4. Article 32 Bank Franchise Tax Repealed
    a. The special rules governing the taxation of banks are repealed, and banks are merged into the Article 9-A corporate franchise tax.

Prior to the changes enacted in Tax Law, New York taxed general business corporations and financial services corporations under the franchise tax outlined in Article 9-A. (Most “corporate” entities were taxed under the provisions of Article 9-A.) Each New York State tax was outlined in a different article (for reference, the personal income tax is held within Article 22). Banking corporations had their own separate franchise tax regime, which was Article 32.

Under Article 32, banking corporations are currently taxed on the highest of four alternative bases:

- a 7.1% tax on the amount of entire net income apportioned to New York;
- a tax ranging from 0.002% to 0.01% on taxable assets;
- a 3% tax on alternative entire net income; or
- a fixed minimum tax of $250.12

Effective for tax years beginning on or after January 15, 2015, Article 32 is being eliminated completely and banks will be taxed under the same provisions of Article 9-A that are applicable to most other corporate entities.

Currently, Article 9-A also taxes corporations on the highest of four alternative tax bases:

- a tax at the rate of 7.1% on the amount of entire net income apportioned to New York;
- a tax at the rate of 0.15% on business and investment capital that has been apportioned to New York (up to a maximum capital tax of $1 million);
- a tax at the rate of 1.5% on minimum taxable income; or
- a fixed minimum income tax ranging from $25 to $5,000 based on the amount of the taxpayer’s New York gross receipts.

(Note that the “minimum tax” is repealed on a going forward basis, and the “capital base” tax is being phased out).

In addition to this baseline change that banks will need to calculate, there are myriad additional differences between Article 32 and Article 9-A taxation. This means that the Article 32 favorable treatment of international banking facilities and the 22.5% deduction for interest income on government obligations are both eliminated as of tax years beginning January 15, 2015.

Article 9-A, for example, has a tax on the value of subsidiary capital allocated to New York at the rate of 0.09%. There is no subsidiary capital tax under Article 32. Article 32 does not have an investment capital concept. Article 9-A requires that foreign corporations doing business in New York apportion worldwide net income and capital to New York; Article 32 requires banks to apportion only U.S. effectively connected income (and related total assets).

Banks, under Article 32, previously apportioned entire net income and taxable assets based on receipts, payroll, and deposits. Under the new Article 9-A provisions, apportionment based upon receipts only may increase or decrease depending upon the taxpayer.

Current Article 32 receipts factor sourcing methods are changed:

- Income on loans secured by real property, currently sourced according to the location of income producing activity, will be sourced to the location of the real property;
- Interest on other loans, currently sourced according to the income producing activity, will be sourced to the location of the borrower;
- Interest on corporate bonds, currently sourced according to the income producing activity, will be sourced to the commercial domicile of the issuing corporation;
- New sourcing rules are created for apportioning income from financial instruments
    - *Qualified Financial Instruments* (QFIs) are investments that are marked to market under Internal Revenue Code §475 or §1256. This includes commodities as well as securities.
    - Taxpayers can elect to apportion 8% of QFI net income (dividend income, interest income, and net gains) to New York, or alternatively use customer-based sourcing.
    - This irrevocable election is made on an annual basis and applies to all QFI income of all members of the combined group.

EisnerAmper LLP comment: Federal law changes in the traditional banking industry relate back to the 1999 repeal of the 1932 Glass-Steagall Act restrictions by the Gramm-Leach-Bliley Act (1999). As the traditional “bank” industry continues to undergo structural changes, and more and more hybrid financial services entities straddle the line, it was becoming apparent that the determination of whether an entity was a “bank” could vastly sway that entity’s New York tax burden. The new Tax Law “merges” Article 32 into Article 9-A by removing Article 32 altogether, and at the same time, makes key changes to Article 9-A.