



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 in the computation of the business income base (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 in the computation of the business income base. 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.

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. An NOL sustained in a tax year is reported on Form CT-3 or CT-3-A, Part 3, line 19.

NOLs that are incurred for tax years beginning on and after January 1, 2015, are used in the computation of the business income base, and cannot be carried back to tax years that began before January 1, 2015.

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 used in the computation of the business income base 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 used in the computation of the combined business income base in such tax year.

The NOLD must be applied in the computation of 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 what would be the tax on apportioned business income after addback of income previously reported as investment income to the higher of the capital base tax or the fixed dollar minimum tax. For a combined group, the NOLD is limited in any tax year to the amount required to reduce what would be the tax on apportioned combined business income after addback of income previously reported as investment income to the higher of the combined capital base tax or the fixed dollar minimum tax of the designated agent.

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 NOLs, or portions thereof, carried back or carried forward to be used in the computation of the business income base in one particular tax year, the earliest NOL 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 IRC sections 381-384 and/or separate return limitation year (SRLY) 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 return (determined with regard to valid extensions) timely filed for the tax year in which the NOL occurs. 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.

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 zero or less, enter **0** on lines 1 through 4 and line 6; then complete lines 5a through 5 and lines 7a through 7.

If the amount on Form CT-3 or CT-3-A, Part 3, line 17, is greater than zero, complete lines 1 and 2, and:

- if line 1 is greater than line 2, complete lines 3 through 7.
- if line 2 is greater than or equal to line 1, enter **0** on lines 3 and 4 and complete lines 5a through 5; enter **0** on line 6, then complete lines 7a through 7.

Computation of net operating losses (NOLs) available to be used, the amount to be used, and the amount to be carried forward

Lines 5a through 7 – All amounts should be entered as positive values.

Computation of net operating loss (NOL) to be used

Lines 5a through 5 – The total NOLs available to be used in the current tax year (entered on line 5) are computed by first taking the NOL carryforward from the preceding tax year's Form CT-3.4, line 5a, then making adjustments on lines 5b through 5f. If filing an amended return due to claiming an NOL carryback, enter the amounts from the **original** lines 5a and 5b.

Line 5c – If filing an amended return to claim an NOL carryback or a subsequent amended return after claiming an NOL carryback, enter the full amount of the loss available to be carried back. Otherwise enter **0**.

Line 5e – Enter **0**; no entry is made on this line until at least 20 tax periods after the first return filed for the period beginning on or after January 1, 2015.

Line 5f – Enter the New York NOL carryforward that is unavailable to be used in the current year due to limitations under IRC sections 381-384 and by SRLY. See Schedule B, column F instructions.

Line 6 – The amount of NOLD, after all applicable NOL limitations are applied in the current year, cannot be more than the amount on line 4. Enter on this line the lesser of line 4 or line 5. Also enter this amount on Form CT-3 or CT-3-A, Part 3, line 18.

Computation of NOL carryforward

Line 7a – If the current year's Form CT-3 or CT-3-A, Part 3, line 19, is less than zero, enter **that** amount on this line. However, this amount **must** be reduced by any amount being carried back to prior years. If the current year's Form CT-3 or CT-3-A, Part 3, line 19, is zero or greater, enter **0**.

Line 7c – Enter the NOL carryforward of members who left the group during the current year. Do **not** include any amount used in the current year.

Line 7 – Subtract line 7d from line 7b and enter the result. Carryforward this amount to next year's Form CT-3.4, line 5a.

Schedule A – Apportioned business income or loss

This schedule **must** be completed for each tax year.

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 box.

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). Update the amounts in this column to reflect any amended returns, New York State tax audit adjustments, and federal revenue agent reports (RARs).

Column C – For **each** row in column C where the **same** row in column B shows a **positive** amount of business income, update that row in column C **each** time the positive amount of business income shown in that same row in column B is reduced by a loss shown in any **other** row in column B (update by entering in column C the ending date of the tax year(s) of the loss(es) being brought back or forward).

Schedules B and C

Only Form CT-3-A filers complete Schedules B and C. **New** members complete Schedule B only, and **former** members complete Schedule C only.

If you have more detail than will fit on the lines provided in these schedules, attach additional sheets in the same format. Include the legal name and EIN of the corporation as shown on Form CT-3.4, page 1, along with the title of the schedule to which the attachment applies, and attach, along with Form CT-3.4, to your return.

Schedule B – New members included in the combined group for the current tax period; Form CT-3-A filers only

Column C – For each **new** member that is included in the combined group in this tax period, but was **not** included in the combined group in the tax period immediately preceding this tax period, enter the amount of unused NOL available on the first date in which the member was included in the combined group. If the new member's unused NOL on this date was zero, enter **0**.

Columns D and E – Enter the new member's tax period beginning and ending dates.

Column F – If the corporation in column A has NOLs listed in column C that are limited by IRC sections 381-384 or SRLY, mark an **X** in the box. Attach a statement showing the computation of the limitation.

Schedule C – Former members not included in the combined group at the end of the current tax period; Form CT-3-A filers only

Column C – For each **former** member that was included in the combined group for any part of the combined group's tax year, that is no longer included in the combined group at the **end** of this tax year, enter the unused NOL available on the **last date** in which the member was included in the combined group. If the former member's unused NOL available on this date was zero, enter **0**.

Columns D and E – Enter the former member's tax period beginning and ending dates.

Need help? and Privacy notification

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