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Computation of Minimum Taxable Income and Minimum Tax Credit

Chapter 170 of the Laws of 1994 amends the Article 9-A minimum taxable income computation and the minimum tax credit computation. See TSB-M-90(13)C for additional details on the computation of minimum taxable income and minimum tax credit.

For tax years beginning before 1994, the net operating loss deduction was not allowed in the computation of minimum taxable income, nor was the minimum tax attributable to the disallowance of such net operating loss eligible for minimum tax credit. The Chapter 170 amendments, effective for tax years beginning in 1994 and thereafter, provide a deduction in the computation of the minimum tax for an alternative net operating loss, and provide for inclusion of the disallowed net operating loss deduction in the minimum tax credit computation.

The New York minimum tax rate for tax years beginning in 1990-94 is 5% of the minimum taxable income base. The rate will drop to 3½% for tax years beginning after 1994. The minimum taxable income base is defined in § 210.1(c) (ii) of the Tax Law as the portion of minimum taxable income allocated to New York, subject to the modifications prescribed by Tax Law § 210.3(d) & (e).

MINIMUM TAXABLE INCOME

The term "minimum taxable income" is defined in § 208.8-B(a) of the Tax Law as (1) entire net income, plus (2) certain federal items of tax preference (Internal Revenue Code § 57), plus or minus (3) certain federal adjustments (IRC §§ 56 and 58), plus(4) the New York net operating loss deduction otherwise allowed under Tax Law § 208.9(f) minus (5) for tax years beginning in 1994 and thereafter, the alternative net operating loss deduction defined in Tax Law § 208.8-B(d).

New York Alternative Net Operating Loss Deduction

The New York alternative net operating loss deduction (ANOLD) provided by Chapter 170 is similar to the federal ANOLD. However, for tax years beginning in 1994 only, the New York ANOLD is limited to 45% of minimum taxable income (MTI) computed without regard to the ANOLD. Thereafter, like the federal, it is limited to 90% of MTI computed without regard to the ANOLD.

As with the federal model, the New York regular tax and alternative minimum tax are parallel but separate systems, with parallel but separate net operating loss deductions. Accordingly, while the New York ANOLD is computed using the methodology of the regular New York net operating loss deduction (NOLD), the ANOLD is determined independently. The amount of the ANOLD may differ from the amount of the NOLD, and the timing and amounts of loss carryovers and carrybacks leading into the ANOLD may differ from the regular tax NOLD schedule.

The ANOLD is the sum of the available alternative net operating losses (ANOLs) from loss years carried to the deduction year. Accordingly, determination of the amount of the ANOLD demands a two-part inquiry, first, as to the amount of any particular ANOL, and second, as to its availability for deduction. With regard to amount, the amount of a given ANOL depends on the year in which loss is incurred. For loss years beginning before 1990, the amount of the ANOL is the NOL under the regular (ENI) tax. For loss years beginning after 1989, the amount of the ANOL is the NOL under the minimum tax.[1]

With regard to availability of ANOLs, the determination of which ANOLs are carried into the ANOLD is governed by Tax Law § 208.8-B(d), which incorporates by reference the rules of the regular tax NOLD and the carryback/carryover rules of IRC § 172(b) (2). The rules are applied in the context of the New York minimum tax system, thereby invoking tax years beginning after 1989, the years in which the state's present minimum tax system has been in effect. By way of contrast, the context of the federal alternative minimum tax invokes tax years beginning after 1986, which is the period during which the federal minimum tax on corporations has been in effect.

In determining the ANOLs carrying into the ANOLD of any given year, the conventions issuing from the rules incorporated in the statute are:

a) Losses from years when the taxpayer was not subject to Article 9-A are excluded.

b) Pre-1990 NOLs available for carryforward to 1990 under the regular tax are available for carryforward to 1990 under the minimum tax, and without the application of minimum tax adjustments.

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[1] This concept of loss under the minimum tax is expressed in the statute as requiring the conversion of the regular tax NOL to the ANOL by (a) application of the federal adjustments that are included in the computation of New York MTI and (b) reduction by the federal items of tax preference included in the computation of New York MTI (but only to the extent these items of tax preference increased the NOL under the entire net income tax). Tax Law § 208.8-B(d) (1) (A).

c) ANOLs must be carried to the appropriate carry years under d), whether or not the tax on MTI is the highest tax for the particular carry year.

d) ANOLs must be carried using the conventions of IRC § 172(b) (2); that is, 3 years back and 15 years forward, and exhausted in the earliest available carry year, except as provided in e) and f).

e) The carryback of each ANOL is limited to $10,000, as is the case with the regular tax NOLD.

f) The federal election to forego carryback of an NOL applies to the related New York ANOL.

g) ANOLs must be applied against 90% of MTI (determined without regard to the ANOLD) each year, even though some lower limitation on the ANOLD actually applies for that year. Limitations on the ANOLD are described in h) - j).

h) In applying the carry out rules under d), ANOLs must be carried out to tax years beginning in 1990-93, even though no ANOLD was allowed in those years.[2]

i) For tax years beginning in 1994, the ANOLD is limited to 45% of MTI computed without regard to the ANOLD, and thereafter to 90% of MTI computed without regard to the ANOLD.

j) The ANOLD for any particular year is limited to the *federal* regular tax NOLD for that year.

EXAMPLE 1: As of the close of 1989, a calendar year taxpayer had $140,000 of pre-1990 NOL remaining for carryover into 1990, and further incurred the income (ENI) and NOLs shown in Schedule I, of which the 1992 NOL was not, and the 1993 NOL was, subject to a federal carryforward election. The ENI and MTI shown in the schedule are income before the deduction of any NOLs.

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[2] The carryout of ANOL to 1990-93 may exhaust some or all of the carried losses without yielding a deduction under the minimum tax. Instead a minimum tax credit is provided against future regular tax for that part of any 1990-93 minimum tax which is attributable to disallowance of deduction for NOL. See the Pre-1994 NOL Component discussion on page 9.

Superscript letters refer to the rules paragraphs above.

Schedule I - ANOLs Available for Carryout				
Year	ENI <NOL>	MTI Adjustments	MTI <ANOL>	ANOLs for Carryout
Pre-1990	<140,000>	None[b]	<140,000>	140,000
1990	80,000	20,000	100,000	
1991	90,000	40,000	130,000	
1992	<80,000>	<10,000>	<90,000>	90,000
1993	<10,000>	<20,000>	<30,000>	30,000
Total ANOLs Available for Carryout				260,000

The taxpayer's ANOLs of $260,000 from Schedule I are carried out against 90% of MTI in 1990-93 as set forth in Schedule II, leaving accumulated ANOL of $110,000 available for deduction in 1994.

Schedule II - ANOL Carried Out Through 1993						
	Year	1990	1991	1992	1993	
	MTI	100,000	130,000	Loss	Loss	
	90% MTI	90,000	117,000			
YEAR	ANOL	ANOL Carried Out				ANOL Forward
Pre-90	140,000	90,000	50,000			
1992	90,000		10,000[e]			80,000
1993	30,000[f]					30,000
Totals	260,000	90,000	60,000			110,000

In 1994 and 1995, the taxpayer's MTI before deduction of ANOLD is $70,000 and $50,000. The remaining ANOLs of $110,000 from Schedule II are carried out against 90% of MTI as shown in Schedule III, leaving $2,000 of ANOL remaining for carryover to 1996. Starting in 1994, the ANOL is deductible against MTI, to the extent of 45% of MTI (before deduction of ANOLD) in 1994, and 90% of MTI (before deduction of ANOLD) thereafter.

Accordingly, as illustrated **in bold** in Schedule III, the ANOL is *deducted* in the amount of $31,500 (45%) in 1994, whereas the ANOL is *carried out* in that year in the amount of $63,000 (90%).[3]

Schedule III - ANOL Deducted and Carried Out 1994-95				
	Year	1994	1995	
	MTI	70,000	50,000	
	45% MTI	31,500	N/A	
	90% MTI	63,000	45,000	
Year	Remaining ANOL	ANOL Carried Out **Deducted**		ANOL Forward
1992	80,000	63,000	17,000	
1993	30,000		28,000	2,000
Totals	110,000	63,000 **31,500**[i]	45,000 **45,000**	2,000

MINIMUM TAX CREDIT

The Tax Law provides for a minimum tax credit, available for use against tax computed on the entire net income base (regular tax). (A technical amendment by Chapter 170 prevents the use of the minimum tax credit against the § 210.1(e) tax on subsidary capital for tax years beginning after 1993.) The minimum tax credit for any tax year is based upon the excess of the "adjusted minimum tax" imposed for all prior tax years beginning after December 31, 1989, over the minimum tax credits deducted for prior years. The "adjusted minimum tax" is a minimum tax reworked to reflect timing items only, that is, excluding nontiming items of tax preference and adjustment. The credit of the adjusted minimum tax against the regular tax is designed to prevent

[3] While not illustrated in this example, it is possible that the amounts deducted in Schedule III could be further limited by the rule in paragraph j) that the ANOLD is limited to the federal regular tax NOLD for the year. For example, if the federal regular tax NOLD for 1994 and 1995 were $23,000 and $25,000, the amount deducted in Schedule III would be limited to $23,000 and $25,000 in lieu of the $31,500 and $45,000 deductions shown in bold. However, the amount of ANOL carried out, and the $2,000 ANOL carryforward, would not be affected by this deduction limit.

the double taxation, under the minimum tax and the regular tax, that might otherwise arise because of the inclusion of timing items of tax preference and adjustment in both bases but in different years.

New Net Operating Loss Deduction

For tax years beginning before 1994, the net operating loss deduction was disallowed, not only in the computation of the minimum tax, but also in the computation of the minimum tax credit. The amendments by Chapter 170 not only provide for inclusion of the ANOLD in the calculation of the minimum tax for tax years beginning after 1993 (see above), but also allow the NOLD in the calculation of the minimum tax credit for tax years beginning after 1993 (Tax Law § 210.13(c)(2) (B)). The interplay of these inclusions has the effect of allowing minimum tax credit against the regular tax for the minimum tax paid that is attributable to excess NOLD. Excess NOLD is the excess of the NOLD under the regular tax over the ANOLD under the minimum tax for a tax year beginning in or after 1994 in which the taxpayer pays minimum tax.

EXAMPLE 2: In 1990 through 1995, based on the income history in Schedules I and III, the taxpayer has the minimum tax calculated in Schedule IV and the regular tax calculated in Schedule V. The minimum tax is calculated at the rate of 5% in 1990-94 and at the rate of 3½% in 1995. Shown in bold in Schedule V is the higher of the minimum tax calculated in Schedule IV or the regular tax in Schedule V.

Schedule IV - Minimum Tax - 1990-95						
Year	ENI before NOLD (1)	MTI Adjust-ments (2)	MTI before ANOLD (3)	ANOLD (4)	MTI (5)	Min Tax (6)
1990	80,000	20,000	100,000	-	100,000	5,000
1991	90,000	40,000	130,000	-	130,000	6,500
1992	<80,000>	<10,000>	<90,000>	-	-	-
1993	<10,000>	<20,000>	<30,000>	-	-	-
1994	60,000	10,000	70,000	31,500	38,500	1,925
1995	30,000	20,000	50,000	45,000	5,000	175

Schedule V - Regular Tax vs Min Tax 1990-95					
Year	ENI before NOLD (1)	NOLD[4] (2)	ENI after NOLD (3)	ENI Tax @ 9% (4)	Min Tax (5)
1990	80,000	80,000	-	-	**5,000**
1991	90,000	70,000	20,000	1,800	**6,500**
1992	<80,000>		-	-	-
1993	<10,000>		-	-	-
1994	60,000	60,000	-	-	**1,925**
1995	30,000	20,000	10,000	**900**	175

The minimum tax credit is generated in those years in which the minimum tax is imposed, (1990, 1991 and 1994 in Schedule V). The amount of credit generated each year is based on the difference between the minimum tax actually imposed and an "as if" minimum tax excluding timing items of preference and adjustment. This "with and without" computation yields a hypothetical minimum tax on the timing items. It is this hypothetical minimum tax which, to the extent it exceeds the next highest tax, constitutes the credit amount. Determination of this hypothetical first requires determination of the "as if" minimum tax. This computation is shown in Schedule VI. In this Schedule it is assumed that, of the MTI adjustments in Schedule I, $5,000 each year are permanent differences and the remainder are timing items. Also in this Schedule, the net operating loss deduction allowed by Chapter 170

[4] The 1990-91 NOLDs of $80,000 and $70,000 are made up of the $140,000 pre-1990 NOL (see Schedule I) and $10,000 from the $80,000 1992 NOL (of which carryback is limited to $10,000). The 1994-95 NOLDs of $60,000 and $20,000 are made up of the remaining $70,000 of 1992 NOL and the $10,000 1993 NOL. As in Example 1, the 1993 NOL of $10,000 was subject to a federal carryforward election which also applies to the state deduction.

starts in 1994. The relevant net operating loss deduction is the regular tax NOLD from Schedule V.[5]

Schedule VI - "As If" Minimum Tax

Year	ENI	Permanent Adjustments (2)	As If MTI before NOLD (3)	NOLD (4)	As If MTI (5)	As If Min Tax (6)
1990	80,000	5,000	85,000	-	85,000	4,250
1991	90,000	5,000	95,000	-	95,000	4,750
1994	60,000	5,000	65,000	60,000	5,000	250

The "as if" minimum tax in Schedule VI is used to determine the minimum tax credit (adjusted minimum tax) in Schedule VII. The amount of credit generated each year (1990, 1991 and 1994) is the difference between the minimum tax imposed and the "as if" minimum tax. Each of these factors is taken into account, however, only to the extent that it exceeds the next highest tax for the year among the three remaining Article 9-A tax bases. Assume that each year the taxpayer's capital-based tax is less than the fixed dollar minimum and that the fixed dollar minimum is $325. Accordingly, the next highest tax base is $325 except in 1991, when the next highest tax base is the ENI tax of $1,800 (see Schedule V). Under these facts, the adjusted minimum tax for each year is calculated in Schedule VII from the difference between the column (1) minimum tax (from Schedule IV) and the column (2) "as if" minimum tax (from Schedule VI). [6]

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[5] As in the federal system, the replacement of the regular tax NOLD by the ANOLD in the minimum taxable income computation is treated as a timing item which is disregarded in the "as if" minimum tax based solely on permanent differences.

[6] While not illustrated in Schedule VII, it is possible, as is the case with the federal system, that the adjusted minimum tax can be a negative number. For example, if in Schedule VII the 1991 minimum tax in column (1) were $2,000 (because timing items were reversing that year) but the "as if" minimum tax remained at $4,750 (because it is unaffected by timing items), column (4) would become $200 ($2,000 - $1,800) and the adjusted minimum tax in column (6) would become <$2,750> ($200 - $2,950).

Schedule VII - Adjusted Minimum Tax						
Year	Min Tax (1)	As If Min Tax (2)	Next Highest Tax (3)	Excess If Any (1)-(3) (4)	Excess If Any (2)-(3) (5)	Adjusted Min Tax (4) -(5) (6)
1990	5,000	4,250	325	4,675	3,925	750
1991	6,500	4,750	1,800	4,700	2,950	1,750
1994	1,925	250	325	1,600	-0-	1,600
Cumulative Adjusted Minimum Tax						4,100

The minimum tax credit is applicable against the regular tax, and the amount available in any given regular tax year is the running total of the adjusted minimum tax generated in minimum tax years, minus any credit used in regular tax years. In this example, the only regular tax year is 1995 (See Schedule V). Accordingly, the cumulative minimum tax credit of $4,100 from Schedule VII is applied against the taxpayer's 1995 regular tax of $900. However, the credit cannot reduce the taxpayer's ENI tax below the next highest tax. In 1995, the taxpayer's fixed dollar minimum is $325, the capital tax is less than that, and the minimum tax is $175. Accordingly, the minimum tax credit is allowed to reduce the $900 ENI tax to $325. Therefore, $575 of minimum tax credit ($900 - $325) is used in 1995 and $3,525 of minimum tax credit ($4,100 $575) is available for further carryover.

Pre-1994 NOL Component

In addition to the minimum tax credit calculated as illustrated in Example 2, Chapter 170 provides for a transition rule to provide minimum tax credit, for tax years beginning in 1994 and' thereafter, for the amount of minimum tax attributable to NOL which was not allowed as a deduction in computing the minimum tax in the years 1990-93 (Tax Law § 210.13(e)). However, no more than 20% of this "pre-1994 NOL component" is allowable annually as credit in the first five years (1994-98). Any pre-1994 NOL component not used up under this 20% constraint is allowable in full after 1998.

EXAMPLE 3: For the years 1990-93, the taxpayer in Example 2 generated adjusted minimum tax of $750 in 1990 and $1,750 in 1991 as shown in Schedule VII. To determine the portion of this adjusted minimum tax which is attributable to disallowed NOLD, a comparison of the adjusted minimum tax with and without the NOLD is required. This requires that the "as if" minimum tax in Schedule VI for those years be recalculated to reflect allowance of the NOLD. This recalculation is shown in Schedule VIII, which starts from Schedule VI, column (3). The relevant NOLD is from Schedule V, column (2).

Schedule VIII - Recalculated 1990-93 As If Min Tax with NOLD				
Year	As If MTI before NOLD (1)	NOLD (2)	As If MTI After NOLD (3)	Recalu-lated As If MinTax (4)
1990	85,000	80,000	5,000	250
1991	95,000	70,000	25,000	1.250

The recalculated "as if" minimum tax from Schedule VIII, reflecting allowance of the NOLD, is used to recalculate the adjusted minimum tax to reflect allowance of the NOLD. Accordingly, the adjusted minimum tax computed in Schedule VII is recalculated in Schedule IX.

Schedule IX - Recalculated Adjusted Minimum Tax						
Year	Min Tax (1)	Sch VIII As If (2)	Next Highest Tax (3)	Excess If Any (1)-(3) (4)	Excess If Any (2)-(3) (5)	Recalcu-lated Adjusted Min Tax (4)-(5) (6)
1990	5,000	250	325	4,675	-	4,675
1991	6,500	1,250	1,800	4,700	-	4,700

The difference between the recalculated adjusted minimum tax calculated in Schedule IX and the adjusted minimum tax calculated in Schedule VII is the pre-

1994 NOL component of the adjusted minimum tax. This pre-1994 NOL component is determined in Schedule X from the difference between Schedule IX, column (6), and Schedule VII, column (6).

Schedule X - Pre-1994 NOL Component			
Year	Recalculated Adjusted Min Tax (1)	Adjusted Min Tax (2)	Pre-1994 NOL Component (1)-(2) (3)
1990	4,675	750	3,925
1991	4,700	1750	2,950
Total Pre-1994 NOL Component			6,875

Accordingly, for the years 1990-93, the taxpayer generated pre-1994 NOL component of $6,875 as calculated in Schedule X. Of the total, $1,375 (20% of $6,875) of pre-1994 NOL component is available to augment the primary minimum tax credit (the credit before taking into account the pre-1994 component) each year (1994-98), and any amount remaining thereafter can be used in full.

EXAMPLE 4: In 1994, the taxpayer in Example 3 was subject to the minimum tax, and in 1995 the regular tax, as illustrated in Schedule V. Thereafter, the taxpayer's highest tax was the regular tax, and the next highest tax was the fixed dollar minimum. These taxes from 1995 onward are shown in Schedule XI. Of the taxpayer's primary minimum tax credit of $4,100, $575 was applied in 1995 in Example 2. However, in this Example 4, the minimum tax credit can be maximized in the near term by application of the primary minimum tax credit of $4,100 and the pre-1994 NOL component of $6,875 as shown in Schedule XI. As illustrated in this Schedule, the 20% limitation on the pre-1994 NOL component lapses after 1998.

Schedule XI - Minimum Tax Credit Used						
	1995	1996	1997	1998	1999	Total
ENI Tax	900	6,200	1,200	5,200	6,300	
Next Highest Tax	325	325	325	325	325	
Tax Available for Credit	575	5,875	875	4,875	5,975	
Credit Used						
Primary Min Tax Credit		4,100	-	-	-	4,100
Pre-1994 NOL Component	575	1,375	875	1,375	2,675	6,875
Total Credit Used	575	5,475	875	1,375	2,675	10,975

OTHER CHAPTER 170 AMENDMENTS RELATED TO MINIMUM TAXABLE INCOME

New Allocation Computation

To compute the portion of minimum taxable income allocated within New York, the alternative business income is multiplied by the alternative business allocation percentage (Tax Law §210.3-a(a)). For tax years beginning in 1994 and thereafter, Chapter 170 provides a four-factor formula consisting of property, wages and receipts, with double weighting of receipts. Aviation firms, which in place of this formula use the formula in Tax Law § 210.3(a) (7), are not affected by this change.

Depreciation Adjustment

The federal AMT adjustment requires that the IRC § 168 depreciation deduction (i.e., MACRS) for property placed in service *after 1986* must be recomputed. The comparable New York MTI adjustment applies to property subject to the § 168 deduction under the regular tax. Prior to 1994, property placed in service outside of New York was not subject to the § 168 deduction under the regular tax and accordingly was not subject to MTI adjustment. Under Chapter 170, property placed in service outside New York in tax years beginning after 1993 will be subject to the IRC § 168 depreciation deduction under the regular tax and will accordingly be subject to the MTI depreciation adjustment.