

Instructions for Form NYC-2.2



Subtraction Modification for Qualified Banks and Other Qualified Lenders

2019

GENERAL INFORMATION

All citations are to New York City Administrative Code sections unless specifically noted otherwise.

For tax years beginning on and after January 1, 2015, three new entire net income (ENI) modifications were created for thrifts and community banks. An additional modification was also created for lenders owning certain types of housing accommodations or residential property (see the description for Schedule E).

The modification computed on Schedule B **must** be utilized by **small** thrifts and qualified community banks that maintained a captive real estate investment trust (REIT) as of April 1, 2014, and maintained that captive REIT on the last day of the tax year for which they are filing a combined return that properly includes such captive REIT (Ad. Code §11-652(8)(r)). Taxpayers qualifying for this modification are precluded from calculating the modifications on Schedules C and D but may qualify for the modification under Schedule E.

The modification computed on Schedule C is available to qualified community banks and thrift institutions who maintain a qualified residential loan portfolio (Ad. Code §11-652(8)(s)). The modification computed on Schedule D is available to qualified community banks and **small** thrift institutions (Ad. Code §11-652(8)(q)). Taxpayers who are not required to utilize the modification on Schedule B may choose either the Schedule C **or** Schedule D modification but **not** both. An additional modification under Schedule E is permitted to lenders owning loans secured by housing accommodations that are rental units subject to rent control, rent stabilization or to a regulatory agreement (subject to certain limitations) or secured by residential real property located in a low-income community (as defined by statute). See Ad. Code §11-652(8)(t).

If more than one member of a combined group is eligible for any of the modifications, all members **must** utilize the same modification (Ad. Code §11-654.3(4)(g)). For purposes of these instructions, a thrift institution, a small thrift, and a qualified community bank are defined below.

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 (Ad. Code §11-652(8)(s)(3)).

A *small thrift* is a thrift institution whose average value of assets during the tax year, or, if the taxpayer is included in a combined group that is filing a combined return, the assets of the combined reporting group, does **not** exceed \$8 billion (Ad. Code §11-652(8)(q)(2-a)).

A *qualified community bank* is:

- a bank or trust company organized under or subject to Article 3 of the New York State Banking Law or comparable law of another state, or a national banking association; **and**
- a taxpayer whose average value of assets during the tax year, or, if the taxpayer is included in a combined group that is filing a combined return, the assets of the combined reporting group, does **not** exceed \$8 billion (Ad. Code §11-652(8)(q)(2)).

Combined groups need to file only one Form NYC-2.2 computed on a combined basis for their group. However, multiple copies of Schedule F may need to be attached.

SPECIFIC INSTRUCTIONS

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

SCHEDULE A

Modification used in the current tax year

If you qualify for the modification in Schedule B, you **must** calculate it, and may not calculate or utilize the modifications under Schedule C and D. You are still eligible, however, for the modification under Schedule E if you meet the criteria specified in the instructions to that Schedule. If you do **not** qualify for the modification in Schedule B, you may calculate and choose from either of the modifications in Schedule C or Schedule D and you may also calculate and use the modification under Schedule E if you meet the criteria specified in the instructions to that schedule.

SCHEDULE B

Computation of modification for a captive real estate investment trust (REIT) (Ad. Code §11-652(8)(r))

This modification can only be utilized by small thrifts and qualified community banks that:

- maintained a captive REIT as of April 1, 2014;
- maintained such captive REIT on the last day of the tax year for which they are reporting; **and**
- properly included such captive REIT in their combined return (Form NYC-2A) for the tax year.

If you qualify to use this modification you **must** utilize it and you are **precluded** from using either of the other two modifications described in the instructions to Schedules C or D in any tax year in which the captive REIT was maintained.

The subtraction equals 160% of the dividends paid deductions allowed to that captive REIT for the tax year for federal income tax purposes.

Note: When you are computing combined ENI you should **not** eliminate any intercompany dividends received from the combined captive REIT, as the Ad. Code §11-652(8)(r) modification accomplishes this.

If this schedule is applicable, complete this schedule in its entirety, but do **not** complete Schedules C and D. If this schedule is **not** applicable to you, skip to line 3 and enter **0**, then continue with the rest of the form.

SCHEDULE C

Computation of modification for qualified residential loan portfolios (Ad. Code §11-652(8)(s))

This modification is available **only** to either a *thrift institution* or a *qualified* community bank that maintains a *qualified residential loan portfolio* as defined below. The subtraction equals the amount, if any, by which 32% of your ENI (less the amount on Schedule E, line 21) exceeds amounts deducted by you on your federal return under IRC sections 166 and 585, less any amounts included in federal taxable income (FTI) as a result of a recovery of a loan.

A *qualified residential loan portfolio* is maintained by you if at least 60% of your total assets at the close of the tax year consist of the assets described in items (i) through (xii) below, with the application of the rule in item (xiii). If you are 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 are:

- (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 does not include any balances serving as collateral for securities lending transactions;
- (ii) obligations of the U.S. 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 U.S. 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, and loans made for the improvement of residential real property or real property used primarily for church purposes. For purposes of this item, residential real property includes 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) above;
- (vi) any regular or residual interest in a real estate mortgage investment conduit (REMIC), as such term is defined in IRC section 860D, 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 95% or more of the assets of such REMIC are assets described in items (i) through (v), 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) 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);
- (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;
- (xii) loans for which the taxpayer is the creditor and which are wholly secured by loans described in item (iv) of this clause; and

- (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.

At the election of the taxpayer, the 60% can be applied on the basis of the average assets outstanding during the tax year, in lieu of the close of the tax year. The taxpayer can elect to compute an average using the assets measured on the first day of the tax year and on the last day of each subsequent quarter, or month, or day during the tax year. This election may be made annually.

For purposes of item (iv), if a multi-family 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 80% 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).

For purposes of item (iv), 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 does not apply to any tax 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), 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 if such REMICs are part of a tiered structure, they shall be treated as one REMIC for purposes of such item (vi).

Line 4 – Enter the amount of assets described in (i) through (xii), with the application of the rule in (xiii) above.

Form NYC-2A filers: Include assets for all members that are thrifts or qualified community banks.

Compute the assets in the same manner as is required by the banking regulator of the taxpayers included in the combined group that is filing the combined return.

Line 5 – Enter the amount of total assets.

Form NYC-2A filers: Include assets for all members that are thrifts or qualified community banks.

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. Assets will only be included if the income or expenses of the assets 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 ENI for the tax year. Assets will not include deferred tax assets and intangible assets identified as *goodwill*. Tangible real and personal property, such as buildings, land, machinery, and equipment are valued at cost. For leased assets that are **not** properly reflected on a balance sheet, only leased real property is included in total assets, and such real property is valued at the annual lease payment multiplied by eight. Intangible property, such as loans and investments, are valued at book value exclusive of reserves. Average assets are computed using the assets measured on the first day of the tax year, and on the last day of each subsequent quarter of the tax year, or month, or day during the tax year.

For a combined return, intercorporate stockholdings and bills, notes, and accounts receivable, and other intercorporate indebtedness between the corporations included in the combined return are eliminated.

Line 6 – If the result is less than 60%, you do **not** qualify for this modification. Proceed directly to line **14** and enter **0**.

Form NYC-2 filers: If the result is 60% or more, skip lines 7 through 10, and continue with line 11.

Form NYC-2A filers: If the result is 60% or more, continue with line 7.

Lines 7, 8, and 9 – Per Ad. Code 11-652(8)(s)(1)(ii)(A), if you are in a combined group that is filing a **combined return** under §11-654.3, this deduction is computed on a combined basis. The ENI of the combined group (less the amount on Schedule E, line 21) is 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 return, and the denominator of which is the average total assets of all the corporations included in the combined return. *Total assets* for this purpose has the same meaning as stated in the instructions for line 5.

Lines 10 through 14 – If Form NYC-2 or NYC-2A, Schedule B, line 22 is zero or a loss, skip lines 12 and 13, and enter **0** on line 14.

Line 10 – The ENI of the combined group is initially reduced by the amount on Schedule E, line 21. That amount is then multiplied by line 9. The product is the ENI amount subject to this modification.

SCHEDULE D

Computation of modification for community banks and small thrifts (Ad. Code §11-652(8)(q))

This modification is available **only** to either a *qualified community bank* or a *small thrift institution*. The subtraction equals 50% of the amount computed by multiplying the net interest income from loans during the tax year by a fraction, the numerator of which is the gross interest income during the tax year from qualifying loans and the denominator of which is the gross interest income during the tax year from all loans.

For purposes of these instructions, *net interest income from loans* means 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 small thrift institution or qualified community bank during the tax year, and the denominator of which is the average total assets of the small thrift institution or qualified community bank during the tax year.

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. Assets will only be included if the income or expenses of the assets 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 ENI for the tax year. Assets will not include deferred tax assets and intangible assets identified as *goodwill*. Tangible real and personal property, such as buildings, land, machinery, and equipment are valued at cost. For leased assets that are **not** properly reflected on a balance sheet, only leased **real** property is included in total assets, and such real property is valued at the annual lease payment multiplied by eight. Intangible property, such as loans and investments, are valued at book value exclusive of reserves. Average assets are computed using the assets measured on the first day of the tax year, and on the last day of each sub-

sequent quarter of the tax year, or month, or day during the tax year.

For purposes of this schedule, a *qualifying loan* is a loan that meets the following conditions:

- (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 is \$5 million or less, and either the borrower is located in this city as determined under Ad. Code §11-654.2 and the loan is not secured by real property, or the loan is secured by real property located in New York City.
 - A *residential mortgage loan* is a loan which meets the definition of an asset as described in 11-652(8)(s)(2)(i)(D). See Schedule C instructions, clause (iv) under Assets.
 - A *small business loan* is a loan made to an active business that had an average of 100 or fewer full-time employees and \$10 million or less gross receipts in its immediately preceding tax year. (If the borrower applies in its first year of operations, these requirements are determined on the date of the loan application.) The borrower may not be part of an affiliated group, unless the group itself would have met the active business, employee, and gross-receipts requirements. An active business is one in which the value of the financial instruments held for investment does not exceed 50% of the value of its total assets. A loan made to an entity that meets these requirements at the time of the filing of the loan application is deemed to be a small business loan throughout the term of such loan.

A loan that meets the definition of a qualifying loan in a prior tax year (including years beginning prior to January 1, 2015) remains a qualifying loan in tax years during and after which such loan is acquired by another corporation in the taxpayer's combined reporting group under Ad. Code §11-654.3

Line 15 – Form NYC-2 filers: Enter the amount from Schedule F, line 11.

Form NYC-2A filers: See the instructions for Schedule F, *Computation of total net interest income from qualifying loans*.

SCHEDULE E

Computation of modification for qualified affordable housing and low income community loans (Ad. Code §11-652(8)(t))

Note: If the total 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, exceeds \$150 billion, the taxpayer does not qualify for this deduction.

A taxpayer that owns a qualifying loan as described below is allowed a deduction as calculated in this schedule.

For purposes of this schedule, a qualifying loan is a loan that meets the following conditions:

- (A) The loan is originated by the taxpayer lender or purchased by the taxpayer immediately after its origination in connection with a com-

mitment to purchase made by the taxpayer prior to the loan's origination; and

- (B) Satisfies conditions of item (I) or (II) of this paragraph B.
- (I) The loan is secured by a housing accommodation located within the city, where there are rental units in such housing accommodation that are qualifying units, which for purposes of this paragraph B, means units subject to rent control, rent stabilization or to a regulatory agreement, provided that, each such loan will be considered a qualifying loan for purposes of this modification only in proportion to a percentage equal to the number of qualifying units divided by the total number of all residential and commercial units located on the site of the real property securing the loan, as determined as of the date the loan is made.
- (II) To the extent not included in item (I) of this paragraph B, loans secured by residential real property located in a low-income community. For purposes of this modification, low-income community areas are census tracts within the New York City in which the poverty rate for such tract is at least twenty percent and the median family income for such tract does not exceed eighty percent of metropolitan area median family income. This determination will be made by reference to the poverty and median family income census data for application of section 45D of the Internal Revenue Code of 1986, as in effect on April 13, 2015.
- (C) The loan is not treated as a qualifying loan in the computation of a subtraction from entire net income pursuant to paragraph Ad. Code §11-652(8)(q) (See instructions to Schedule D above)
- (D) If the taxpayer applies a subtraction pursuant to Ad. Code §11-652(8)(r), the interest or net gains from the loan are not recognized by a captive REIT as defined in Ad. Code §11-601.
- (E) 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 Ad. Code §11-654.3.

"Housing accommodations" for purposes of this modification means a multiple dwelling that contains at least five dwelling units together with the land on which such structure is situated.

"Regulatory agreement" for purposes of this modification means a written agreement with or approved by any local, municipal, state, federal or other government agency that requires the provision of housing accommodations for families and persons of low or moderate income, and binds the owner of such real property and its successors and assigns. A regulatory agreement may include such other terms and conditions as the locality, municipality, state, or federal government shall determine.

"Rent stabilization" for purposes of this modification means, collectively, the rent stabilization law of nineteen hundred sixty-nine, the rent stabilization code, and the emergency tenant protection act of nineteen seventy-four, all as in effect as of April 13, 2015 or as amended thereafter, together with any successor statutes or regulations addressing substantially the same subject matter

In order to determine your eligibility for this modification, you must first complete Schedule F using the definition of qualifying loans above and NOT the definition of qualifying loans applicable to Schedule D.

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. Assets will only be included if the income or expenses of the assets 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 ENI for the tax year. Assets will not include deferred tax assets and intangible assets identified as goodwill. Tangible real and personal property, such as buildings, land, machinery, and equipment are valued at cost. Leased assets (other than assets leased under a capital lease and reflected on the balance sheet) are valued at the annual lease payment multiplied by eight. Intangible property, such as loans and investments, are valued at book value exclusive of reserves. Average assets are computed using the assets measured on the first day of the tax year, and on the last day of each subsequent quarter of the tax year, or month, or day during the tax year.

If the total average value during the taxable year of the assets of the taxpayer, or if the taxpayer is included in a combined return, of the assets of the combined reporting group of the taxpayer under Ad. Code §11-654.3, does not exceed \$100 billion, the deduction is equal to the taxpayer's net interest from qualifying loans.

If the total 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, exceeds \$100 billion but is less than \$150 billion, the taxpayer is allowed a deduction equal to the taxpayer's net interest income from qualifying loans multiplied by a fraction, the numerator of which is \$150 billion minus the total 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, and the denominator of which is \$50 billion.

Net interest income from qualifying loans is the taxpayer's net interest income from loans during the taxable year multiplied 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 from all loans.

Net interest income from loans is the gross interest income during the taxable year 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 taxpayer during the taxable year and the denominator of which is the average total assets of the taxpayer for the year.

SCHEDULE F

Computation of total net interest income from qualifying loans

Check the appropriate box to indicate whether this form is being completed for purpose of the subtraction under Ad. Code §11-652(8)(q) or Ad. Code §11-652(8)(t). For purposes of determining the qualifying loans specified on line 8 of this schedule, use the appropriate definition of qualifying loans found in the instructions to Schedule D or E, above. If both subtractions are being claimed, complete a separate Schedule F for each subtraction.

Form NYC-2A filers: Complete this schedule on a separate basis for each entity in the combined group that is a qualified community bank or small thrift institution or for each member of the combined group claiming a subtraction under Schedule D or Schedule E, and attach all such schedules. Enter the total of all Schedule F, line 11 amounts on Schedule D, line 15 or Schedule E, line 17, as appropriate.