(c) Noninterest expenses charged to another person or entity. Noninterest expenses incurred by a taxpayer for the benefit of, or on behalf of, an affiliated corporation or other affiliated entity that are either charged back to that corporation or other entity or offset on the books and records of the taxpayer, other than through a reimbursement arrangement described above or through a management fee described below, are not subject to attribution provided a deduction for such expenses is not claimed by the taxpayer.

(d) Management fees. Compensation received through a management or similar fee arrangement between the taxpayer and a corporation or other entity, whether or not affiliated with the taxpayer, must be treated as business income, and deductions for noninterest expenses compensated for by such management or similar fee must be directly attributed to business income and capital. Noninterest expenses can be treated as compensated for through a management or similar fee provided the fee is paid pursuant to a written agreement. Absent a written agreement, the nature of the transaction as one involving compensation through a management or similar fee must be proven by the taxpayer, for example, by submission of contemporaneous corporate minutes or memoranda.

(2) Federal base modifications. In determining those deductions subject to attribution, adjustments required by the Administrative Code must be taken into account. In addition, expenses required to be capitalized and for which no deduction is allowed for City purposes are not subject to attribution under these provisions.

(3) Attribution of noninterest deductions.

(a) The following rules must be applied in determining whether a taxpayer has properly attributed noninterest deductions directly and indirectly among classes of capital and the income, gains and losses therefrom. Deductions not directly attributed to one or more classes of capital or income under these rules must be included in the residual group of deductions that will be indirectly attributed as provided in paragraph (c).

(b) Direct attribution of noninterest deductions. Where possible, the taxpayer must directly attribute to the appropriate class of capital or income those noninterest deductions for expenses that proximately, and not incidentally, benefit that class of capital or income. The determination of which classes of capital or income are proximately benefitted must be made on the basis of all of the facts and circumstances, including but not limited to, the nature of the income that proximately relates to the expenses that are the basis for the deduction. Taxpayers should maintain books and records sufficient to support the direct attribution of expenses among the classes of capital and income.

Except as provided in subparagraph (i)(A), below, if a deduction is for an expense that proximately benefits more than one class of capital or the income therefrom, the deduction must be apportioned among those classes of capital or income that are benefitted.

(i) <u>Direct attribution of noninterest deductions to business capital or income.</u>

(A) At the election of the taxpayer, each of the following noninterest deductions will be irrebuttably presumed to be directly attributable to business income or capital.[2] In response to any letter sent to the taxpayer as provided under the procedures set forth above, the taxpayer need only substantiate the nature and amount of each item on this list with respect to which such an election is made; the taxpayer is not required to separately establish the basis for direct attribution of those items for which such an election is made to business income or capital:

(a) cost of goods sold;

(b) bad debts other than items properly classified as subsidiary or investment capital;

(c) property, excise and sales and use taxes;

(d) real estate rents, depreciation and repairs;

(e) utilities including telecommunications costs;

(f) amortization of real property leasehold costs and improvements;

(g) depletion;

(h) advertising;

(i) noninterest expenses for which reimbursement is received in the form of a management fee treated on the

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[2]This does not preclude as a separate issue a discretionary adjustment as described in section IV.A(1)(a) above, to any expense on this list. Such adjustments could relate, for example, to the amount of the expense or the identity of the taxpayer to which the deduction is allowable.

report as business income;

(j) research and development expenses;

(k) marketing expenses;

(l) property and casualty and product liability insurance and uninsured deductible casualty and product liability losses;

(m) compensation packages of the chief executive officer, chief financial officer and chief operating officer (identified by reference to duties and not to titles);

(n) directors' fees, expenses and indemnity insurance;

(o) charitable contributions;

(p) stationery, printing, postage and other similar distribution costs;

(q) noninterest costs and expenses relating to communication and interaction with the taxpayer's shareholders and investors;

(r) noninterest costs and expenses relating to routine reporting requirements of the Securities and Exchange Commission or other federal, state or local regulatory entities, routine financial statements and tax filings;

(s) travel and entertainment expenses;

(t) noninterest costs and expenses incurred in connection with an uncompleted acquisition;

(u) noninterest costs and expenses of developing company or group-wide administrative procedures; and

(v) internal auditing costs and expenses.

(B) Taxpayers shall directly attribute to business capital or income those noninterest deductions for expenses that proximately and not incidentally benefit business capital or income. The following is a nonexclusive list of examples of noninterest deductions that, except as provided in subparagraph (i)(A) above, under appropriate facts and circumstances may be directly attributed to business capital or income. In response to any letter sent to the taxpayer as provided under the procedures set forth above, the taxpayer must substantiate the direct attribution of these deductions to business capital or income as well as the amount of the deduction:

(a) deductible costs of shipping goods to customers;

(b) compensation and other benefits of officers and employees engaged in manufacturing, sales, services, or other activities directly producing business capital or income (for situations where such activities are not exclusive, see examples in section IV.B below); and

(c) deductible legal expenses incurred in conducting the taxpayer's business, such as costs incurred to acquire or protect a copyright or patent owned by the taxpayer and used in the taxpayer's business or legal expenses incurred in negotiating contracts or resolving labor disputes with employees engaged directly in manufacturing, sales, services, or other activities directly producing business capital or income.

(d) reimbursed noninterest expenses as provided in section IV.A(1)(b) above.

(ii) <u>Direct attribution of noninterest deductions to subsidiary capital or income, gains or losses therefrom.</u> Taxpayers shall directly attribute to subsidiary capital or income those noninterest deductions for expenses that proximately and not incidentally benefit subsidiary capital or income. The following is a nonexclusive list of examples of noninterest deductions that, except as provided in subparagraph (i)(A), above, should be directly attributed to subsidiary capital or income from subsidiary capital:

(A) compensation and other benefits of officers and employees engaged in the acquisition, management or disposition of subsidiary capital or income therefrom (for situations where such activities are not exclusive, see examples in section IV.B below);

(B) legal and accounting expense deductions relating to the management of subsidiary capital or income therefrom;

(C) computer expense deductions relating to the management of subsidiary capital or income therefrom;

(D) other deductible fees and expenses incurred in connection with the completed purchase of subsidiary capital, or the sale, whether or not completed, of subsidiary capital;

(E) other deductible expenses incurred by the taxpayer for its own benefit in its role as a holder of subsidiary capital, including but not limited to;

(a) deductible expenses incurred in reviewing information prepared by the subsidiary where such review is undertaken by the taxpayer in its role as a holder of subsidiary capital;

(b) deductible expenses incurred in connection with the general supervision of a subsidiary by the taxpayer's employees (stewardship expenses). These expenses do not include expenses relating to the day-to-day operation of the subsidiary;

(c) deductible expenses incurred by the taxpayer to preserve its investment in subsidiary capital; and

(d) deductible expenses incurred in meeting reporting requirements or other legal obligations imposed on the taxpayer in its role as a holder of subsidiary capital.

(iii) Direct attribution of noninterest deductions to investment capital or income. Taxpayers shall directly attribute to investment capital or income those noninterest deductions for expenses that proximately and not incidentally benefit investment capital or income. The following is a nonexclusive list of examples of noninterest deductions that, except as provided in subparagraph (i)(A), above, should be directly attributed to investment capital or income:

(A) safe deposit box rentals for safekeeping of certificates or other documents relating to investment capital;

(B) financial news subscriptions utilized exclusively by employees engaged primarily in the acquisition, management or disposition of investment capital or the income therefrom;

(C) compensation and other benefits of officers and employees engaged in the acquisition, management or disposition of investment capital or the income therefrom (for situations where such activities are not exclusive, see examples in section IV.B below);

(D) the deductible cost of insurance and fidelity bonds covering investment capital;

(E) deductible custodian fees, investment advisory fees and legal and accounting costs and fees relating to the management of investment capital or the income therefrom;

(F) deductible computer expenses relating to the, management of investment capital or the income therefrom;