income tax basis of such property on such date.

(iv) Application to replacement property and transferee taxpayers. This clause shall apply whether the clause B gain or loss: (I) is with respect to either transition property or depreciable property the basis of which is determined by reference to transition property, or (II) is recognized by either a qualified public utility or by a taxpayer which is a transferee of transition property (whether or not such transferee is a qualified public utility, notwithstanding subparagraph one of this paragraph).

(c-3) Depreciation adjustments by qualified power producers and pipeline companies. (1) In the case of a qualified taxpayer, entire net income shall be computed with the depreciation adjustments set forth in this paragraph.

(2) Definitions. (A) Qualified taxpayer. The term "qualified taxpayer" means a qualified power producer or a qualified pipeline.

(B) Qualified power producer. The term "qualified power producer" means a taxpayer which: (i) on December thirty-first, nineteen hundred ninety-nine, was not subject to the ratemaking supervision of the state department of public service, and (ii) for the year ending on December thirty-first, nineteen hundred ninety-nine, was subject to tax under former section one hundred eighty-six of this chapter on account of its being principally engaged in the business of supplying electricity.

(C) Qualified pipeline. The term "qualified pipeline" means a taxpayer which: (i) on December thirty-first, nineteen hundred ninety-nine, was subject to the ratemaking supervision of either the federal energy regulatory commission or the state department of public service, and (ii) for the year ending on December thirty-first, nineteen hundred ninety-nine, was subject to tax under sections one hundred eighty-three and one hundred eighty-four of this chapter on account of its being principally engaged in the business of pipeline transmission.

(D) Transition property. The term "transition property" means property placed in service by a qualified taxpayer before January first, two thousand, for which a depreciation deduction is allowed under section one hundred sixty-seven of the internal revenue code.

(3) Federal depreciation disallowed. With respect to transition property, the deduction for federal income tax purposes for depreciation shall not be allowed.

(4) New York depreciation. With respect to transition property, a deduction shall be allowed for the depreciation expense computed as provided in this subparagraph. (A) All transition property shown on the books and records of the taxpayer on January first, two thousand shall be treated as a single asset placed in service on such date. The New York basis for purposes of computing the depreciation deduction on such single asset shall be the net book value of such transition property determined on the first day of the federal taxable year ending in two thousand (or on the date any such property is placed in service, if later) adjusted as provided in clause (B) of this subparagraph.

(B) If transition property is sold or otherwise disposed of, the New York basis of the single asset shall be reduced on the date of such sale or disposition by the amount of the adjusted federal tax basis of such property on such date.

(C) The New York depreciation deduction allowed for any taxable year with respect to such single asset shall be computed using the straight-line method, a twenty-year life, and a salvage value of zero.

(D) For purposes of this subparagraph, the term "net book value" means cost reduced by accumulated depreciation shown on the books and records of the taxpayer and determined, in the case of a qualified power producer, in accordance with generally accepted accounting principles;

and in the case of a qualified pipeline, in accordance with the taxpayer's regulatory reports filed with the federal energy regulatory commission or state department of public service.

(d) The commissioner may, whenever necessary in order properly to reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer.

(e) The entire net income of any bridge commission created by act of congress to construct a bridge across an international boundary means its gross income less the expense of maintaining and operating its properties, the annual interest upon its bonds and other obligations, and the annual charge for the retirement of such bonds or obligations at maturity.

(h) If the period covered by a report under this article is other than the period covered by the report to the United States treasury department,

(1) except as provided in subparagraph two hereof, entire net income shall be determined by multiplying the taxable income reported to such department (as adjusted pursuant to the provisions of this article) by

the number of calendar months or major parts thereof covered by the report under this article and dividing by the number of calendar months or major parts thereof covered by the report to such department. If it shall appear that such method of determining entire net income does not properly reflect the taxpayer's income during the period covered by the report under this article, the commissioner shall be authorized in its discretion to determine such entire net income solely on the basis of the taxpayer's income during the period covered by its report under this article.

(2) In the case of a New York S termination year, an equal portion of entire net income shall be assigned to each day of such year. The portion of such entire net income thereby assigned to the S short year and the C short year shall be included in the respective reports for the S short year and the C short year under this article. However, where paragraph three of subsection (s) of section six hundred twelve of this chapter applies, the portion of such entire net income assigned to the S short year and the C short year shall be determined under normal tax accounting rules.

(i) With respect to a DISC which during any taxable year or reporting year (1) received more than five percent of its gross sales from the sale of inventory or other property which it purchased from its stockholders, (2) received more than five percent of its gross rentals from the rental of property which it purchased or rented from its stockholders or (3) received more than five percent of its total receipts other than sales and rentals from its stockholders, the following provisions shall apply.

(A) For any taxable year in which sub-paragraph (B) of this paragraph is in effect and not rendered invalid, a DISC meeting the above test shall be exempt from all taxes imposed by this article.

(B) Supplemental to the provisions of subdivision five of section two hundred eleven of this article, any taxpayer required to compute a tax under this article, which during the taxable year being reported was a stockholder in any DISC meeting the test prescribed in this paragraph, shall for any taxable year ending after December thirty-first, nineteen hundred seventy-one adjust each item of its receipts, expenses, assets and liabilities, as otherwise computed under this article, by adding thereto its attributable share of each such DISC's receipts, expenses, assets and liabilities as reportable by each such DISC to the United States Treasury Department for its annual reporting period ending during the current taxable year of such taxpayer; provided, however, (1) that all transactions between the taxpayer and each such DISC shall be eliminated from the taxpayer's adjusted receipts, expenses, assets and liabilities; (2) that the taxpayer's entire net income as otherwise computed under this section, shall be reduced by subtracting the amount of the deemed distribution of current income, if any, from each such DISC already included in the entire net income of such taxpayer by virtue of having been included in its entire taxable income for that taxable year as reported to the United States Treasury Department; and (3) that in the event this paragraph should be rendered invalid, all DISC's and their stockholders taxable hereunder shall be taxed instead under the remaining portions of this article.

(j) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years

beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been excluded from entire net income pursuant to subparagraph eight of paragraph (b) of this subdivision, a taxpayer shall be allowed with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty. This paragraph shall not apply to property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine.

(k) QSSS. (1) New York S corporation. In the case of a New York S corporation which is the parent of a qualified subchapter S subsidiary (QSSS) with respect to a taxable year:

(A) where the QSSS is not an excluded corporation,

(i) in determining the entire net income of such parent corporation, all assets, liabilities, income and deductions of the QSSS shall be treated as assets, liabilities, income and deductions of the parent corporation, and

(ii) the QSSS shall be exempt from all taxes imposed by this article, and

(B) where the QSSS is an excluded corporation, the entire net income of the parent corporation shall be determined as if the federal QSSS election had not been made.

(2) New York C corporation. In the case of a New York C corporation which is the parent of a QSSS with respect to a taxable year:

(A) where the QSSS is a taxpayer,

(i) in determining the entire net income of such parent corporation, all assets, liabilities, income and deductions of the QSSS shall be treated as assets, liabilities, income and deductions of the parent corporation, and

(ii) the QSSS shall be exempt from all taxes imposed by this article, and

(B) where the QSSS is not a taxpayer,

(i) if the QSSS is not an excluded corporation, the parent corporation may make a QSSS inclusion election to include all assets, liabilities, income and deductions of the QSSS as assets, liabilities, income and deductions of the parent corporation, and

(ii) in the absence of such election, or where the QSSS is an excluded corporation, the entire net income of the parent corporation shall be determined as if the federal QSSS election had not been made.

(3) Non-New York S corporation not excluded. In the case of an S corporation which is not a taxpayer and not an excluded corporation, and which is the parent of a QSSS which is a taxpayer, the shareholders of the parent corporation shall be entitled to make the New York S election under subsection (a) of section six hundred sixty of this chapter.

(A) For any taxable year for which such election is in effect, the parent corporation shall be subject to tax under this article as a New York S corporation, and the provisions of clause (A) of subparagraph one of this paragraph shall apply.

(B) For any taxable year for which such election is not in effect, the QSSS shall be a New York C corporation, and the entire net income of the QSSS shall be determined as if the federal QSSS election had not been made. For purposes of such determination, the taxable year of the parent corporation shall constitute the taxable year of the QSSS, excluding,

however, any portion of such year during which the QSSS is not a

taxpayer.

(4) S corporation excluded. In the case of an S corporation which is an excluded corporation and which is the parent of a QSSS which is a taxpayer, the QSSS shall be a New York C corporation and the provisions of clause (B) of subparagraph three of this paragraph shall apply.

(5) Excluded corporation. The term "excluded corporation" means a corporation subject to tax under sections one hundred eighty-three through one hundred eighty-six, inclusive, or article thirty-three of this chapter, or a foreign corporation not taxable by this state which, if it were taxable, would be subject to tax under any of such sections or article.

(6) Taxpayer. For purposes of this paragraph, the term "taxpayer" means a parent corporation or QSSS subject to tax under this article, determined without regard to the provisions of this paragraph.

(7) QSSS inclusion election. The election under subclause (i) of clause (B) of subparagraph two of this paragraph shall be effective for the taxable year for which made and for all succeeding taxable years of the corporation until such election is terminated. An election or termination shall be made on such form and in such manner as the commissioner may prescribe by regulation or instruction.

(l) Emerging technology investment deferral. In the case of any sale of a qualified emerging technologies investment held for more than thirty-six months and with respect to which the taxpayer elects the application of this paragraph, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost of any qualified emerging technologies investment purchased by the taxpayer during the three hundred sixty-five-day period beginning on the date of such sale, reduced by any portion of such cost previously taken into account under this paragraph. For purposes of this paragraph the following shall apply:

(1) A qualified investment is stock of a corporation or an interest, other than as a creditor, in a partnership or limited liability company that was acquired by the taxpayer as provided in Internal Revenue Code 1202(c)(1)(B), except that the reference to the term "stock" in such section shall be read as "investment," or by the taxpayer from a person who had acquired such stock or interest in such a manner.

(2) A qualified emerging technology investment is a qualified investment, that was held by the taxpayer for at least thirty-six months, in a company defined in paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law or an investment in a partnership or limited liability company that is taxed as a partnership to the extent that such partnership or limited liability company invests in qualified emerging technology companies.

(3) For purposes of determining whether the nonrecognition of gain under this subsection applies to a qualified emerging technologies investment that is sold, the taxpayer's holding period for such

investment and the qualified emerging technologies investment that is purchased shall be determined without regard to Internal Revenue Code 1223.

(m) Amounts deferred. The amount deferred under paragraph (l) of this subdivision shall be added to entire net income when the reinvestment in the New York qualified emerging technology company which qualified a taxpayer for such deferral is sold.

(n-1) For taxable years beginning after December thirty-first, two thousand two, in the case of qualified property described in paragraph two of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in paragraph (q) of

this subdivision, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), which was placed in service on or after June first, two thousand three, a taxpayer shall be allowed with respect to such property the depreciation deduction allowable under section 167 of the internal revenue code as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one.

(o) Related members expense add back. (1) Definitions. (A) Related member. "Related member" means a related person as defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, except that "fifty percent" shall be substituted for "ten percent".

(B) Effective rate of tax. "Effective rate of tax" means, as to any state or U.S. possession, the maximum statutory rate of tax imposed by the state or possession on or measured by a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any state or U.S. possession is zero where the related member's net income tax liability in said jurisdiction is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a jurisdiction in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that jurisdiction, the maximum statutory rate of tax imposed by said jurisdiction shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by such credit or similar adjustment.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale,

exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner, and include amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid Business Purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) Except where a taxpayer is included in a combined report with a related member pursuant to section two hundred ten-C of this article, for the purpose of computing entire net income or other applicable taxable basis, a taxpayer must add back royalty payments directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members during the taxable year to the extent deductible in calculating federal taxable income.

(B) Exceptions. (i) The adjustment required in this paragraph shall not apply to the portion of the royalty payment that the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, meets all of the following requirements: (I) the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (II) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person that is not a related member; and (III) the transaction giving rise to the royalty payment between the taxpayer and the related member was undertaken for a valid business purpose.

(ii) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (I) the related member was subject to tax on or measured by its net income in this state or another state or possession of the United States or some combination thereof; (II) the tax base for said tax included the royalty payment paid, accrued or incurred by the taxpayer; and (III) the aggregate

effective rate of tax applied to the related member in those jurisdictions is no less than eighty percent of the statutory rate of tax that applied to the taxpayer under section two hundred ten of this article for the taxable year.

(iii) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (I) the royalty payment was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (II) the related member's income from the transaction was subject to a comprehensive income tax treaty between such country and the United States; (III) the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (IV) the related member's income from the transaction was taxed in such country at an effective rate of tax at least equal to that imposed by this state; and (V) the royalty payment was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(iv) The adjustment required in this paragraph shall not apply if the taxpayer and the commissioner agree in writing to the application or use of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of such agreement the income of the taxpayer would not be properly reflected.

(p) For taxable years beginning after December thirty-first, two thousand two, upon the disposition of property to which paragraph (n-1) of this subdivision applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to subparagraph seventeen of paragraph (a) and subparagraph seventeen of paragraph (b) of this subdivision attributable to such property.

(q) For purposes of paragraphs (n-1) and (p) of this subdivision, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection k of section 168 of the internal revenue code substantially all of the use of which is in the

resurgence zone, as defined below, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the taxpayer after December thirty-first, two thousand two. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a southeasterly direction diagonally across Manhattan Bridge

Plaza, to the Manhattan Bridge and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

(r) Subtraction modification for qualified residential loan portfolios. (1)(A) A taxpayer that is either a thrift institution as defined in subparagraph three of this paragraph or a qualified community bank as defined in subparagraph two of paragraph (s) of this subdivision and maintains a qualified residential loan portfolio as defined in subparagraph two of this paragraph shall be allowed as a deduction in computing entire net income the amount, if any, by which (i) thirty-two percent of its entire net income determined without regard to this paragraph exceeds (ii) the amounts deducted by the taxpayer pursuant to sections 166 and 585 of the Internal Revenue Code less any amounts included in federal taxable income as a result of a recovery of a loan.

(B)(i) If the taxpayer is in a combined report under section two hundred ten-C of this article, this deduction will be computed on a combined basis. In that instance, the entire net income of the combined reporting group for purposes of this paragraph shall be multiplied by a fraction, the numerator of which is the average total assets of all the thrift institutions and qualified community banks included in the combined report and the denominator of which is the average total assets of all the corporations included in the combined report.

(ii) Measurement of assets. For purposes of this paragraph: (I) Total assets are those assets that are properly reflected on a balance sheet, computed in the same manner as is required by the banking regulator of the taxpayers included in the combined return. In addition, total assets includes leased real property that is not properly reflected on a balance sheet.

(II) Assets will only be included if the income or expenses of which are properly reflected (or would have been properly reflected if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the computation of the combined group's entire net income for the taxable year. Assets will not include deferred tax assets and intangible assets identified as "goodwill".

(III) Tangible real and personal property, such as buildings, land, machinery, and equipment shall be valued at cost. Leased real property that is not properly reflected on a balance sheet will be valued at the

annual lease payment multiplied by eight. Intangible property, such as loans and investments, shall be valued at book value exclusive of reserves.

(IV) Intercorporate stockholdings and bills, notes and accounts receivable, and other intercorporate indebtedness between the corporations included in the combined report shall be eliminated.

(V) Average assets are computed using the assets measured on the first day of the taxable year, and on the last day of each subsequent quarter of the taxable year or month or day during the taxable year.

(2) Qualified residential loan portfolio. (A) A taxpayer maintains a qualified residential loan portfolio if at least sixty percent of the amount of the total assets at the close of the taxable year of the thrift institution or qualified community bank consists of the assets described in items (i) through (xii) of this clause, with the application of the rule in item (xiii). If the taxpayer is a member of a combined group, the determination of whether there is a qualified residential loan portfolio will be made by aggregating the assets of the thrift institutions and qualified community banks that are members of the combined group.

Assets:

(i) cash, which includes cash and cash equivalents including cash items in the process of collection, deposit with other financial institutions, including corporate credit unions, balances with federal reserve banks and federal home loan banks, federal funds sold, and cash and cash equivalents on hand. Cash shall not include any balances serving as collateral for securities lending transactions;

(ii) obligations of the United States or of a state or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality or a government sponsored enterprise of the United States or of a state or political subdivision thereof;

(iii) loans secured by a deposit or share of a member;

(iv) loans secured by an interest in real property which is (or from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this item, residential real property shall include single or multi-family dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis;

(v) property acquired through the liquidation of defaulted loans described in item (iv) of this clause;

(vi) any regular or residual interest in a REMIC, as such term is defined in section 860D of the internal revenue code, but only in the proportion which the assets of such REMIC consist of property described

in any of the preceding items of this clause, except that if ninety-five percent or more of the assets of such REMIC are assets described in items (i) through (v) of this clause, the entire interest in the REMIC shall qualify;

(vii) any mortgage-backed security which represents ownership of a fractional undivided interest in a trust, the assets of which consist primarily of mortgage loans, provided that the real property which serves as security for the loans is (or from the proceeds of the loan, will become) the type of property described in item (iv) of this clause and any collateralized mortgage obligation, the security for which consists primarily of mortgage loans that maintain as security the type of property described in item (iv) of this clause;

(viii) certificates of deposit in, or obligations of, a corporation organized under a state law which specifically authorizes such corporation to insure the deposits or share accounts of member associations;

(ix) loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities;

(x) loans made for the payment of expenses of college or university education or vocational training;

(xi) property used by the taxpayer in support of business which consists principally of acquiring the savings of the public and investing in loans; and

(xii) loans for which the taxpayer is the creditor and which are wholly secured by loans described in item (iv) of this clause.

(xiii) The value of accrued interest receivable and any loss-sharing commitment or other loan guaranty by a governmental agency will be considered part of the basis in the loans to which the accrued interest or loss protection applies.

(B) At the election of the taxpayer, the percentage specified in clause (A) of this subparagraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year. The taxpayer can elect to compute an average using the assets measured on the first day of the taxable year and on the last day of each subsequent quarter, or month or day during the taxable year. This election may be made annually.

(C) For purposes of item (iv) of clause (A) of this subparagraph, if a multifamily structure securing a loan is used in part for nonresidential use purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds eighty percent of the property's planned use (measured, at the taxpayer's election, by using square footage or gross rental revenue, and determined as of the time the loan

is made).

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

(3) For purposes of this paragraph, a "thrift institution" is a savings bank, a savings and loan association, or other savings institution chartered and supervised as such under federal or state law.

(s) Subtraction modification for community banks and small thrifts.

(1) A taxpayer that is a qualified community bank as defined in subparagraph two of this paragraph or a small thrift institution as defined in subparagraph two-a of this paragraph shall be allowed a deduction in computing entire net income equal to the amount computed under subparagraph three of this paragraph.

(2) To be a qualified community bank, a taxpayer must satisfy the following conditions.

(A) It is a bank or trust company organized under or subject to the provisions of article three of the banking law or a comparable provision of the laws of another state, or a national banking association.

(B) The average value during the taxable year of the assets of the taxpayer, or, if the taxpayer is included in a combined report, the assets of the combined reporting group of the taxpayer under section two hundred ten-C of this article, must not exceed eight billion dollars.

(2-a) To be a small thrift institution, a taxpayer must satisfy the following conditions.

(A) It is a savings bank, a savings and loan association, or other savings institution chartered and supervised as such under federal or state law.

(B) The average value during the taxable year of the assets of the taxpayer, or, if the taxpayer is included in a combined report, the assets of the combined reporting group of the taxpayer under section two hundred ten-C of this article, must not exceed eight billion dollars.

(3)(A) The subtraction modification shall be computed as follows:

(i) Multiply the taxpayer's net interest income from loans during the taxable year by a fraction, the numerator of which is the gross interest

income during the taxable year from qualifying loans and the denominator of which is the gross interest income during the taxable year from all loans.

(ii) Multiply the amount determined in clause (i) by fifty percent. This product is the amount of the deduction allowed under this paragraph.

(B)(i) Net interest income from loans shall mean gross interest income from loans less gross interest expense from loans. Gross interest expense from loans is determined by multiplying gross interest expense by a fraction, the numerator of which is the average total value of loans owned by the thrift institution or community bank during the taxable year and the denominator of which is the average total assets of the thrift institution or community bank during the taxable year.

(ii) Measurement of assets. (I) Total assets are those assets that are properly reflected on a balance sheet, computed in the same manner as is required by the banking regulator of the taxpayers included in the combined return. In addition, total assets includes leased real property that is not properly reflected on a balance sheet.

(II) Assets will only be included if the income or expenses of which are properly reflected (or would have been properly reflected if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the computation of the taxpayer's entire net income for the taxable year. Assets will not include deferred tax assets and intangible assets identified as "goodwill".

(III) Tangible real and personal property, such as buildings, land, machinery, and equipment shall be valued at cost. Leased real property that is not properly reflected on that balance sheet will be valued at the annual lease payment multiplied by eight. Intangible property, such as loans and investments, shall be valued at book value exclusive of reserves.

(IV) Average assets are computed using the assets measured on the first day of the taxable year, and on the last day of each subsequent quarter of the taxable year or month or day during the taxable year.

(C) A qualifying loan is a loan that meets the conditions specified in subclause (i) of this clause and subclause (ii) of this clause.

(i) The loan is originated by the qualified community bank or small thrift institution or purchased by the qualified community bank or small thrift institution immediately after its origination in connection with a commitment to purchase made by the bank or thrift institution prior to the loan's origination.

(ii) The loan is a small business loan or a residential mortgage loan, the principal amount of which loan is five million dollars or less, and

either the borrower is located in this state as determined under section two hundred ten-A of this article and the loan is not secured by real property, or the loan is secured by real property located in New York.

(iii) A loan that meets the definition of a qualifying loan in a prior taxable year (including years prior to the effective date of this paragraph) remains a qualifying loan in taxable years during and after which such loan is acquired by another corporation in the taxpayer's combined reporting group under section two hundred ten-C of this article.

(t) A small thrift institution or a qualified community bank, as defined in paragraph (s) of this subdivision, that maintained a captive REIT on April first, two thousand fourteen shall utilize a REIT subtraction equal to one hundred sixty percent of the dividends paid deductions allowed to that captive REIT for the taxable year for federal income tax purposes and shall not be allowed to utilize the subtraction modification for qualified residential loan portfolios under paragraph (r) of this subdivision or the subtraction modification for community banks and small thrifts under paragraph (s) of this subdivision in any tax year in which such thrift institution or community bank maintains that captive REIT.