Instructions for Form NYC-1A

FINANCE NEW • YORK

Combined Banking Corporation Tax Return

For fiscal years beginning in 2004 or for calendar year **2004**

Highlights of Recent Tax Law Changes for Banking Corporations

- Changes to definition of thrift institution – The definition of a thrift institution has been amended, applicable to tax years beginning on or after January 1, 2002. See Administrative Code 11-641(h)(1)(B), as amended by Chapter 85 of the Laws of New York of 2002, Part U, §2.
- Related members income and expense modifications—For tax years beginning on or after January 1, 2003, taxpayers may be required to add back to entire net income ("ENI") certain payments for the use of intangible property, such as trademarks or patents, made during the tax year to related member(s) to the extent such payments were deducted in computing federal taxable income. Where the related member is a New York City taxpayer, the related member(s) must subtract from ENI those payments received during the tax year to the extent the payments were included in federal taxable income and were required to be added back to the ENI of a related taxpayer. Ad. Code §11-641(q) added by Chapter 686 of the Laws of 2003, Part M.
- Gramm-Leach-Bliley Act Transition Rules Extended – The transition rules for corporations affected by the enactment of the Gramm-Leach-Bliley Act of 1999 have been extended for tax years beginning before 2006. Ch. 60, Pt. G §6 of the Laws of 2004.

GENERAL INFORMATION

Additional instructions are on Form NYC-1.

Transitional provisions relating to the enactment of the Gramm-Leach-Bliley Act of 1999.

Existing Corporations:

Except for a banking corporation described in paragraphs (1) through (8) of Ad. Code section 11-640(a) (see, Form NYC-1, Instructions "Who Must File" items A through C), for taxable years beginning after 1999 and before 2001, a corporation that was in existence before January 1, 2000 was taxable under the same tax (either NYC General Corporation Tax (GCT) or NYC Banking Corporation Tax (BCT)) as applied to it for its last taxable year beginning before January 1, 2000. For this purpose, a corporation was considered to have been subject to a tax prior to 2000 if it was not a taxpayer but was properly included in a combined report filed by another corporation under that tax. A corporation that was in existence prior to 2000 but first became subject to tax after 2000 is considered to have been subject to whichever tax, GCT or BCT, would have applied based on its activities had it been a taxpayer prior to 2000.

Ad. Code §11-640 was amended to similarly require a corporation that was in existence prior to January 1, 2001 to be taxed in years beginning after 2000 and before 2003 under the same tax, either GCT or BCT, that applied to it for the last year beginning before 2001. Ch. 383, Laws of 2001, Part P, §8.

Ad. Code 11-640 was further amended to require a corporation that was in existence prior to January 1, 2003 to be taxed in years beginning after 2003 and before 2004 under the same tax, either GCT or BCT, that applied to it for the last year beginning before 2003. Ch. 62 of the Laws of 2003, Pt. G3, §6. Ad. Code §11-640 again was amended in 2004 to require a corporation that was in existence prior to January 1, 2004 to be taxed in years beginning after 2003 and before 2006 under the tax, either GCT or BCT, that applied to it for the last year beginning before 2004. Ch. 60, Pt.G, §6 of the Laws of 2004.

Newly-formed Corporations:

A corporation formed on or after January 1, 2000, and before January 1, 2001 could have elected to be subject to either the GCT or BCT for its taxable years beginning after 1999 and before 2001 **provided:**

- the corporation was a financial subsidiary, or
- at least 65% of the corporation's voting stock was owned or controlled, directly or indirectly, by a financial holding company, and the corporation is principally engaged in activities described in sections 4(k) 4 or 4(k)5 of the Bank Holding Company Act of 1956, as amended, or described in regulations promulgated under that section.

A financial subsidiary is a corporation whose voting stock is 65% or more owned or controlled directly or indirectly, by a banking corporation (including a corporation that elected to be subject to the BCT under these transition rules) described in paragraphs (1) through (3) of Ad. Code section 11-640(a) and described in 12 USCS section 24a or section 46 of the Federal Deposit Insurance Act.

A financial holding company is a corporation that has filed with the Federal Reserve Board a written declaration of its election to be a financial holding company under section 4(i) of the Bank Holding Company Act of 1956, as amended, provided the Federal Reserve Board has not found that election to be ineffective.

An election by a newly-formed corporation under this provision had to have been made on or before the due date for filing its return for the applicable year, including extensions, and was made by filing the return required under the appropriate tax. The election is irrevocable.

Ad. Code §11-640(h) permits a corporation formed on or after January 1, 2001 and before January 1, 2003 to make a comparable election for tax years beginning after 2000 and before 2003 if it meets the requirements described above.

Similarly, new Ad. Code 11-640(i) permits a qualifying corporation formed on or after January 1, 2003 and before January 1, 2004 to make a comparable election for its first tax year beginning after 2002 and before 2004. Ch. 62 of the Laws of 2003, Pt. G3, §6.

New Ad. Code §11-640(j) similarly permits a qualifying corporation formed on or after January 1, 2004 and before January 1, 2006 to make a comparable election for its first taxable year beginning after 2003 and before 2006. Ch. 60, Pt. G, §6 of the Laws of 2004.

Combined Filing under Transitional Provisions

A bank holding company doing business in the City that, during a taxable year beginning after 1999 and before 2006, registers for the first time as a bank holding company under the Bank Holding Company Act of 1956, as amended, and elects to be a financial holding company,

may file a combined report under the BCT for such year with one or more banking corporations doing business in the City and 65% or more owned or controlled, directly or indirectly, by that bank holding company without seeking permission from the Commissioner. In addition, such bank holding company may, without seeking the Commissioner's permission: (i) include in a combined report filed for a subsequent year beginning after 1999 and before 2006 any eligible banking corporation that, for the first time in such subsequent year, either is doing business in the City or meets the above ownership requirements; and (ii) eliminate from a combined report filed in any such subsequent year any corporation no longer meeting the requirements for combination in such subsequent year. Except as provided above, the permission of the Commissioner is required for any such bank holding company to cease to file on a combined basis, elect to file on a combined basis or make any changes to the composition of the group of corporations filing on a combined basis for any subsequent year. Ad. Code §11-646(f)(2)(iv).

WHO MAY FILE FORM NYC-1A

A. CORPORATIONS REQUIRED TO FILE A COMBINED RETURN

A banking corporation or bank holding company which is doing business in New York City in a corporate or organized capacity is required to file a combined return with the following:

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

However, a banking corporation or bank holding company doing business in New York City 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 Department of 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 (refer to Intercorporate Transactions below) or some agreement, understanding, arrangement or transaction whereby the activity, business, income or assets of the corporation within New York City is improperly or inaccurately reflected.

A banking corporation or bank holding company which seeks to be excluded from a combined return may be permitted to do so in the discretion of the Department of Finance.

B. CORPORATIONS THAT MAY BE PERMITTED OR REQUIRED TO FILE A COMBINED RETURN

A banking corporation or bank holding company which meets any of the 65% or more stock ownership requirements described below may be permitted or required to file a combined return only if the Department of Finance determines that such filing is necessary to properly reflect the tax liability of such corporation or other corporations.

A banking corporation or bank holding company which is doing business in New York City in a corporate or organized capacity may be permitted or required to file a combined return with the following:

- any banking corporation or bank holding company which is doing business in New York City in a corporate or organized capacity and which owns or controls, directly or indirectly, 65% or more of its voting stock; and
- any banking corporation or bank holding company which is doing business in New York City in a corporate or organized capacity and in which it owns or controls, directly or indirectly, 65% or more of the voting stock.

A banking corporation or bank holding company which is **not** doing business in New York City 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 which is doing business in New York City in a corporate or organized capacity and which owns or controls, directly or indirectly, 65% or more of its voting stock; and
- any banking corporation or bank holding company which is doing business in New York City in a corporate or organized capacity and in which it owns or controls, directly or indirectly, 65% or more of the voting stock.

The Department of Finance may permit or require the filing of a combined return by banking corporations or bank holding companies 65% or more of the voting stock of each of which is owned or controlled, directly or indirectly, by the same interest if at least one of such corporations is a taxpayer.

In making its determination whether a combined return is necessary in order to properly reflect the tax liability of any one or more of such corporations, the Department of Finance will first determine whether the group of corporations under consideration is engaged in a unitary business. In deciding whether a corporation is part of a unitary business, the Department of Finance will consider whether the activities in which the corporation engages are related to the activities of the other corporations in the group, or whether the corporation is engaged in the same or related lines of business as the 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.

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 where the Department of Finance determines that:

- such corporation has intercorporate transactions (refer to Intercorporate Transactions, below) 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 City of one or more of the corporations; or
- such 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 City of one or more of the corporations.

C. CORPORATIONS THAT CANNOT BE INCLUDED IN A COMBINED RETURN

- a corporation which elected under Section 11-640(d) of the Administrative Code to be taxed under Subchapter 2 of Chapter 6, Title 11 of the Administrative Code (General Corporation Tax) for those years such election is in effect,
- a banking corporation or bank holding company whose accounting period differs from the accounting period adopted by the combined group, and
- a banking corporation or bank holding company which does not meet the 65% or more stock ownership requirement.

D. ALIEN CORPORATIONS

- A banking corporation or bank holding company organized under the laws of a country other than the United States 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. An alien corporation can only be included in a combined return with other alien corporations.

INTERCORPORATE TRANSACTIONS

In deciding whether there are intercorporate transactions which cause the improper reflection of the tax liability of a corporation within New York City, the Department of 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 the services. Service functions include, but are not limited to, accounting, legal and personnel services. It is not necessary to have intercorporate transactions between each member and every other member of the group. It is, however, essential that each corporation have intercorporate transactions with one other combinable corporation or with the combined group of corporations.

CHANGE IN COMPOSITION OF A COMBINED GROUP

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.

Provided all of the information required to be submitted on page 6 of the Form NYC-1A and on the Combined Group Information Schedule is submitted, a group of corporations meeting the requirements set forth above (**WHO MAY FILE FORM NYC-1A,** B. CORPORATIONS THAT MAY BE PERMITTED OR REQUIRED TO FILE A COMBINED RETURN) is deemed to have tentative permission to file on a combined basis, however, the combined filing is subject to revision or disallowance on audit. This return will not be considered complete unless all of the information required is submitted.

In general, each banking corporation or bank holding company is 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 such corporations under the Banking Corporation Tax Law. In all cases where a combined return is permitted or required, a combined tax return must be filed on Form NYC-1A. In addition, a separate tax return must be filed by each corporation in the combined group on Form NYC-1 and attached to Form NYC-1A.

If the parent corporation is not included in the group of banking corporations and bank holding companies filing a combined return, then one of the group's member corporations shall be designated as the parent for purposes of completing Form NYC-1A. This designated parent must be used in all subsequent years in which the group continues to file a combined return, unless the group has received the permission of the Department of Finance to designate a different parent for the combined return.

WHERE AND WHEN TO FILE

This return must be filed by calendar year taxpayers for the calendar year ended December 31, 2004, on March 15, 2005, and by fiscal year taxpayers on or before the 15th day of the third month following the close of the reporting period. An automatic extension of time to file the tax return may be obtained by filing Form NYC-6B and paying the properly estimated tax. Mail returns to:

N.Y.C. Department of Finance
P.O. Box 5120
Kingston, NY 12402-5120

Certain short-period returns: If this is **NOT** a final return and your Federal return covered a period of less than 12 months as a result of your joining or leaving a Federal consolidated group or as a result of a Federal IRC §338 election, this return generally will be due on the due date for the Federal return and not on the date noted above. **Check the box on the front of the return.**

Preparer Authorization: If you want to allow the Department of Finance to discuss your return with the paid preparer who signed it, you must check the "yes" box in the signature area of the return. This authorization applies only to the individual whose signature appears in the "Preparer's Use Only" section of your return. It does not apply to the firm, if any, shown in that section. By checking the "Yes" box, you are authorizing the Department of Finance to call the preparer to answer any questions that may arise during the processing of your return. Also, you are authorizing the preparer to:

- Give the Department any information missing from your return,
- Call the Department for information about the processing of your return or the status of your refund or payment(s), and
- Respond to certain **notices that you have shared with the preparer** about math errors, offsets, and return preparation. The notices will not be sent to the preparer.

You are not authorizing the preparer to receive any refund check, bind you to anything (including any additional tax liability), or otherwise represent you before the Department. The authorization cannot be revoked, however, the authorization will automatically expire no later than the due date (without regard to any extensions) for filing next year's return. **Failure to check the box will be deemed a denial of authority**.

SPECIFIC INSTRUCTIONS

Check the box marked "yes" on page 1 of this form if, on your federal return: (i) you reported bonus depreciation and/or a first year expense deduction under IRC §179 for "qualified New York Liberty Zone property," "qualified New York Liberty Zone leasehold improvements," or "qualified Resurgence Zone property," regardless of whether you are required to file form NYC-399Z, (ii) you claimed a federal targeted jobs credit for Liberty Zone business employees, or (iii) you replaced property involuntarily converted as a result of the attacks on the World Trade Center during the five (5) year extended replacement period. You must attach Federal forms 4562, 4684, 4797 and 8884 to this return.

Computation of Combined Tax

A. CORPORATIONS ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE U.S.

- Each corporation included in the combined return is required to compute entire net income, alternative entire net income, and issued capital stock on Form NYC-1 as if it had filed its federal income tax return on a separate basis.
- In computing allocated combined issued capital stock (Schedule N),

intercorporate eliminations are not allowed. Percentage in New York City (Schedule N, line 49a) and allocated issued capital stock (Schedule N, line 49b) must be computed separately for each corporation included in the combined return.

B. CORPORATIONS ORGANIZED UNDER THE LAWS OF THE U.S. OR ANY OF ITS STATES

- Each corporation included in the combined return is required to compute entire net income, alternative entire net income and taxable assets on Form NYC- 1 as if it had filed its federal income tax return on a separate basis.

When computing combined entire net income (Schedule K, line 36) and combined alternative entire net income (Schedule L, line 40) on Form NYC-1A, intercorporate dividends and intercorporate transactions between the corporations included in the combined return must be eliminated. 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 entire net income and combined alternative entire net income, taxpayers using a different adjusted basis for property placed in service in taxable years beginning before January 1, 1981, or a different method of depreciation for City tax purposes than for Federal tax purposes for such property must make appropriate adjustments to Federal taxable income. Attach a schedule showing the adjustments. See subdivisions (c) and (j)(2) of Ad. Code section 11-641 for details.

When computing combined taxable assets (Schedule M, line 44) on Form NYC-1A, intercorporate stockholdings and bills, notes, accounts receivable and payable, and other intercorporate indebtedness between the corporations included in the combined return must be eliminated.

Combined taxable assets do not include the taxable assets of a corporation that 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 taxable year such certificate is outstanding.

Combined groups with more than three members must attach a rider for each such additional member providing the amounts of lines 36 through 50 of Schedules K, L, M and N. Such amounts must be included within the total shown in column A of Schedules K, L, M and N.

Riders must be attached to the return setting forth all intercorporate eliminations. The rider must clearly show the amount of the intercorporate transactions and identify the corporations involved in each transaction.

Computation of Combined Allocation Percentages

A. CORPORATIONS ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE U.S.

- Each corporation included in the combined return must compute the entire net income allocation percentage, alternative entire net income allocation percentage, and issued capital stock allocation percentage on Form NYC-1 as if it had filed its federal income tax return on a separate basis.

B. CORPORATIONS ORGANIZED UNDER THE LAWS OF THE U.S. OR ANY OF ITS STATES

- Each corporation included in the combined return must compute the entire net income allocation percentage, alternative entire net income allocation percentage, and taxable assets allocation percentage on Form NYC-1 as if it had filed its federal income tax return on a separate basis.

When computing the combined allocation percentages (Schedule J) on Form NYC-1A, the payroll, receipts and deposits factors in each allocation percentage are computed as though the corporations included in the combined return were one corporation. Intercorporate dividends and all other intercorporate transactions including intercorporate receipts and deposits between the corporations included in the combined return are eliminated.

Combined groups with more than three members must attach a rider for each such additional member providing the amounts of lines 1 through 35 of Schedule J. Such amounts must be included within the total shown in column A of Schedule J.

Riders must be attached to the return setting forth all intercorporate eliminations. The rider must clearly show the amount of the intercorporate transactions and identify the corporations involved in each transaction.

Minimum Tax

Each corporation included in the combined return, other than the taxpayer paying the combined tax, is required to pay the minimum tax of $125.00. When the fixed minimum tax (Schedule A, line 4) is the combined tax of the group (Schedule A, line 5), this fixed minimum tax must be paid in addition to the amount of the combined fixed minimum tax for subsidiaries (Schedule A, line 6). A corporation which would not otherwise be taxable in New York City except for its inclusion in a combined return is not required to pay the minimum tax of $125.00.

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 11-641(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 11-642(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.

TOTAL REMITTANCE DUE

If the amount on line 19 is not greater than zero, enter on line 21 the sum of the amount on line 15 and the amount by which line 18 exceeds the amount on line 16, if any.

ISSUER'S ALLOCATION PERCENTAGE

See instructions for Form NYC-1, line 20.

COMBINED GROUP INFORMATION SCHEDULE

All of the information required on this schedule must be submitted for this return to be considered complete. Failure to provide any information requested will result in correspondence and may result in the filing on a combined basis by this group being revised or disallowed.