residual noninterest deductions by the asset factor (defined in (iv) below) for subsidiary capital.

(b) The taxpayer must indirectly attribute to investment capital and income an amount of residual noninterest deductions determined by multiplying residual noninterest deductions by the asset factor (defined in (iv) below) for investment capital.

(c) The taxpayer must indirectly attribute to business capital and income the excess of the amount of residual noninterest deductions over the amount of residual noninterest deductions indirectly attributed pursuant to (a) and (b) above.

(B) Election. In order to use the alternative asset method to attribute its residual noninterest deductions, the taxpayer must elect to do so for both subsidiary and investment capital and the income therefrom on a return or amended return for the applicable tax year. A separate election must be made for each year. This election is irrevocable for each year with respect to which the election is made unless the filing status of the taxpayer as combined or separate is changed as a result of an audit or where a change in the composition of a combined group is made on audit. The taxpayer may not elect the alternative asset method for any year in which the value of the taxpayer's total assets is not greater than zero. The taxpayer may elect the alternative asset method on an amended return provided that at the time it is filed, no audit has been commenced with respect to the year covered by the return. In the absence of a timely election the taxpayer must use the combined asset and income method specified in subparagraph (ii) above.

(iv) Computation of Asset and Income Factors.

(A) Asset Factor. The asset factor with respect to subsidiary capital is determined by dividing the average value of the taxpayer's subsidiary capital, without reduction for liabilities attributable to subsidiary capital, by the total average value of all the taxpayer's assets without reduction for liabilities. The asset factor with respect to investment capital is determined by dividing the average value of the taxpayer's assets constituting investment capital, without reduction for liabilities attributable to investment capital, by the total average value of all the taxpayer's assets without reduction for liabilities. If the value of a taxpayer's assets constituting investment or subsidiary capital is not greater than zero and the total assets is greater than zero, the respective asset factor for that class is zero.

For these purposes, real property and marketable securities must be valued at fair market value and the value of personal property other than marketable securities must be the value thereof shown on the books and records of the taxpayer in accordance with generally accepted accounting principles consistent with Administrative Code section 11-604.2.

(B) Income factor. The income factor for subsidiary capital is determined by dividing the taxpayer's gross income from subsidiary capital by its total gross income. The income factor for investment capital is determined by dividing the taxpayer's gross income from investment capital by its total gross income. If a taxpayer's gross income from investment or subsidiary capital is equal to zero and total income is greater than zero, the respective income factor for that class is zero.

(a) For these purposes total gross income means gross income as defined in Internal Revenue Code section 61, increased by (a) those items described in such section 61 that are included in the computation of entire net income by reason of Administrative Code section 11-602.8(c), and (b) interest on State and local bonds excluded from gross income under Internal Revenue Code section 103. Gross income is not reduced by any deduction for capital losses or by any other deductions.

(b) Gross income from subsidiary capital is that portion of total gross income consisting of dividends, interest, and gains (but not losses) from subsidiary capital.

(c) Gross income from investment capital is that portion of total gross income consisting of dividends, interest, and gains (but not losses) from investment capital as well as items described in 19 RCNY section 11-69(b), definition of Investment Income, (i)(B) through (E).

(v) <u>Computation of subsidiary and investment capital combined percentages.</u>

(A) The subsidiary capital combined percentage is computed by adding together two times the taxpayer's income factor for subsidiary capital and the taxpayer's asset factor for subsidiary capital and dividing the total by three. (The income and asset factors are defined in (iv) above.)

(B) The investment capital combined percentage is computed by adding together two times the taxpayer's income factor for investment capital and the taxpayer's asset factor for investment capital and dividing the total by three.

(C) In determining the subsidiary capital and investment capital combined percentages, if total gross income is zero, the subsidiary and investment capital combined percentages are equal to their respective asset factors. If total assets are not greater than zero, the subsidiary and investment capital combined percentages are equal to their respective income factors.

B. Examples

The following examples illustrate the direct and indirect attribution of noninterest deductions to subsidiary, investment and business capital.

Example 1: Each member of a taxpayer's accounting staff spends 40% of his or her time analyzing whether the taxpayer should restructure its subsidiaries. Each member of the accounting staff spends 20% of his or her time analyzing the taxpayer's investment portfolio. The accounting staff does not spend any other time on issues relating to subsidiary or investment capital or income. The taxpayer attributes 40% of the accounting staff's salaries and related employee benefit expenses and payroll taxes to subsidiary capital and 20% to investment capital. This method is acceptable.

Example 2: The facts are the same as in example 1. In addition, the accounting staff occupies 10% of a building rented by the taxpayer. The other 90% is used for the taxpayer's service business. All rental expense may, at the election of the taxpayer, be directly attributed to business capital pursuant to paragraph A(3)(b)(i)(A)(d). None of the rental expense would then be attributed to subsidiary or investment capital or income.

Example 3: The facts are the same as in example 1. The taxpayer has a total of 100 employees. Ten employees are in the accounting department. Each member of the accounting staff spends 40% of his or her time analyzing whether the taxpayer should restructure its subsidiaries and each member of the accounting staff spends 20% of his or her time analyzing the taxpayer's investment portfolio. Ten employees are in the personnel department. They are responsible for managing the hiring, salaries, pension and medical benefits of all