

# Instructions for Form NYC-2.1



## Investment and Other Exempt Income and Investment Capital

2015

### GENERAL INFORMATION

For tax years beginning on and after January 1, 2015, significant changes were made to the definitions of investment capital and investment income, and a new other exempt income category of income was created. Investment income and other exempt income are subtracted from entire net income (ENI) in the computation of business income. Investment capital is subtracted from total net assets in the computation of the capital base.

Taxpayers (including combined groups) must subtract from gross investment income any interest deductions directly or indirectly attributable to investment capital or gross investment income. Taxpayers (including combined groups) must subtract from gross other exempt income any interest deductions directly or indirectly attributable to gross other exempt income. Interest deductions must be attributed regardless of whether or not income is actually earned in a particular tax year. For specific rules guidance regarding the computation of interest deductions attributable, see Finance Memorandum 16-2, Direct and Indirect Attribution of Interest Deductions for Corporate Tax of 2015. In lieu of actual attribution, a 40% safe harbor election may be made by completing Schedule A.

For purposes of calculating investment income, other exempt income, the attribution of interest deductions, and the safe harbor election the combined group is treated as a single corporation and computes these amounts on a combined basis.

All intercompany transactions and activity must be eliminated. A corporate partner using the aggregate method to determine its tax with respect to its interest in a partnership must include its distributive share of each partnership item of receipts, income, gain, loss and deduction and the corporation's proportionate part of each asset and liability from that partnership, after the elimination of all inter-entity transactions and activity, when calculating investment income, other exempt income, and the attribution of interest deductions.

For purposes of these instructions, the term exempt gross exempt unitary insurance or utility dividends means dividend income received from unitary corporations that are taxable or would be taxable, if subject to tax,

under the New York City Utility Tax (except for vendors of utility services that are also taxable under the Business Corporation Tax) and corporations that would have been taxable as insurance corporations under former part IV, title R, chapter forty-six of the Administrative Code as in effect on June 30, 1974, but are not included in a combined return with the taxpayer, less any interest deductions directly or indirectly attributable to such income. Gross exempt unitary insurance or utility dividends are one type of exempt unitary corporation dividends.

For purposes of these instructions, gross other exempt income, gross investment income, gross exempt unitary insurance and utility dividends, gross exempt controlled foreign corporation (CFC) income, and gross exempt unitary corporation dividends is the amount of each of these types of income as defined in sections 11-652.5 and 11-652.5-a, but **before** the 40% safe harbor reduction or any subtraction for the attribution of interest deductions.

#### Purpose of form

Form NYC-2.1 provides detail for the amounts reported on certain lines in Form NYC-2 or NYC-2-A, Schedules B, C, and D. Schedule A is used to make the 40% safe harbor election. Schedules B and C compute other exempt income and investment income, respectively.

Schedule D computes the total amounts that are reported on Form NYC-2 or NYC-2-A, Schedule B, lines 25 and 27.

Schedule E computes investment capital, and Schedule F computes the addback of prior year presumed investment capital and income. Total amounts are reported on Form NYC-2 or NYC-2-A, Schedule B, line 29, and Schedule D, lines 1, 2, 3, and 5.

#### Limitations

Other exempt income, investment income, and gross investment income are subject to certain limitations per sections 11-652(5)(a)(i), 11-652(5)(a)(iii), 11-652(5-a)(d), 11-652(4)(e) and 11-652(7). Investment capital is not impacted by the limitations on investment income. However, the net average fair market value (FMV) of each item of investment capital cannot be less than zero per section 11-652(4)(b).

Table A below provides a summary of applicable limitations.

**Table A - Summary of applicable limitations**

ITEM	Description of limitation	New York City Ad. Code §
Gross investment income	Limited to the greater of 8% of ENI or the amount of income (before the 40% safe harbor reduction or any subtraction for the attribution of interest deductions) that taxpayer claims New York cannot constitutionally apportion	11-652(5)(a)(iii) and 11-652(4)(e)
Other exempt income*	Limited to ENI	11-652(5-a)(d)
Investment income*	Limited to ENI minus other exempt income	11-652(5)(a)(i) and 11-652(7)
Sum of investment income* and other exempt income*	Limited to ENI	11-652(7)
Investment capital**	Not impacted by any of the limitations on investment income; the net average FMV of any particular item of investment capital cannot be less than zero	11-652(4)(b)

\* after the 40% safe harbor reduction or any subtraction for the attribution of interest deductions

\*\* net of liabilities attributable

## **SPECIFIC INSTRUCTIONS**

When filing a combined return, enter the legal name and employer identification number of the group's designated agent.

### **Schedule A – 40% safe harbor election**

In lieu of subtracting from gross investment income and gross other exempt income the actual amount of interest deductions directly and indirectly attributable to such income and to investment capital, taxpayers may make a revocable election to reduce such income by 40%, provided, however, that the safe harbor election does not apply to gross exempt unitary insurance or utility dividends. Interest deductions must always be attributed to gross exempt unitary insurance or utility dividends, regardless of whether or not the safe harbor election is made. Any such election applies to all members of the group. If you subsequently revoke this election, it is revoked for all such income. (§11-652(5)(b) and 11-652(5-a)(b)).

Certain rules apply; see Finance Memorandum 16-2 and the instructions for Schedules B and C.

**Line 1** – To make this revocable election, mark an X in the box.

### **Schedule B – Other exempt income**

Schedule B computes other exempt income. You must complete this schedule if you own any assets that could generate other exempt income, regardless of whether or not such income is actually earned in a particular tax year.

*Other exempt income* means the sum of exempt CFC income and exempt unitary corporation dividends (§11-652(5-a)(a)). It does not include any amount treated as dividends pursuant to Internal Revenue Code (IRC) section 78. (§11-652(5-a)(e)).

*Exempt CFC income* means the income required to be included in the taxpayer's federal gross income per IRC section 951(a), received from a corporation that is conducting a unitary business with the taxpayer but is not included in a combined return with the taxpayer, less any interest deductions directly or indirectly attributable to that income (§11-652(5-a)(b)). In lieu of attribution, you may make a revocable election (by completing Schedule A) to reduce gross exempt CFC income by 40%. If you make this election, it also applies to gross investment income and gross exempt unitary corporation dividends. If you do not make this election because you do not have gross exempt CFC income, you will not be precluded from making those other elections.

*Exempt unitary corporation dividends* means those dividends from a corporation that is conducting a unitary business with the taxpayer but is not included in a combined return with the taxpayer, less any interest deductions directly or indirectly attributable to such income (§11-652(5-a)(c)). In lieu of attribution, you may make a revocable election (by completing Schedule A) to reduce gross exempt unitary corporation dividends (except for gross exempt unitary insurance or utility dividends) by 40%. If you make this election, it also applies to gross investment income and gross exempt CFC income. If you do not make this election because you do not have gross exempt unitary corporation dividends, you will not be precluded from making those other elections. Also, if you are precluded from making this election because your only gross exempt unitary corporation dividends are dividends from corporations taxed as utilities under the Utility Tax under Chapter 11 of Title 11 of the Ad. Code, you will not be precluded for making those other elections. (§11-652(5-a)(c)). The safe harbor election does not apply to gross exempt unitary insurance or utility dividends; interest deductions must be directly or indirectly attributed to gross exempt unitary insurance and utility dividends.

Other exempt income cannot exceed ENI. If you attribute interest de-

ductions to gross other exempt income and the amount attributed exceeds gross other exempt income, the excess must be added back to ENI. (§11-652(5-a)(d)).

**Note:** If you made the safe harbor election, complete Parts 1, 2, 6 and 7. If you did not make the safe harbor election, complete Parts 1 through 5 and Part 7.

### **Part 1**

**Line 2** – Enter your total amount of gross exempt unitary corporation dividends other than gross exempt unitary insurance or utility dividends, which are reported separately in Part 2, line 6.

**Line 4** – If you made the safe harbor election by marking an X in Schedule A, line 1, multiply line 3 by 40% (.40) and enter the result. See the instructions for Schedule A.

### **Parts 2, 3, and 4**

**Lines 7, 8, 12, 13, 15 and 16** – For specific rules regarding the attribution of interest deductions, see Finance Memorandum 16-2.

### **Schedule C – Investment income**

Schedule C computes investment income. You must complete this schedule if you own any assets that could generate investment income, regardless of whether or not such income is actually earned in a particular tax year.

*Investment income* means income, including capital gains in excess of capital losses, from investment capital, to the extent included in computing ENI, less any interest deductions allowable in computing ENI which are directly or indirectly attributable to investment capital or gross investment income. (§11-652(5)(a)).

When income or gain from a debt obligation or other security cannot be apportioned to New York as a result of U.S. constitutional principles found in decisions of the U.S. Supreme Court, the debt obligation or other security will be included in investment capital; any such income or gain, less interest deductions directly or indirectly attributable to such income or capital, is included in investment income. (§ 11-652(4)(e)).

If a taxpayer acquires stock that is a capital asset under IRC section 1221 during the tax year, and owns that stock on the last day of the tax year, it will be presumed, solely for purposes of determining whether that stock should be classified as investment capital after it is acquired, that the taxpayer held that stock for more than one year. Provided, however, if the taxpayer can determine, at the time it files its original return for the tax year in which it acquired the stock, whether or not it actually held the stock for more than one year, then the presumption in the preceding sentence does not apply and the actual period of time during which the taxpayer owned the stock is used to determine whether the stock could be classified as investment capital.

Two situations in which the holding period presumption described above would not apply are:

- 1) you still own the stock on the date you file your return, but as of that date you have owned the stock for more than one year; and
- 2) you have sold the stock prior to the date you file your return.

In both cases, you would use your actual holding period to determine whether the stock could be classified as investment capital.

The statute also includes an addback requirement for both the presumed investment capital and the related income if the holding period requirement is not met. (§ 11-652(4)(d)).

Gross investment income cannot exceed the greater of 8% of your ENI

or the income (prior to attribution or the safe harbor reduction) that New York cannot constitutionally apportion. (§§ 11-652(5)(a)(iii) and 11-652(4)(e)).

Investment income cannot exceed ENI (§11-652(5)(a)(i)). If you attribute interest deductions to investment capital or to gross investment income, and the amount attributed exceeds gross investment income, the excess must be added back to ENI. (§11-652(5)(a)(ii)).

In lieu of subtracting from investment income the amount of actual attributed interest deductions, you may make a revocable election (by completing Schedule A) to reduce your total gross investment income, determined after applying the limitations in sections 11-652(5)(a)(iii) and 11-652.4(e), by 40% (§11-652.5)(b)). If you make this election, it also applies to gross exempt CFC income and gross exempt unitary corporation dividends. If you do not make this election because you do not have investment capital, you will not be precluded from making those other elections.

Investment income does not include any amount treated as dividends pursuant to IRC section 78. (§11-652.5)(c)).

**Note:** If you made the safe harbor election, complete Parts 1, 2, 4, and 5. If you did not make the safe harbor election, complete Part 1 and Parts 3, 4, and 5.

#### Part 1

**Line 3** – Enter income (including gains in excess of losses) generated from investments identified in Schedule E, Part 1. The amount entered should be the amount **before** the 40% safe harbor reduction or any subtraction for the attribution of interest deductions. Do **not** enter less than zero.

**Lines 6 and 7** – Enter income generated from investments identified in Schedule E, Part 2. The amounts entered should be the amounts before the 40% safe harbor reduction or any subtraction for the attribution of interest deductions; do not enter less than zero.

**Line 11** – Enter dividend income generated from investments identified in Schedule E, Part 3. The amounts entered should be the amounts before the 40% safe harbor reduction or any subtraction for the attribution of interest deductions.

#### Part 2

**Line 14** – If you made the safe harbor election by marking an X in Schedule A, line 1, multiply line 13 by 40% (.40) and enter the result. See the instructions for Schedule A.

#### Part 3

**Lines 16 and 17** – For specific rules regarding the attribution of interest deductions, see Finance Memorandum 16-2 .

#### Schedule E – Investment capital

Schedule E computes investment capital items to be included in Form NYC-2 or NYC-2-A, Schedule D. The income generated from the investments reported on Schedule E is reported on Schedule C. Investment capital is **not** limited by any limitations applicable to investment income or gross investment income.

**Note:** Reverse repurchase agreements, securities borrowing agreements, and their underlying securities, are business capital and cannot be listed as investment capital.

*Investment capital* means investments in stocks of non-unitary corporations that satisfy the definition of a capital asset under IRC section 1221 at all times the taxpayer owned such stock during the tax year, are held by the taxpayer for investment for more than one year, and the dispositions of which are, or would be, treated by the taxpayer as generating long-term

capital gains or losses under the IRC. For dealers subject to IRC section 1236, stocks acquired on or after January 1, 2015, must have never been held for sale to customers in the regular course of business after the close of the day on which they are acquired. Such stocks must be clearly identified in the taxpayer's records as stock held for investment in the same manner as required under IRC section 1236(a)(1) for the stock of a dealer in securities to be eligible for capital gain treatment (whether or not the taxpayer is a dealer of securities subject to section 1236). Generally, the identification must occur before the close of the day on which the stock was acquired, although floor specialists have seven business days to make the identification. (§11-652(4)(a)).

For nondealers not subject to IRC section 1236, holding stock acquired prior to October 1, 2015, such identification must occur before October 1, 2015. See *Finance Memorandum 15-3, Investment Capital Identification Requirements for the Corporate Tax of 2015*.

Stock in a corporation that is conducting a unitary business with the taxpayer, stock in a corporation that is included in a combined return with the taxpayer pursuant to the commonly owned group election in section 11-654.3(3), and stock issued by the taxpayer does not constitute investment capital.

If the taxpayer, or all the members of a combined group, owns or controls, directly or indirectly, less than 20% of the voting power of the stock of a corporation, that corporation will be presumed to be conducting a business that is not unitary with the business of the taxpayer for purposes of determining whether or not the stock constitutes investment capital.

*Stock* means an interest in a corporation that is treated as equity for federal income tax purposes. (§11-652(3-a)).

Any liabilities which are directly or indirectly attributable to an item of investment capital are deducted from that item of investment capital. If the amount of those liabilities exceeds the amount of that item of investment capital, the amount of that item of investment capital will be zero. (§ 11-652.4)(b))

If a taxpayer acquires stock that is a capital asset under IRC section 1221 during the tax year, and owns that stock on the last day of the tax year, it will be **presumed**, solely for purposes of determining whether that stock should be classified as investment capital after it is acquired, that the taxpayer held that stock for more than one year. (§11-652(4)(d)). Provided, however, if the taxpayer can determine, at the time it files its original return for the tax year in which it acquired the stock, whether or not it actually held the stock for more than one year, then the presumption in the preceding sentence does not apply and the actual period of time during which the taxpayer owned the stock is used to determine whether the stock could be classified as investment capital.

Two situations in which the holding period presumption described above would not apply are:

- 1) you still own the stock on the date you file your return, but as of that date you have owned the stock for more than one year; and
- 2) you have sold the stock prior to the date you file your return.

In both cases, you would use your actual holding period to determine whether the stock could be classified as investment capital.

The statute also includes an addback requirement for both the **presumed** investment capital and the related income if the holding period requirement is not met. See the specific addback instructions in Schedule F.

#### Parts 1 through 4

If more space is needed, attach additional sheets providing the information in the same format as in each part.

For Part 1, list all assets owned that generated income being claimed as not allocable to New York City under the U.S. Constitution. For Parts 2 and 3, for each category of stock, list all stocks owned.

**Column A** – For Part 1, provide identifying information, such as stock name, committee on uniform security identification procedures (CUSIP) or CUSIP international numbering system (CINS) number, lot number, or issuer and maturity date of bond. For Parts 2 and 3, provide the name, CUSIP or CINS number, or lot number.

**Columns B through E** – For Parts 1, 2, and 3, provide the requested additional information in these columns.

**Note:** For Part 3, columns D and E are not applicable. To qualify as presumed investment capital the stock must still be owned at the time the taxpayer files its original return for the tax year. Any stock that has been sold is **never** reported as presumed investment capital in Part 3.

**Note:** For all parts, you must complete column F before completing column G.

**Column F** – Enter the total average FMV of each item listed in column A. On any date, the FMV of stocks, bonds, and other regularly traded securities is the mean between the highest and lowest selling prices. The average value is generally computed quarterly if your usual accounting practice permits, but you may use a monthly, weekly, or daily average. If your usual accounting practice does not permit a quarterly or more frequent computation of average FMV, you may use a semiannual or annual computation if no distortion of average FMV results. If the security is not marketable, value it using generally accepted accounting principles (GAAP).

**Column G** – Enter all liabilities, both long-term and short-term, directly and indirectly attributable to each item of investment capital listed in column A. Use the same method of averaging used to determine the average value of assets in column F. Enter for each item of investment capital listed in column A the sum of the liabilities directly and indirectly attributable to such capital. Liabilities directly attributable to an asset include those that were incurred in connection with the acquisition or holding of that asset.

**Column G worksheet – Computation of liabilities indirectly attributable to a particular item of investment capital**

A. Total liabilities (see instructions below) .....	A.	
B. Liabilities directly attributable to investment capital (see instructions below) .....	B.	
C. Liabilities directly attributable to business capital (see instructions below) .....	C.	
D. Total liabilities directly attributable (add lines B and C) .....	D.	
E. Total liabilities indirectly attributable (subtract line D from line A) .....	E.	
F. Average FMV of investment capital before subtraction of liabilities attributable (from Schedule E, column F, line 4) .....	F.	
G. Average FMV of adjusted total assets (see instructions below) .....	G.	
H. Investment capital factor (divide line F by line G) .....	H.	
I. Liabilities indirectly attributable to total investment capital (multiply line E by line H) .....	I.	
J. Enter the average FMV of a particular item of investment capital before subtraction of liabilities attributable (see instructions below) .....	J.	
K. Investment capital factor for that particular item of investment capital (divide line J by line F) .....	K.	
L. Liabilities indirectly attributable to that particular item of investment capital (multiply line I by line K) .....	L.	

**INSTRUCTIONS**

- Line A** Enter the amount from Form NYC-2, Schedule C, column C, line 6 or from Form NYC-2-A, Schedule C, column D, line 6.
- Line B** Enter the total average FMV of all liabilities directly traceable to the items of investment capital reported in Schedule E, Parts 1, 2, and 3.
- Line C** Enter the total average FMV of all liabilities directly traceable to business capital. Include the **lesser** of:
  - (a) the sum of the total average FMV of repurchase agreements and stock lending agreements, or
  - (b) the sum of the total average FMV of reverse repurchase agreements and stock borrowing agreements.
- Note:** Reverse repurchase agreements, securities borrowing agreements, and their underlying securities, are business capital. Repurchase agreements and stock lending agreements are liabilities directly traceable to business capital to the extent of the sum of the total value of reverse repurchase agreements and stock borrowing agreements.
- Line G** Most taxpayers should enter the amount from Form NYC-2, Schedule C, column C, line 5, or from Form NYC-2-A, Schedule C, column D, line 5. However, if you have reverse repurchase agreements and/or stock borrowing agreements, you must reduce such amount by the lesser of:
  - (a) the sum of the total average FMV of reverse repurchase agreements and stock borrowing agreements, or
  - (b) the sum of the total average FMV of repurchase agreements and stock lending agreements. For more information, see Finance Memorandum 16-2.
- Line J** For each item of investment capital listed in Schedule E, Parts 1, 2, and 3, column A, enter the amount from the respective line in column F.
- Note:** Lines J through L are completed for each item of investment capital listed in Schedule E, and the line L amount is included in the computation of the amount entered on each respective line in column G.

Use the methodology outlined in the Column G worksheet – *Computation of liabilities indirectly attributable to a particular item of investment capital*, to determine the amount of liabilities indirectly attributable to each particular item of investment capital.

For each item listed in column A, enter in the respective line in column G the sum of the line L amount from this worksheet (liabilities indirectly attributable to that particular item of investment capital) and the amount of liabilities directly attributable to that particular item of investment capital.

**Column H** – Determine the net average FMV of each item listed in column A by subtracting column G from column F. The net average FMV of any particular item cannot be less than zero.

**Lines 1, 2, and 3** – In each part, add all amounts in columns F, G, and H; enter the totals on lines 1, 2, and 3, respectively. If none, enter 0 in the appropriate column. The totals on lines 1, 2, and 3 are then entered on Form NYC-2 or NYC-2-A, Schedule D, lines 1, 2, and 3, in columns A, B, and C.

**Schedule F – Current year addback of prior year presumed investment capital and investment income**

Schedule F computes the addback of prior year presumed investment capital items that failed to meet the holding period presumption. These addback amounts are reported on the current year Form NYC-2 or NYC-2-A, Schedule D, line 5. Schedule F also computes the addback of income from such investment capital items which is then reported on the current year Form NYC-2 or NYC-2-A, Schedule B, line 29.

If the taxpayer reported presumed investment capital items in the prior year, and then failed to hold a particular item of such presumed investment capital for more than one year, then the taxpayer must increase its total business capital in the immediately succeeding tax year by the amount included in investment capital in the prior year return for that stock, net of any liabilities attributable to that stock in the prior year return computed as provided in section 11-652(4)(b), and must increase its business income in the immediately succeeding tax year by the amount of income and net gains (but not less than zero) from that stock included in investment income, in the prior year return less either any interest deductions directly and indirectly attributable to that stock, or if the safe harbor election is made, less 40% of the gross investment income from that stock claimed in the prior year return, as provided in section 11-652(5). Alternatively, a taxpayer may file an amended return for the preceding tax year to reflect the fact that the stock is no longer considered investment capital. If you choose to file an amended return, mark an X in the box on line A. See, Finance Memorandum 16-2.

**Part 1**

List all prior year presumed investment capital items, as previously reported on your prior tax year Form NYC-2.1, that did not meet the holding period requirement. In column A, provide the name, CUSIP number, or CINS, or lot number and provide the requested additional information in all other columns. If more space is needed, attach additional sheets, providing the information in the same format.

For all columns other than columns D and E, the information entered for each item of investment capital should be identical to the information reported on your prior tax year Form NYC-2.1, Schedule E, Part 3, for that particular item of investment capital.

**Part 2**

The required addback of prior year presumed investment income from the investment capital items listed in Part 1 above is calculated based on the specific stocks identified in Part 1.

**Lines 2 and 3** – Enter the requested information for the stocks identified in Part 1, as previously reported on your prior tax year.