



Instructions for Form CT-3.4

Net Operating Loss Deduction (NOLD)

CT-3.4-I

All citations are to New York State Tax Law sections unless specifically noted otherwise.

General information

Form CT-3.4 is used by a taxpayer subject to tax under Tax Law Article 9-A to compute the net operating loss deduction (NOLD) allowed in the computation of the business income base by §210.1(a)(ix) for tax years beginning on and after January 1, 2015. It is also used to make the election to waive the carryback of a net operating loss (NOL) in the year in which such NOL occurs, as well as to report the specific tax years from which NOLs have been used to reduce business income (see Schedule A). Schedule A must be completed for every tax year. Therefore, Form CT-3.4 must be filed for every tax year, even when no NOLD is being used to reduce business income. Failure to file Form CT-3.4 each tax year may result in a delay receiving NOLD benefits. Combined groups need to file only one Form CT-3.4, computed on a combined group basis, for their group. If filing an amended return to claim a carryback of an NOL, you must file Form CT-3.4 with the amended return.

NOLs that are incurred for tax years beginning on and after January 1, 2015, are applied against apportioned business income and cannot be carried back to tax years that began before January 1, 2015.

The NOLD must be applied against the business income base after the prior net operating loss conversion (PNOLC) subtraction (see Form CT-3.3, *Prior Net Operating Loss Conversion (PNOLC) Subtraction*).

The NOLD is limited in any tax year to the amount required to reduce the tax on the apportioned business income base to the higher of the capital base tax or the fixed dollar minimum tax. For a combined return, the fixed dollar minimum tax of the designated agent is used for this purpose.

An *NOL* is the amount of a business loss incurred in a particular tax year, multiplied by the apportionment factor for that year as determined under §210-A. For a combined return, a *combined NOL* is the combined business loss incurred in a particular tax year, multiplied by the combined apportionment factor for that year as determined under §210-C.5.

The *NOLD* is the amount of NOL or NOLs from one or more tax years that are carried forward or carried back to a particular tax year and allowed to reduce business income in such tax year. For a combined return, a *combined NOLD* is the amount of combined NOL or NOLs from one or more tax years that are carried forward or carried back to a particular tax year and allowed to reduce the combined business income base in such tax year.

The NOLD does **not** include any NOL incurred during any tax year beginning prior to January 1, 2015, or during any tax year in which the taxpayer was not subject to tax under Article 9-A.

The NOLD is not limited to the amount allowed under Internal Revenue Code (IRC) section 172 or the amount that would have been allowed if the taxpayer had not made an election under IRC, Chapter 1, subsection S. A taxpayer that files as part of a federal consolidated return but on a separate basis for purposes of Article 9-A must compute its deduction and loss as if it were filing on a separate basis for federal income tax purposes.

The NOLD will **not** include any NOL incurred during a New York S year. However, a New York S year must be treated as a tax

year for purposes of determining the number of tax years to which an NOL may be carried forward. A *New York S year* is a tax year for which a valid New York S election is in effect (see Form CT-6, *Election by a Federal S Corporation to be Treated as a New York S Corporation*).

If there are two or more apportioned NOLs, or portions thereof, carried back or carried forward to be deducted from apportioned business income in one particular tax year, the earliest apportioned loss incurred must be applied first.

An NOL may be carried back three tax years preceding the tax year of the loss (the *loss year*). However, a loss **cannot** be carried back to a tax year beginning before January 1, 2015. The loss is first carried to the earliest of the three tax years. If it is not entirely used in that year, the remainder is carried to the second tax year preceding the loss year, and any remaining amount is carried to the tax year immediately preceding the loss year. Any unused amount of loss then remaining may be carried forward for as many as 20 tax years following the loss year. Losses carried forward are carried forward first to the tax year immediately following the loss year, then to the second tax year following the loss year, and then to the next immediately subsequent tax year or years until the loss is used up or the 20th tax year following the loss year, whichever comes first.

For a corporation that files a combined return, either in the tax year the NOL is incurred or in the tax year in which a deduction is claimed on account of the loss, the combined NOLD is determined as if the combined group is a single corporation and, to the extent possible and not otherwise inconsistent with §210-C.4, is subject to the same limitations that would apply for federal income tax purposes under the IRC and the code of federal regulations as if such corporation had filed for such tax year a consolidated federal income tax return with the same corporations included in the combined return. If a corporation files a combined return, regardless of whether it filed a separate return or consolidated return for federal income tax purposes, the NOL and NOLD for the combined group must be computed as if the corporation had filed a consolidated return for the same corporations for federal income tax purposes (§210-C.4(d)(iii)).

In general, any NOL carryover from a year in which a combined return was filed shall be based on the combined NOL of the group of corporations filing such return. The portion of the combined loss attributable to any member of the group that files a separate return for a succeeding tax year will be an amount bearing the same relation to the combined loss as the NOL of such corporation bears to the total NOL of all members of the group having such losses to the extent that they are taken into account in computing the combined NOL (§210-C.4(d)(iv)).

Election to waive carryback

You may elect to waive the entire carryback period with respect to an NOL. You must make the election on your original timely filed return (determined with regard to valid extensions) for the tax year of the NOL for which the election is to be in effect. Once an election is made for a tax year, it is irrevocable for that tax year. You must make a separate election for each loss year. This election applies to all members of a combined group. To make the election, see the instructions for Schedule A, column D.

Line instructions

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

If the amount on Form CT-3 or CT-3-A, Part 3, line 17 is a loss, enter **0** on lines 1 through 4 and line 6. However, complete lines 5 and 7.

Line 1 – Small business taxpayers

If the amount you would enter on line 2 is \$27,690 or more, you cannot deduct any NOLD in this tax year:

- Leave lines 1 and 3 blank.
- Complete line 2.
- Enter **0** on lines 4 and 6.
- Complete lines 5 and 7.

If your business income **base** before your NOLD, but after your PNOLC subtraction, is \$290,000 or less, use 6.5% (.065) as the tax rate for lines 1 and 4.

If your business income **base** before your NOLD, but after your PNOLC subtraction, is more than \$290,000, but not more than \$390,000, go to our website and use the *Small business taxpayer online calculator* (www.tax.ny.gov/bus/ct/pnolc-nol_3-4.xlsx). Skip lines 1, 2, and 3, and enter the calculated amount on line 4.

Lines 3 through 7

If line 2 is greater than or equal to line 1:

- Enter **0** on lines 3 and 4.
- Complete line 5.
- Enter **0** on line 6.
- Complete line 7.

Schedule A – Table of apportioned business income or loss

This schedule **must** be completed for each tax year. Enter in the first row the tax year for which this Form CT-3.4 is being completed. Then, when completing the form for the next tax year, move the information from the first row to the second row and enter in the first row the information for that next tax year. Proceed in this manner until all 20 rows are completed then drop the oldest year from the table. In each subsequent tax year the oldest year will be dropped from the table.

Column B – Use a minus sign (-) to report a loss (not parentheses or brackets).

Column C – If any row in column B shows a loss, this column requires updating in the tax year when the loss in column B is being carried back or carried forward to a different tax period(s), and used to reduce business income after the PNOLC subtraction in such different tax period(s). Enter in column C the tax year of the column B loss in the row for **each** tax year to which the column B loss is being applied against business income after the PNOLC subtraction.

Column D – If you have a loss on Form CT-3 or CT-3-A, Part 3, line 19, and you want to elect to waive the carryback of this loss, mark an **X** in the first row of this column.

Need help? and Privacy notification

See Form CT-1, *Supplement to Corporation Tax Instructions*.
