

1989 Legislation  
New York State Net Operating Losses

Chapter 61 of the Laws of 1989 amended section 208.9(f) of Article 9-A of the New York State Tax Law regarding the carryback and carryforward of net operating losses for New York State. The amendments affect the following areas:

- the carryback of net operating losses for loss years ending after 6/30/89; and
- the carryback and carryforward of net operating losses for corporations involved in a subdivision seventeen corporate acquisition or a subdivision eighteen corporate merger or consolidation; and
- the carryback and carryforward of net operating losses for corporations principally engaged in aviation.

The net operating loss provisions of section 208.9(f) of Article 9-A of the New York State Tax Law and Article 9-A Regulation Sections 3-8.1 through 3-8.9 which existed prior to the above amendments remain in effect to the extent such prior laws or regulations are not inconsistent with the above amendments.

Net Operating Loss Deduction - Loss Years Ending After 6/30/89

For each loss year ending after 6/30/89, the New York State net operating loss deduction is computed as if the corporation elected under section 172 of the IRC to carryforward the loss to the next succeeding 15 years except:

- only the 1st \$10,000 of the loss may be carried back to the three preceding years, beginning with the 3rd preceding year;
- any amount of the \$10,000 loss which cannot be carried back, can be carried forward.

A corporation, which elected for federal and or state tax purposes to relinquish the three year carryback for a loss year, will be allowed to carryforward the 1st \$10,000 of such loss year to the next succeeding 15 years.

Net Operating Loss Deduction - Corporate Acquisitions, Mergers or Consolidations

For taxable years beginning on or after 1/1/89, the New York State net operating loss carryback and carryforward of corporations involved in a subdivision seventeen corporate acquisition (tax law section 208.17) or a subdivision eighteen corporate merger or consolidation (tax law section 208.18) recorded on or after 4/19/89 will be computed as follows:

Subdivision seventeen corporate acquisition

	<u>Target Corporation's Taxable Years</u>	<u>Acquiring Corporation's Taxable Years</u>
Prior Year	1/1/87-12/31/87	7/1/86-6/30/87
Prior Year	1/1/88-12/31/88	7/1/87-6/30/88
Acquisition Year	1/1/89-12/31/89(acquired on 6/30/89)	7/1/88-6/30/89
Subsequent Year	1/1/90-12/31/90	7/1/89-6/30/90

Any New York State loss sustained by the target corporation for 1/1/87-12/31/87 can be carried back to prior years or carried forward to 1/1/88-12/31/88, but cannot be carried forward to 1/1/89-12/31/89 or subsequent taxable years.

Any New York State loss sustained by the target corporation for 1/1/88-12/31/88 can be carried back, but cannot be carried forward to 1/1/89-12/31/89 or subsequent taxable years.

Any New York State loss sustained by the target corporation for 1/1/89-12/31/89 can be carried back (limited to \$10,000 for loss years ending after 6/30/89) but cannot be carried forward.

Any New York State loss sustained by the target corporation for 1/1/90-12/31/90 can be carried back (limited to \$10,000 for loss years ending after 6/30/89) or carried forward by the target corporation.

Any New York State loss sustained by the target corporation for 1/1/87-12/31/87, 1/1/88-12/31/88, 1/1/89-12/31/89 or 1/1/90-12/31/90 cannot be used by the acquiring corporation.

Any New York State loss sustained by the acquiring corporation for 7/1/86-6/30/87, 7/1/87-6/30/88, 7/1/88-6/30/89 or 7/1/89-6/30/90 can be carried back (limited to \$10,000 for loss years ending after 6/30/89) or carried forward by the acquiring corporation but may not be used by the target corporation.

Subdivision 18 Corporate Merger

	Target Corporation's <u>Taxable Years</u>	Acquiring Corporation's <u>Taxable Years</u>
Prior Years	1/1/88-12/31/88	7/1/87-6/30/88
Merger Years	1/1/89- 6/30/89(merged on 6/30/89)	7/1/88-6/30-89
Subsequent Year	NONE	7/1/89-6/30/90

Any New York State loss sustained by the target corporation for 1/1/88-12/31/88 can be carried back to prior years or carried forward to 1/1/89-6/30/89.

Any New York State loss sustained by the target corporation for 1/1/89-6/30/89 can be carried back.

Any New York State loss sustained by the target corporation for 1/1/88-12/31/88 or 1/1/89-6/30/89 cannot be used by the acquiring corporation.

Any New York State loss sustained by the acquiring corporation for 7/1/87-6/30/88, 7/1/88-6/30/89 or 7/1/89-6/30/90 can be carried back (limited to \$10,000 for loss years ending after 6/30/89) or carried forward by the acquiring corporation but may not be used by the target corporation.

Subdivision 18 Corporate Consolidation

	Target Corporation's <u>Taxable Years</u>	Acquiring Corporation's <u>Taxable Year</u>
Prior Years	1/1/88-12/31/88	7/1/89-6/30/88
Consolidation Year	1/1/89- 6/30/89 (Consolidated on 6/30/89)	
Subsequent Year	NONE	Consolidated Corporation's <u>Taxable Years</u> 7/1/88-6/30/89 7/1/89-6/30/90

Any New York State loss sustained by the target corporation for 1/1/88-12/31/88 can be carried back to prior years or carried forward to 1/1/89-6/30/89.

Any New York State loss sustained by the target corporation for 1/1/89-6/30/89 can be carried back.

Any New York State loss sustained by the target corporation for 1/1/88-12/31/88 or 1/1/89-6/30/89 cannot be used by the acquiring corporation.

Any New York State loss sustained by the acquiring corporation for 7/1/87-6/30/88, 7/1/88-6/30/89 or 7/1/89-6/30/90 can be carried back (limited to \$10,000 for loss years ending after 6/30/89) or carried forward by the acquiring corporation but may not be used by the target corporation.

A subdivision seventeen corporate acquisition (tax law section 208.17) means a corporate acquisition where the taxpayer is a target corporation and:

- the constituent corporation's ratio of average aggregate debt to average aggregate equity for the taxable year in which the acquisition occurred, increased by more than 100% over such ratio for the immediately preceding taxable year; and
- the constituent corporation's ratio of average aggregate debt to average aggregate assets for the taxable year in which the acquisition occurred, increased by more than 60% over such ratio for the immediately preceding taxable year; and
- the acquiring person's interest paid or accrued during its taxable year in which the acquisition occurred is more than \$1,000,000.

A subdivision seventeen corporate acquisition does not include an excluded transaction as defined in section 208.16 of the Tax Law or a corporate acquisition as defined in section 208.17 of the Tax Law which was recorded prior to 4/19/89.

A subdivision eighteen corporate merger or consolidation (tax law section 208.18) means a corporate merger or consolidation where the taxpayer is the surviving or consolidated corporation and:

- the constituent corporation's ratio of average aggregate debt to average aggregate equity for the taxable year in

which the merger or consolidation occurred, increased by more than 100% over such ratio for the immediately preceding taxable year; and

- the constituent corporation's ratio of average aggregate debt to average aggregate assets for the taxable year in which the merger or consolidation occurred, increased by more than 60% over such ratio for the immediately preceding taxable year; and
- the interest paid or accrued by the surviving or consolidated corporation during its taxable year in which the merger or consolidation occurred is more than \$1,000,000.

A subdivision eighteen corporate merger or consolidation does not include an excluded transaction as defined in section 208.16 of the Tax Law or a corporate merger or consolidation as defined in section 208.18 of the Tax Law which was recorded prior to 4/19/89.

Excluded transaction (tax law section 208.16) means:

- A purchase of stock by an individual, trust, estate, partnership, association, company or corporation from the estate of a shareholder under section 303 of the IRC; or
- A purchase of stock in a corporate acquisition where the target corporation and acquiring corporation are both members of an affiliated group as defined in section 1504 of the IRC. Except that the term "common parent corporation" means any individual, trust, estate, partnership, association, company or corporation as defined in section 7701 (a) (1) of the IRC, and references to at least 80% in section 1504 of the IRC shall be read as more than 50%; or
- A purchase of stock in a corporate merger or consolidation where the target corporation and acquiring corporation are both members of an affiliated group as defined in section 1504 of the IRC. Except that the term "common parent corporation" means any individual, trust, estate, partnership, association, company or corporation as defined in section 7701 (a) (1) of the IRC, and references to at least 80% in section 1504 of the IRC shall be read as more than 50%; or

- A purchase of stock in a corporate acquisition by an acquiring person as defined in section 7701 (a) (1) of the IRC (i.e. individual, trust, estate, partnership, association, company or corporation). Provided the acquiring person is controlled by a majority of the employees of the target corporation or, the acquiring person is a trust for the exclusive benefit of the employees of the target corporation or their beneficiaries. The term control, in the case of an acquiring corporation, means ownership of more than 50% of the total voting power in such corporation. The term control in the case of an acquiring partnership means 50% or more of the sum of the employees' interest in the partnership as defined by section 704 (b) of the IRC.

Additional information on corporate acquisitions, mergers or consolidations can be found in TSB-M-89(17)C or Form CT-3-Schedule F.

#### Net Operating Loss Deduction - Airlines

For taxable years beginning on or after 1/1/89, corporations principally engaged in aviation will be subject to tax under Article 9-A. Additionally, corporations principally engaged in aviation will be entitled to net operating loss deductions under Article 9-A. With two exceptions the net operating loss deductions for such corporations will be determined in the same manner as net operating loss deductions for all other 9-A corporations. These two exceptions concern net operating loss deductions for the years 1985 through 1988 and net operating loss deduction carryforward for a taxable year which includes any month in 1989.

#### Net Operating Loss Deduction - Taxable Years 1985 Through 1988

Corporations principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which:

- filed Forms CT-183 and CT-184 for each of the calendar years 12/85, 12/86, 12/87 and 12/88, and

- filed Form CT-3 for a taxable year beginning in 1989,

shall be allowed under section 208.9(f) of the Tax Law to carryforward any New York State net operating losses sustained during the federal 48 month period 1/1/85 through 12/31/88 to taxable years beginning on or after 1/1/89.

Such New York State net operating loss carryforward shall be computed:

- as if the corporation had filed Forms CT-3, rather than Forms CT-183 and 184, for the federal 48 month period 1/1/85 through 12/31/88; and
- as if any losses shown on Forms CT-3 for the federal 48 month period 1/1/85 through 12/31/88 had been sustained on 12/31/88; and
- as if the corporation had elected under section 172 of the IRC not to carryback such losses sustained on 12/31/88.

#### Net Operating Loss Deduction - Taxable Year Which Includes Any Month in 1989

A New York State net operating loss carryforward will be allowed under section 208.9(f) of the Tax Law to be carried forward to a taxable year which includes any month in 1989 when:

- the net operating loss is sustained by a corporation principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers); and
- such corporation is not a constituent corporation in a corporate acquisition as defined in section 208.17 of the tax law with another corporation subject to tax under Article 9-A during a taxable year which includes any month in 1989; or
- such corporation is not a constituent corporation in a corporate merger or consolidation as defined in section 208.18 of the tax law during a taxable year which includes any month in 1989.

Computation Of New York State Net Operating Loss For An Aviation Corporation (Other than Air Freight Forwarders Acting As Principal And Like Indirect Air Carriers) Which Files On A Calendar Year Basis For Federal Tax Purposes

Federal Reports Filed	NYS Reports Filed	NYS CT-3 Filed on an as if Basis
1/1/85-12/31/85	CT-183 1/1/85-12/31/85 (Privilege Period 12/86) CT-184 1/1/85-12/31/85	CT-3 1/1/85-12/31/85 Federal loss CT-3 Sch. B, line 17 (\$110,000) *NYS loss CT-3 Sch. B, line 31 ( 100,000)
1/1/86-12/31/86	CT-183 1/1/86-12/31/86 (Privilege Period 12/87) CT-184 1/1/86-12/31/86	CT-3 1/1/86-12/31/86 Federal loss CT-3 Sch. B, line 17 ( 110,000) *NYS loss CT-3 Sch. B, line 31 ( 100,000)
1/1/87-12/31/87	CT-183 1/1/87-12/31/87 (Privilege Period 12/88) CT-184 1/1/87-12/31/87	CT-3 1/1/87-12/31/87 Federal Income CT-3 pg. 1, line 2 200,000 *NYS income CT-3, pg. 1, line 18 220,000
1/1/88-12/31/88	CT-183 1/1/88-12/31/88 (Privilege Period 12/89) CT-184 1/1/88-12/31/88	CT-3 1/1/88-12/31/88 Federal loss CT-3 pg. 1, line 2 ( 110,000) *NYS loss CT-3 pg. 1, line 18 ( 100,000)
1/1/89-12/31/89	CT-3 1/1/89-12/31/89 Federal Income CT-3 pg. 1, line 2 1,000,000 **12/85-12/88 NYS loss CF (300,000) 12/90 NYS loss CB ( 10,000)	
1/1/90-12/31/90	CT-3 1/1/90-12/31/90 ***NYS loss (100,000) NYS loss CB 12/89 ( 10,000) NYS loss CF ( 90,000)	

\* When completing Form CT-3 for the years 12/85, 12/86, 12/87 and 12/88 entire net income is computed using federal depreciation as computed under ACRS and federal income or deductions as recorded in a safe harbor lease.

\*\* For federal and state purposes the 12/85, 12/86 and 12/88 losses of (\$330,000) for federal and (\$300,000) for State are treated as if such losses were sustained on 12/31/88, and as if such losses were carried forward to taxable years beginning on or after 1/1/89. Therefore, the 12/85, 12/86 or 12/88 losses are not applied against the 12/87 income. Had the corporation been a constituent corporation in a section 208.17 corporate acquisition with another corporation subject to tax under Article 9-A for the taxable year 1/89-12/89 or been a constituent corporation in a section 208.18 corporate merger or consolidation for the taxable year 1/89-12/89, the losses sustained for the years 12/85, 12/86 and 12/88 could not be carried forward to 1/89-12/89 but could be carried forward to subsequent taxable years.

\*\*\* Since the loss for the year 12/90 ends after 6/30/89, only the 1st (\$10,000) of the loss may be carried back 3 years and the (\$90,000) balance carried forward. Since the corporation was not subject to tax under Article 9-A for the taxable years 12/87 or 12/88, the (\$10,000) loss for



Computation Of New York State Net Operating Loss For An Aviation Corporation (Other Than Air Freight Forwarders Acting As Principal And Like Indirect Air Carriers) Which Files On A January Fiscal Year Basis For Federal Tax Purposes

Federal Reports Filed	NYS Reports Filed	NYS CT-3 Filed on an as if Basis
2/1/84-1/31/85	CT-183 1/1/85-12/31/85 (Privilege Period 12/86) CT-184 1/1/85-12/31/85	CT-3 1/1/85-1/31/85 Federal loss CT-3 Sch. B, line 17 (110,000) *NYS loss CT-3 Sch. B, line 31 (100,000)
2/1/85-1/31/86	CT-183 1/1/86-12/31/86 (Privilege Period 12/87) CT-184 1/1/86-12/31/86	CT-3 2/1/85-1/31/86 Federal loss CT-3 Sch. B, line 17 (110,000) *NYS loss CT-3 Sch. B, line 31 (100,000)
2/1/86-1/31/87	CT-183 1/1/87-12/31/87 (Privilege Period 12/88) CT-184 1/1/87-12/31/87	CT-3 2/1/86-1/31/87 Federal loss CT-3 Sch. B, line 17 (110,000) *NYS loss CT-3 Sch. B, line 31 (100,000)
2/1/87-1/31/88	CT-183 1/1/88-12/31/88 (Privilege Period 12/89) CT-184 1/1/88-12/31/88	CT-3 2/1/87-1/31/88 Federal loss CT-3 pg. 1, line 2 (110,000) *NYS loss CT-3 pg. 1, line 18 (100,000)
2/1/88-1/31/89	**CT-184 1/1/89-1/31/89	CT-3 2/1/88-12/31/88 Federal income CT-3 Pg.1, line 2 75,000 *NYS income CT-3 Pg. 1 line 18 70,000
2/1/89-1/31/90	CT-3 2/1/89-1/31/90 Federal income 300,000 *** 1/85-1/88 NYS loss CF (300,000) Balance NYS loss CF (100,000)	

\* When completing Form CT-3 for the years 1/85-1/86, 1/87, 1/88 and 12/88 entire net income is computed using federal depreciation as computed under ACRS and federal income or deductions as recorded in a safe harbor lease.

\*\* When filing Forms CT-184 or CT-184-M for 1/31/89, use 1988 Tax Forms and the provisions of Article 9 Tax Law which existed prior to taxation under Article 9-A.

\*\*\* For federal and state purposes the 1/85, 1/86, 1/87, and 1/88 losses of (\$144,000) for federal and (400,000) for state are treated as if such losses were sustained on 12/31/88, and as if such losses were carried forward to taxable years beginning on or after 1/1/89. Therefore, the 1/85, 1/86, 1/87 or 1/88 losses are not applied against the 12/88 income. Also, the 1/85-1/88 loss carryforward to 1/90 is limited to (\$300,000) the amount required to reduce federal taxable income to zero. The remaining loss of (\$100,000) is allowed as a loss carryforward to subsequent years. Had the corporation been a constituent corporation in a section 208.17 corporate acquisition with another corporation subject to tax under Article 9-A for the taxable year 2/89-1/90 or been a constituent corporation in a section 208.18 corporate merger or consolidation for the taxable year 2/89-1/90, the losses sustained for the years 1/85-1/88 could not be carried forward to 2/89-1/90 but could be carried forward to subsequent taxable years.

Computation Of New York State Net Operating Loss For An Aviation Corporation (Other Than Air Freight Forwarders Acting as Principal And Like Indirect Air Carriers) Which Files On A September Fiscal Year Basis For Federal Tax Purposes

Federal Reports Filed	NYS Reports Filed	NYS CT-3 Filed on an as if Basis
10/1/84-9/30/85	CT-183 1/1/85-12/31/85 (Privilege Period 12/86) CT-184 1/85-12/31/85	CT-3 1/1/85-9/30/85 Federal loss CT-3 Sch. B, line 17 (\$110,000) *NYS loss CT-3 Sch. B, line 31 ( 100,000)
10/1/85-9/30/86	CT-183 1/1/86-12/31/86 (Privilege Period 12/87) CT-184 1/1/86-12/31/86	CT-3 10/1/85-9/30/86 Federal loss CT-3 Sch. B, line 17 ( 110,000) *NYS loss CT-3 Sch. B, line 31 ( 100,000)
10/1/86-9/30/87	CT-183 1/1/87-12/31/87 (Privilege Period 12/88) CT-184 1/1/87-12/31/87	CT-3 10/1/86-9/30/87 Federal loss CT-3 Sch. B, line 17 ( 110,000) *NYS loss CT-3 Sch. B, line 17 ( 100,000)
10/1/87-9/30/88	CT-183 1/1/88-12/31/88 (Privilege Period 12/89) CT-184 1/1/88-12/31/88	CT-3 10/1/87-9/30/88 Federal loss CT-3 pg. 1, line 2 ( 110,000) *NYS loss CT-3 pg. 1, line 18 ( 100,000)
10/1/88-9/30/89	CT-3 1/1/89-9/30/89 **Federal loss CT-3 pg. 1, line 2 ( 65,000) NYS loss CT-3 pg. 1, line 18 (60,000)	CT-3 10/1/88-12/31/88 Federal loss CT-3 pg. 1, line 2 ( 25,000) *NYS loss CT-3pg. 1, line 18 ( 20,000)
10/1/89-9/30/90	CT-3 10/1/89-9/30/90 Federal Income 600,000 *** NYS loss CF (480,000)	

\* When completing Form CT-3 for the years 9/85, 9/86, 9/87, 9/88 and 12/88 entire net income is computed using federal depreciation as computed under ACRS and federal income or deductions as recorded in a safe harbor lease.

\*\* Since 9/89 is a loss year, the federal and state losses for the years 9/85, 9/86, 9/87, 9/88 and 12/88 of (\$465,000) for federal and (\$420,000) for state must be carried forward to 9/90. Had the corporation been a constituent corporation in a section 208.17 corporate acquisition with another corporation subject to tax under Article 9-A for the taxable year 1/89-9/89 or been a constituent corporation in a section 208.18 corporate merger or consolidation for the taxable year 1/89-9/89, the loss sustained for the taxable year 1/89-9/89 of (\$60,000) could not be carried forward and for all practical purposes would be lost.

\*\*\* The federal losses of (\$465,000) and (\$65,000) would be carried forward to 9/90. The New York State losses of (\$420,000) and (\$60,000) would be carried forward to 9/90.