

These FAQs are meant to provide general guidance on topics of interest to taxpayers. However, taxpayers should be aware that subsequent changes in the Administrative Code or its interpretation may affect the accuracy of an FAQ. The information provided in these FAQs does not cover every situation and is not intended to replace the law or change its meaning. These FAQs clarify corporate tax reform legislative amendments that take effect for taxable years beginning on or after January 1, 2015, unless otherwise stated

BUSINESS CAPITAL

1. Does business capital include the capital that generates other exempt income?

Yes, because this capital may also generate taxable business income, such as capital gains from the sale of stock in a unitary corporation that is not included in a combined report with the taxpayer.

BUSINESS INCOME BASE

1. Are Internal Revenue Code Section 78 gross-up dividends included in the business income base?

Our current policy of excluding these dividends from Entire Net Income is being continued. See Administrative Code section 11-652(8)(a)(2-a).

2. What constitutes a small business for determining whether a small thrift or community bank has made a “small business loan” for purposes of the subtraction modification under Administrative Code section 11-652(8)(q)?

A loan will be considered a “small business loan” if made to an active business that has had, for federal income tax purposes, an average number of full-time employees of 100 or fewer, not including general executive officers, and gross receipts of not greater than \$10,000,000 in its immediately preceding taxable year. In the event that the entity applies for the loan in its first year of operations, satisfaction of the requirements in the preceding sentence is determined by the employees, receipts and assets of the business on the date of the loan application. In addition, the business may not be part of an affiliated group, as defined in section 1504 of the Internal Revenue Code, unless the group would have itself met, as a group, the active business, employee and the gross-receipts requirements. A business qualifies as an active business if the value of the financial instruments described in Section 11-654.2(5)(a) of the Administrative Code of the City of New York that it holds for investment does not exceed 50% of the value of its total assets. A loan made to an entity which meets these requirements to be a small business at the time of the filing of the loan application, is deemed to be a small business loan throughout the term of such loan.

Example A:

A retail clothing business submits an application for a loan from a community bank on February 1, 2016. The bank determines that during the 2015 tax year, the business had an average number of 30 employees, and that for the same tax year the business’s gross receipts were \$3,000,000 and its assets consisted entirely of inventory and working capital. The bank further determines that the business is not part of an affiliated group. The loan is a “small business loan” for purposes of the subtraction modification under Administrative Code section 11-652(8)(q).

Example B:

The business in example A submits an application for a loan from the same community bank on February 1, 2017. The bank determines that during the 2016 tax year, the business had an average num-

ber of 40 employees, and that for the same tax year the business's gross receipts were \$4,000,000. The bank further determines that for the 2016 tax year the business was part of an affiliated group; and that during that tax year the members of the affiliated group together had an average number of 90 employees, and that for the same tax year the members of the group's total gross receipts were \$9,000,000. The loan to the business is a "small business loan" for purposes of the subtraction modification under Administrative Code section 11-652(8)(q).

Example C:

A limited partnership submits an application for a loan from a community bank on February 1, 2017. The bank determines that during the 2016 tax year, the partnership had no employees and its gross receipts were \$2,000,000 for the year. The bank also determines that its assets consist of corporate stock that has a value equal to \$40 million and land that has a value equal to \$10 million. The partnership holds the corporate stock for investment. The loan to the partnership does not qualify as a "small business loan" for purposes of the subtraction modification under Administrative Code section 11-652(8)(q).

COMBINED REPORTING

1. Will New York City consider a corporation instantly unitary with a taxpayer when acquired?

It is a facts and circumstances determination upon acquisition.

2. How is the commonly owned group election made?

The election is made on the original return of the combined group that is timely filed (including valid extensions of time for filing). There will be an indicator on the combined return for this election.

3. Can both fiscal year and calendar year filers be included in a combined report? If so, when is a fiscal-year corporation that is a member of a combined group included in a combined report if its designated agent files as a calendar-year taxpayer?

Generally, a corporation with a fiscal tax year may be included in a combined report with a calendar-year taxpayer. If a corporation does not have the same tax year as the taxpayer designated as the agent for the combined group, the corporation's income and activities for its tax year that ends within the tax year of the designated agent are included in the combined report. However, any corporation with a fiscal tax year that begins in 2014 and ends in 2015 cannot be included in a combined report with any other corporation that has a tax year beginning on or after January 1, 2015. Fiscal-year taxpayers must file a separate tax return from that of its designated agent for a tax year that began in 2014 and ends in 2015, if the designated agent's tax year begins on or after January 1, 2015. A fiscal-year taxpayer may be included in a combined report with its designated agent starting with its first fiscal year that begins on or after January 1, 2015. See also, Finance Memorandum 15-2 (April 17, 2015)

Example A:

A BCT taxpayer has a fiscal tax year that ends on September 30. The taxpayer is a member of a combined group whose designated agent has a calendar tax year ending on December 31. The BCT taxpayer is still subject to tax under the BCT for its 2014-2015 fiscal tax year, and must separately file Form NYC-1 for its fiscal tax year that runs from October 1, 2014 through September 30, 2015. For its fiscal tax year that begins on October 1, 2015 and ends on September 30, 2016, the former BCT taxpayer is included in the designated agent's combined report filed under Subchapter 3-A for the tax year that begins on January 1, 2016 and ends on December 31, 2016.

Example B:

A GCT taxpayer with a fiscal tax year that ends on June 30 is a member of a combined group with a calendar tax year ending on December 31. The taxpayer must separately file Form NYC-3L for its fiscal tax year that runs from July 1, 2014 to June 30, 2015, and may not be included in the designated agent's combined report for the tax year that begins on January 1, 2015 to December 31, 2015. The fiscal tax year that begins on July 1, 2015 and ends on June 30, 2016 is included in the designated

agent's combined report for the tax year that runs January 1, 2016 through December 31, 2016.

Example C:

The designated agent of a combined group has made a commonly owned group election under Administrative Code section 11-654.3(3) (seven year election) for its 2015 calendar tax year. It owns more than 50% of an affiliated corporation that is a GCT fiscal-year taxpayer with a tax year that ends on March 31. The affiliated corporation must separately file Form NYC-3L for its fiscal tax year that runs from April 1, 2014 through March 31, 2015. For its fiscal tax year that begins on April 1, 2015 and ends on March 31, 2016, the affiliated corporation is included in the designated agent's combined report for the tax year that begins on January 1, 2016 and ends on December 31, 2016.

4. **Are nontaxpayer members of a combined group subject to the fixed dollar minimum tax?**
No.

CORPORATE PARTNERS

1. **Does corporate tax reform change the method for determining partnership income of a corporate partner?**
In general, no. We are currently preparing Rules that will address the issue in detail and will conform closely to the New York State regulations for corporate partners.

CREDIT CARRYFORWARDS

1. **How does corporate tax reform affect credit carryforwards from years prior to 2015?**
The credit carryforward provisions were included in the new Subchapter 3-A. Any credit carried forward from a year prior to corporate tax reform may continue to be carried forward and used against the tax imposed under Subchapter 3-A in tax years 2015 and after, under the same rules that applied prior to reform.
- Credits with carryforwards of unlimited duration can continue to be carried forward until used
 - Credits with carryforwards of a limited duration can be carried forward and used until their expiration.

Example:

A taxpayer, who relocated in 2008, was allowed a \$3,000 Lower Manhattan Relocation and Employment Assistance tax credit in 2013 that has a 5-year carryforward duration. The taxpayer used \$1000 in 2013 and \$500 in 2014. The unused credit carryforward of \$1,500 may continue to be carried forward until 2018, or whenever it is completely used, whichever comes first. Further, the twelve year benefit period also carries over into Subchapter 3-A.

INTEREST ATTRIBUTION

1. **If a taxpayer makes the election to reduce its investment income and other exempt income by 40% in lieu of attributing interest expense to investment income and other exempt income, can the Department override the election and require attribution?**
No. The Department is bound to follow the taxpayer's election.

INVESTMENT CAPITAL

1. **Is the 20% ownership presumption regarding a unitary relationship for purposes of determining exempt investment income a rebuttable presumption?**
The 20% ownership presumption is rebuttable. If the Department chooses to rebut the presumption, the burden will fall on the Department to demonstrate that the less than 20% owned subsidiary is unitary with the taxpayer.

2. The definition of investment capital includes a debt obligation or other security if its income or gain cannot be apportioned to the state as business income as a result of U.S. constitutional principles. Will the Department issue guidance outlining the items it cannot constitutionally apportion as business income?

No. Under U.S. Supreme Court case law, a state cannot treat an item of income of a taxpayer subject to tax in the state as apportionable business income if the state does not have constitutional nexus with that item of income. The Department will not attempt to offer guidance beyond existing Supreme Court case law as to how this constitutional doctrine would apply under particular facts and circumstances.

APPLICABLE TAX RATE FOR QUALIFIED NEW YORK MANUFACTURING CORPORATIONS

1. How does a qualified New York manufacturing corporation determine its tax rate?

The tax rate applicable to a qualified New York manufacturing corporation depends upon both the amount of its business income allocated to the City and the amount of its total business income prior to allocation. Administrative Code sections 11-654(1)(k)(1), (2) and (3) require separate alternative tax rate calculations using each amount. To determine its applicable tax rate, the corporation must, first, calculate its tax rate with reference to business income allocated to the City, second, calculate its tax rate with reference to business income prior to allocation, and, third, select the highest rate resulting from these calculations. Each calculation is necessary even if the corporation's allocated business income is less than \$10 million. Accordingly, the tax rate based on total business income prior to allocation sets a minimum, not a maximum, tax rate. No tax rate reduction applies at all if the corporation's income allocated to the City is \$20 million or greater or its business income prior to allocation is \$40 million or greater.

Example A:

A qualified New York manufacturing corporation has \$15 million of business income allocable to the City and \$25 million of total business income. It must calculate alternative tax rates using each amount of income. The applicable tax rate is 6.638% because:

1. Tax rate based on business income allocated to the City. $4.425\% + (4.425\% \times ([\$15 \text{ million} - \$10 \text{ million}] / \$10 \text{ million})) = 6.6375\%$ (round to 6.638%),
2. Tax rate based on total business income prior to allocation. $4.425\% + (4.425\% \times ([\$25 \text{ million} - \$20 \text{ million}] / \$20 \text{ million})) = 5.53125\%$ (round to 5.531%), and
3. The higher rate is 6.638%.

Example B:

A qualified New York manufacturing corporation has \$15 million of business income allocable to the City and \$35 million of total business income. It must calculate alternative tax rates using each amount of income. The applicable tax rate is 7.744% because:

1. Tax rate based on business income allocated to the City. $4.425\% + (4.425\% \times ([\$15 \text{ million} - \$10 \text{ million}] / \$10 \text{ million})) = 6.6375\%$ (round to 6.638%),
2. Tax rate based on total business income prior to allocation. $4.425\% + (4.425\% \times ([\$35 \text{ million} - \$20 \text{ million}] / \$20 \text{ million})) = 7.74375\%$ (round to 7.744%), and
3. The higher rate is 7.744%.

Example C:

A qualified New York manufacturing corporation has \$15 million of business income allocable to the City and \$41 million of total business income. The applicable tax rate is 8.85% because total business income is \$40 million or greater.

Example D:

A qualified New York manufacturing corporation has \$25 million of business income allocable to the City

and \$25 million of total business income. The applicable tax rate is 8.85% because business income allocated to the City is \$20 million or greater.

Example E:

A qualified New York manufacturing corporation has \$8 million of business income allocable to the City and \$25 million of total business income. It must calculate alternative tax rates using each amount of income.

The applicable tax rate is 5.531% because:

1. Tax rate based on business income allocated to the City. Business income allocated to the City is less than \$10 million, which means the rate is 4.425%,
2. Tax rate based on total business income prior to allocation. $4.425\% + (4.425\% \times ((\$25 \text{ million} - \$20 \text{ million}) / \$20 \text{ million})) = 5.53125\%$ (round to 5.531%), and
3. The higher rate is 5.531%.

Example F:

A qualified New York manufacturing corporation has \$8 million of business income allocable to the City and \$15 million of total business income. It must calculate alternative tax rates using each amount of income. The applicable tax rate is 4.425% because:

1. Tax rate based on business income allocated to the City. Business income allocated to the City is less than \$10 million, which means the rate is 4.425%,
2. Tax rate based on total business income prior to allocation. Total business income prior to allocation is less than \$20 million, which means no increase to the 4.425% tax rate applies, and
3. The tax rate is 4.425%.

MANDATORY FIRST INSTALLMENT (MFI)

1. How does a bank that files under the Banking Corporation Tax for its 2014 tax year compute its MFI for the first quarter of 2015?

Corporate tax reform did not change the MFI rules. MFI will continue to be based on rules in effect for a taxpayer's 2014 tax return.

2. Does corporate tax reform change the MFI rules?

No. The mandatory first installment is still based on the prior year's tax. The remaining three estimated tax payments should reflect the anticipated liability for the current tax year. Therefore, when determining the amount of the 2nd, 3rd and 4th estimated tax payments for tax years that begin on or after January 1, 2015, the effect of the corporation tax reform rules should be taken into consideration.

However, as a general matter, the Department will not assert an underpayment of estimated tax for any payment due on or prior to June 15, 2015, if the taxpayer makes the required declarations and payments in full no later than the first due date after June 15, 2015 on which an installment of estimated tax is required to be paid, together with all other such declarations and payments.

NET OPERATING LOSS (NOL)

1. Can a taxpayer carry back a net operating loss to a tax year beginning before January 1, 2015?

NOLs can be carried back 3 years. However, an NOL generated in 2015 or later cannot be carried back to a tax year commencing prior to January 1, 2015.

PRIOR NET OPERATING LOSS (PNOL) CONVERSION SUBTRACTION

1. Are the PNOL conversion subtraction and the net operating loss deduction (NOLD) applied to business income pre-apportionment or post-apportionment?

For tax years beginning on or after January 1, 2015, both the PNOL conversion subtraction and the NOLD are applied against apportioned business income.

REPEAL OF THE BANKING CORPORATION TAX (BCT) FOR C-CORPORATIONS

1. When does a fiscal-year BCT filer become subject to tax under Subchapter 3-A?

The BCT will not apply to C-corporations for tax years beginning on or after January 1, 2015. Therefore, a former BCT taxpayer is subject to tax under Subchapter 3-A starting with its first fiscal tax year that begins on or after January 1, 2015.

Example:

An BCT taxpayer with a fiscal tax year beginning on October 1, 2014 will be subject to tax under the BCT until September 30, 2015. The taxpayer will then be subject to tax under Subchapter 3-A for its fiscal tax year that begins on October 1, 2015.

REPORTS

1. When will the 2015 Subchapter 3-A forms and instructions be made available?

The Department is currently in the process of drafting the 2015 Subchapter 3-A forms and instructions. We anticipate the 2015 Subchapter 3-A forms and instructions will be made available in accordance with our normal release dates in December 2015 so that taxpayers may timely file their returns in 2016.