

1 Pursuant to the authority contained in Tax Law sections 171, subdivision First, 208,
2 subdivisions (6), (6-a), (7), (8) and (9), and 210, subdivision (1), paragraph (a), the
3 Commissioner of Taxation and Finance hereby makes and adopts as a permanent rule the
4 following amendments to the New York Franchise and Certain Business Tax regulations under
5 Article 9-A and Article 32 of the Tax Law as published in Title 20 of the Official Compilation of
6 Codes, Rules and Regulations of the State of New York, repealing Subpart 3-7, Capital Loss, and
7 adding a new Subpart 3-7 to read as follows:

8 SUBPART 3-7

CAPITAL LOSS

Sec.

3-7.1 New York investment capital gains or losses in taxable years
beginning on or after January 1, 2015

9 3-7.2 New York business capital gains or losses in taxable years beginning
10 on or after January 1, 2015

11 3-7.3 Capital losses sustained in taxable years beginning before January
12 1, 2015

13 3-7.4 Capital losses sustained in taxable years beginning on or after
14 January 1, 2015

15 3-7.5 Application of New York Net Capital Losses

16 3-7.6 Combined Reporting

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27 Section 3-7.1 New York investment capital gains or losses in taxable years beginning on or after
28 January 1, 2015.

29 (a) The amount of Federal capital gains generated or losses sustained in taxable years
30 beginning on or after January 1, 2015 that are attributable to investment capital, as defined under
31 Subpart 3-4.1 of this part, are “New York investment capital gains or losses”.

32 (b) The amount of New York investment capital gains in excess of New York investment
33 capital losses is a taxpayer’s “New York net investment capital gain” for the taxable year.

34 (c) The amount of New York investment capital losses in excess of New York investment
35 capital gains is a taxpayer’s “New York net investment capital loss” for the taxable year.

36 (d) New York investment gains or losses do not include any amount of Federal capital
37 gains or losses sustained in a year in which a corporation is:

38 (1) not a taxpayer or a member of a New York combined group under Tax Law section
39 210-C (a New York non-filing year);

40 (2) a New York S corporation as defined in Tax Section 208(1-A) (a New York S year);

41 (3) a “non -captive REIT” as defined in section 3-11(b) of this Part (a non-captive REIT
42 filing year);

43 (4) a “non-captive RIC” as defined in section 3-11(d) of this Part (a non-captive RIC filing
44 year); or

45 (5) a captive insurance company that is not a combinable captive as defined in Tax Law
46 section 2(11) (a non-combinable captive insurance filing year).

47

48 Section 3-7.2 – New York business capital gains or losses in taxable years beginning on or after
49 January 1, 2015.

50 (a) The amount of Federal capital gains generated or losses sustained in taxable years
51 beginning on or after January 1, 2015 that are attributable to business capital as defined in Section
52 3-5.1 of this part, are “New York business capital gains or losses”.

53 (b) The amount of New York business capital gains in excess of New York business capital
54 losses is a taxpayer’s “New York net business capital gain” for the taxable.

55 (c) The amount of New York business capital losses in excess of New York business capital
56 gains is a taxpayer’s “New York net business capital loss” for the taxable year.

57 (d) New York business capital gains or losses do not include any amount of Federal capital
58 gains or losses sustained in a year in which a corporation is:

59 (1) not a taxpayer or a member of a New York combined group under Tax Law section
60 210-C (a New York non-filing year);

61 (2) a taxpayer that has made an election under subchapter S of Chapter one of the Internal
62 Revenue Code (a New York S year) and New York State Tax Law Section 660(a) (a New York S
63 year);

64 (3) a “non -captive REIT” as defined in Reg Section 3-11(b);

65 (4) a “non-captive RIC” as defined in Reg Section 3-11(d); or

66 (5) a captive insurance company that is not a combinable captive as defined in Tax Law
67 section 2(11).

68

69 Section 3-7.3 Federal net capital loss sustained in taxable years beginning before January
70 1, 2015.

71 (a) Except as provided in subdivision (b) and (c) of this section, a corporation subject to
72 tax under article 9-A or article 32, or a member of a combined group subject to tax under article
73 9-A or article 32, that sustained a Federal net capital loss under Internal Revenue Code section
74 1212 in a taxable year beginning before January 1, 2015 shall carry back and forward such Federal
75 net capital loss as required by Subpart 3-7 of this Part and section 18-2.5(b) of Subchapter B of
76 this Chapter, as such provisions existed on December 31, 2014.

77 (b) The carryover of any amount of a Federal net capital loss that was sustained in a taxable
78 year beginning before January 1, 2015 to a taxable year beginning after December 31, 2014 shall
79 be governed by these Subpart 3-7 provisions as subsequently enacted.

80 (c) Any Federal net capital loss available for carryforward as of the end of the last taxable
81 year beginning before January 1, 2015 shall be deemed to be a New York net business capital loss
82 as defined in Section 3-7.2 of this Subpart (regardless of whether such capital loss was from
83 business capital, investment capital, or subsidiary capital as such terms were previously defined in
84 prior Article 9-A regulations) to be carried forward to the next succeeding taxable year beginning
85 on or after January 1, 2015, and must be applied only against New York business capital gains,
86 provided it does not increase or produce a net operating loss for New York State purposes. Any
87 such New York net business capital loss may only be carried forward for five taxable years
88 immediately succeeding the loss year and nothing in this Subpart extends this capital loss
89 carryforward period.

90

91 Section 3-7.4 Capital losses sustained in taxable years beginning on or after January 1, 2015.

92 (a) In computing the business income base, taxpayers generally start with Federal taxable
93 income that includes capital gains in excess of capital losses without differentiation between New
94 York investment capital gains and losses and New York business capital gains and losses. For New

95 York State purposes, taxpayers must ensure that investment capital losses do not offset business
96 capital gains and that business capital losses do not offset investment capital gains when
97 calculating the business income base.

98 (b) A corporation or combined group, in the case of a combined report, subject to tax under
99 article 9-A must properly classify and separate any amount of Federal capital losses and Federal
100 capital gains, as such terms are defined in Internal Revenue Code section 1222, into New York
101 business capital gains or losses and New York investment capital gains or losses. To properly
102 calculate the business income base, Federal taxable income must be increased for the amount of
103 New York net investment capital loss that offsets New York business capital gains. Similarly, to
104 properly calculate the business income base, Federal taxable income must be increased for the
105 amount of New York net business capital loss that offsets New York investment capital gains.

106 (c) For any amount of Federal capital loss sustained in a New York non-filing year that is
107 used on a Federal return in a year in which a corporation is subject to tax under article 9-A or is a
108 member of a New York combined group under Tax Law section 210-C, (a New York filing year),
109 Federal taxable income in that New York filing year must be increased by the amount of Federal
110 capital loss that was used from that New York non-filing year.

111 (d) For any amount of Federal capital loss sustained in a New York S year that is used on
112 a Federal return in a New York C year, Federal taxable income in that New York C year must be
113 increased by the amount of the Federal capital loss that was used from the New York S year.

114 (e) For any amount of Federal capital loss sustained in a non-captive REIT filing year that
115 is used on a Federal return in a captive REIT filing year, Federal taxable income in that captive
116 REIT filing year must be increased by the amount of the Federal capital loss that was used from
117 the non-captive REIT filing year.

118 (f) For any amount of Federal capital loss sustained in a non-captive RIC filing year that is
119 used on a Federal return in a captive RIC filing year, Federal taxable income in that captive RIC
120 filing year must be increased by the amount of the Federal capital loss that was used from the non-
121 captive RIC filing year.

122 (g) For any amount of Federal capital loss sustained in a non-combinable captive filing
123 year that is used on a Federal return in a combinable captive filing year, Federal taxable income in
124 that non-combinable captive filing year must be increased by the amount of the Federal capital
125 loss that was used from the combinable captive filing year.

126

127 Section 3-7.5 Application of New York Net Capital Losses.

128 (a) Except as otherwise provided in this Subpart, the amount of New York net business
129 capital loss and the amount of New York net investment capital loss must be carried back to each
130 of the three taxable years immediately preceding the taxable year of each such loss and then must
131 be carried forward to the five taxable years immediately succeeding the taxable year of each such
132 loss, but only to the extent that the amount of New York net business capital loss or New York net
133 investment capital loss does not increase or produce a net operating loss for New York State
134 purposes. New York net business capital loss must be carried back or forward in accordance with
135 the guidance of this Subpart to offset only New York business capital gains in other taxable years,
136 for New York State purposes. New York net investment capital loss must be carried back and
137 forward in accordance with the guidance of this Subpart to offset only New York investment
138 capital gains in other taxable years, for New York State purposes.

139 (b) A New York net business capital loss or New York net investment capital loss cannot
140 be carried back to a taxable year beginning before January 1, 2015.

141 (c) Except for as provided in Section 3-7.5(b), a New York net business capital loss or New
142 York net investment capital loss is carried first to the earliest of the three taxable years immediately
143 preceding the tax year in which the loss was sustained. If such net capital loss is not entirely used
144 in that tax year, the remaining amount is then carried to the second taxable year preceding the loss
145 year, and any amount thereafter remaining is carried to the first taxable year immediately preceding
146 the tax year in which the net capital loss was sustained. Any unused amount after the application
147 of the carryback rules is then carried forward to the first five taxable years immediately succeeding
148 the loss year. Such net capital loss is carried forward first to the taxable year immediately following
149 the loss year and then to the next immediately succeeding taxable year or years until the loss is
150 used up or the fifth taxable year following the loss year, whichever comes first. Any unused capital
151 loss carryforward is forfeited after such fifth taxable year following the loss year.

152 (d) For purposes of determining the number of tax years to which a capital loss may be
153 carried back or forward, the following years are counted:

- 154 (1) a New York filing year;
- 155 (2) a New York non-filing year;
- 156 (3) a New York S filing year;
- 157 (4) a non-captive REIT filing year;
- 158 (5) a non-captive RIC filing year; and
- 159 (6) a non-combinable captive insurance filing year.

160 (e) A corporation that reports as part of a consolidated group for Federal income tax
161 purposes but on a separate basis for purposes of Article 9-A must compute its New York net
162 business capital loss and New York net investment capital loss as if it were filing separately for
163 Federal income tax purposes. This requires such corporation, when computing its Federal taxable
164 income as if it had filed its Federal tax return on a separate basis, to also compute its Federal net

165 capital gain or loss as if it had filed separately for Federal income tax purposes. Such corporation
166 then follows this Subpart to compute its New York net investment capital gain or loss and New
167 York net business capital gain or loss.

168 (f) Under Tax Law section 210-C, in computing its tax bases, a New York State combined
169 group is generally treated as a single corporation subject to the same Federal income tax limitations
170 that would apply if such corporation had filed for such taxable year on a consolidated Federal
171 income tax return with the combined group. When applying this rule to the computation of
172 combined business income, Federal taxable income must be computed as if all the corporations in
173 the combined group had filed a Federal consolidated return including such group members. When
174 the New York State combined group is comprised of corporations different than those that filed
175 on the same Federal consolidated return, a re-computation of Federal taxable income is required
176 and, as a result, a re-computation of Federal net capital gain or loss is required as if the Federal net
177 capital gain or loss was computed by a Federal consolidated group comprised of the same members
178 as the New York State combined group. A New York State combined group must then, for the
179 purpose of computing its New York combined business income, compute its New York net
180 business capital loss and New York net investment capital loss, pursuant to this Subpart, as if all
181 the corporations included in the combined group are a single corporation.

182

183 Section 3-7.6 Capital Losses in Combined Reports.

184 (a) In computing the New York net capital loss of corporations included in a combined
185 report pursuant to Tax Law section 210-C, the New York net capital loss of the combined group
186 is computed in accordance with this Subpart, substituting “combined group” for “corporation”.

187 (b) A member leaving a combined group must compute its own share of New York net
188 business capital loss carryover and New York net investment capital loss carryover. New York net
189 capital loss carryover is net capital loss that may be carried back or forward as the case may be.

190 (1) To compute the leaving member's share of the New York net business capital loss
191 carryover, multiply the combined group's New York net business capital loss carryover for the
192 taxable year by a fraction, the numerator of which is the total New York business capital losses for
193 that taxable year of such member and the denominator of which is the total New York business
194 capital losses for that taxable year of all members of the combined group having such New York
195 business capital losses to the extent such capital losses are included in the capital loss carryover
196 amount of the combined group in accordance with this section.

197 (2) To compute the leaving member's share of New York net investment capital loss
198 carryover, multiply the combined group's New York net investment capital loss carryover for the
199 taxable year by a fraction, the numerator of which is the total New York investment capital losses
200 for that taxable year of such member and the denominator of which is the total New York
201 investment capital losses for that taxable year of all members of the combined group having such
202 New York investment capital losses to the extent such capital losses are included in the capital loss
203 carryover amount of the combined group in accordance with this section.

204 (c) If a corporation is a member of a combined group pursuant to Tax Law Section 210-C
205 for any taxable year beginning on or after January 1, 2015 and leaves that group in a later taxable
206 year, the outgoing member takes its share of the combined group's New York net business capital
207 loss carryover and New York net investment capital loss carryover, as computed in subdivision (c)
208 of this section. If such corporation joins another combined group, its New York net business capital
209 loss carryover is added to the new combined group's New York net business capital loss carryover
210 and its New York net investment capital loss carryover is added to the new combined group's New

211 York net investment capital loss carryover, subject to the rules in this Subpart. If such corporation
212 files a separate New York return, it is allowed to use its New York net business capital loss
213 carryover or New York net investment capital loss carryover on a separate basis, subject to the
214 rules in this Subpart.

215 (d) If a corporation that was subject to tax under Article 9-A and was not a member of a
216 combined group in any taxable year beginning on or after January 1, 2015 subsequently joins a
217 combined group, that incoming member's New York net business capital loss carryover is added
218 to the combined group's New York net business capital loss carryover and its New York net
219 investment capital loss carryover is added to the combined group's New York net investment
220 capital loss carryover, subject to the rules in this Subpart.

221

222 Section 3-7.7 Record Keeping.

223 A taxpayer or a combined group that claims a New York net capital loss carryback or
224 carryforward, either business or investment, must submit a copy of its Federal schedule of capital
225 gains and losses used and a schedule of New York capital gains and losses used for the loss year
226 and for any year(s) to which the losses are to be carried. A claim for refund based on a New York
227 capital loss carryover must be filed on the forms and in the manner prescribed by the
228 commissioner.

229

230 Section 3-7.8 Examples.

231 The following examples illustrate the application of the rules in this Subpart.

232 Example 1: Corporation X incorporated and began doing business in New York on January 1,
233 2015. For tax year 2015, Corporation X has \$5,000 of interest directly and indirectly attributable
234 to investment capital. Corporation X sustained a \$9,000 Federal net capital gain which was

235 comprised of a \$3,000 New York net business capital loss and a \$12,000 New York net investment
 236 capital gain and had no other investment income. As New York net business capital loss offsets
 237 New York investment capital gains, Federal taxable income must be increased as follows:

The 2015 Federal 1120 contains the following information:			
Federal taxable income "FTI" (before NOLD & Special Deduction)			\$ 150,000
State income taxes deducted			11,000
			-
2015 FTI income includes the following Capital Gains (Schedule D):			
2015 New York net business capital loss		\$ (3,000)	
2015 New York net investment capital gain		12,000	
2015 federal net capital gain		\$ 9,000	
Recomputation of 2015 FTI without allowing netting of New York net investment capital gain with New York net business capital loss			
Federal taxable income (before NOLD & Special Deductions)			\$ 150,000
Increase FTI by the amount of the 2015 New York net business capital loss that offset New York investment capital gains	3,000		
Federal taxable income adjusted for NY capital loss utilization ("as if" federal line 28)			\$ 153,000
Calculation of business income base			
Federal taxable income adjusted for NY capital loss utilization ("as if" federal line 28)			\$ 153,000
Add: State income taxes deducted			11,000
Entire Net Income			\$ 164,000
Less: Investment Income (\$12,000 investment capital gain less \$5,000 of interest attribution)			(7,000)
Business Income			\$ 157,000

238
 239 Corporation X has a New York net business capital loss of \$3,000 available for carryforward from
 240 2015.

241
 242 Example 2: Corporation X incorporated and began doing business in New York on January 1,
 243 2011. For tax year 2014, it sustained a \$75,000 New York net business capital loss. Corporation
 244 X has New York business capital gains and losses and uses the New York net business capital
 245 loss sustained in tax year 2014 as follows:

Taxable Year ended	2011	2012	2013	2014	2015	2016	2017	2018	2019
New York net business capital gains or loss	3,000	6,000	9,000	(75,000)	12,000	10,000	15,000	13,000	5,000
New York net business capital loss carryback from 2014 to 2011	(3,000)			3,000					
New York net business capital loss carryback from 2014 to 2012		(6,000)		6,000					
New York net business capital loss carryback from 2014 to 2013			(9,000)	9,000					
New York net business capital loss carryforward from 2014 to 2015				12,000	(12,000)				
New York net business capital loss carryforward from 2014 to 2016				10,000		(10,000)			
New York net business capital loss carryforward from 2014 to 2017				15,000			(15,000)		
New York net business capital loss carryforward from 2014 to 2018				13,000				(13,000)	
New York net business capital loss carryforward from 2014 to 2019				5,000					(5,000)
New York net business capital loss	-	-	-	(2,000)	-	-	-	-	-

246

247 The \$2,000 remaining of the New York net business capital loss sustained in tax year 2014 is
 248 forfeited after tax year 2019 and cannot be carried forward to any tax year beginning on or after
 249 January 1, 2020 as it cannot be carried forward more than five years succeeding the loss year.

250

251 Example 3: For tax year 2014, Corporation X has a \$9,000 Federal net capital loss available for
 252 carryforward. While the \$9,000 Federal net capital loss is comprised of a \$2,000 business capital
 253 loss, a \$6,000 investment capital loss and a \$1,000 subsidiary capital loss (not treated as a
 254 deduction directly attributable to subsidiary capital), the entire loss is treated as a New York net
 255 business capital loss in tax years beginning on or after January 1, 2015. The Federal net capital
 256 loss is applied as follows in tax year 2015:

The 2015 Federal 1120 contains the following information:		
Federal taxable income (before NOLD & Special Deduction)		\$ 150,000
State income taxes deducted		15,000
No other investment income besides the New York investment capital gains		-
2015 Federal taxable income includes the following Capital Gains (Schedule D):		
2015 New York business capital gains	\$ 4,000	
2015 New York investment capital gains	7,000	
Less: 2014 New York net business capital loss forward	\$ (9,000)	
Total 2015 Capital Gains after federal capital loss carryforward	\$ 2,000	

257

258 Since the Federal taxable income computation allows the \$7,000 New York investment capital
 259 gain to be partially offset by the \$9,000 carryforward of New York net business capital loss,
 260 Federal taxable income must be re-computed as follows:

Federal taxable income (before NOLD & Special Deductions)		\$ 150,000
Add: 2014 total applied federal capital loss carried forward to 2015	9,000	
Subtract: 2014 New York net business capital loss that offset New York business capital gains	(4,000)	
Increase FTI by the amount of the 2014 New York net business capital loss applied against New York investment capital gains	5,000	5,000
Federal taxable income adjusted for NY capital loss utilization ("as if" federal line 28)		\$ 155,000

261

262 The re-computed Federal taxable income is used as the starting point for computing business
 263 income, which is computed as follows:

Calculation of business income base			
	Federal taxable income adjusted for NY capital loss utilization ("as if" federal line 28)		\$ 155,000
	Add: State income taxes deducted		15,000
	Entire Net Income		\$ 170,000
	Less: Investment Income (investment capital gain after interest attribution)		(7,000)
264	Business Income		\$ 163,000

265 The 2014 New York net business capital loss carryforward is computed as follows:

	Total 2014 New York net business capital loss	\$ (9,000)
	Less: 2014 New York net business capital loss utilized against business capital gains in 2015	4,000
266	Total 2014 New York net business capital loss available for carry forward against business capital gains	\$ (5,000)

267 Example 4: Corporation X has New York net business capital gains in tax years 2014, 2015, and
 268 2017. In tax year 2016, it sustains a \$30,000 New York net business capital loss. While New York
 269 net business capital losses are generally allowed to be carried back three taxable years, such losses
 270 cannot be carried back to a tax year beginning before January 1, 2015. As a result, they cannot be
 271 applied against the New York business capital gain sustained in tax year 2014. The New York net
 272 business capital loss is applied as follows:

Taxable Year ended	2014	2015	2016	2017
New York capital loss application				
New York business capital gains (losses)	8,000	10,000	(30,000)	20,000
New York net business capital loss carryback from 2016 to 2015		(10,000)	10,000	
New York net business capital loss carryforward from 2016 to 2017			20,000	(20,000)
273 New York net business capital gain (loss)	8,000	-	-	-

274 Example 5: For tax year 2015, Corporation X sustains an \$8,000 New York net investment capital
 275 loss. It may only be applied against New York investment capital gains as follows:

Taxable Year ended	2015		2016		2017	
	Business Capital Gain/(Loss)	Investment Capital Gain/(Loss)	Business Capital Gain/(Loss)	Investment Capital Gain/(Loss)	Business Capital Gain/(Loss)	Investment Capital Gain/(Loss)
New York net capital gain or loss	-	(8,000)	10,000	3,000	9,000	7,000
New York net investment capital loss carryforward from 2015 to 2016		3,000		(3,000)		
New York net investment capital loss carryforward from 2015 to 2017		5,000				(5,000)
276 New York net capital gain or loss	-	-	10,000		9,000	2,000

277 Example 6: For tax year 2015, Corporation X sustained a \$10,000 Federal net capital loss
 278 comprised entirely of a \$10,000 New York net business capital loss. For tax year 2016, Corporation
 279 X generated an \$11,000 Federal net capital gain comprised of a \$6,000 New York net business
 280 capital gain and a \$5,000 New York net investment capital gain. For tax year 2017, Corporation
 281 X generated a \$14,000 Federal net capital gain comprised entirely of a \$14,000 New York net
 282 business capital gain. The net capital losses are applied against capital gains as follows:

Taxable Year ended	2015		2016		2017	
	New York Business Capital Gain/(Loss)	New York Investment Capital Gain/(Loss)	New York Business Capital Gain/(Loss)	New York Investment Capital Gain/(Loss)	New York Business Capital Gain/(Loss)	New York Investment Capital Gain/(Loss)
New York net capital gain/(loss)	(10,000)	-	6,000	5,000	14,000	-
Net York net business capital loss carryforward from 2015 to 2016	6,000		(6,000)			
Net York net business capital loss carryforward from 2015 to 2017	4,000				(4,000)	
New York net capital gain (loss)	-	-	-	5,000	10,000	-

283

284 Example 7: In tax year 2015, Corporation A used a \$2,000 Federal net capital loss. Such capital
 285 loss is classified as a New York net investment capital loss and was offset against New York
 286 business capital gains. As a result, Federal taxable income reported on the original tax year 2015
 287 return must be increased by the amount of the New York net investment capital loss as follows:

The 2015 Original Federal 1120 contains the following information:		
Federal taxable income (before NOLD & Special Deduction)		\$ 175,000
State income taxes deducted		7,000
No investment income		-
Federal taxable income includes the following Capital Gains (Schedule D)		
2015 New York business capital gains	\$ 6,000	
2015 New York investment capital loss	(2,000)	
Total net capital gains/losses	\$ 4,000	
Recomputation of federal taxable income without regard to federal application capital losses on original 2015 return		
Federal taxable income (before NOLD & Special Deductions)		\$ 175,000
Increase FTI by the amount of the 2015 New York investment capital loss that offset New York business capital gains		\$ 2,000
Federal taxable income adjusted for New York capital loss utilization ("as if" federal line 28)		\$ 177,000

289

290 For tax year 2018, Corporation A sustained a Federal net capital loss of \$8,000 comprised of a
 291 \$3,000 New York net business capital loss and a \$5,000 New York net investment capital loss.

292 Corporation A carries the Federal net capital loss back to the 2015 tax year and computes its 2015
 293 Federal taxable income on the amended 2015 return as follows:

The 2015 Amended Federal 1120 contains the following information:		
Federal taxable income (before NOLD & Special Deduction)		\$ 171,000
State income taxes deducted		7,000
No investment income		-
Amended Federal taxable income includes the following Capital Gains (Schedule D)		
2015 New York business capital gains	\$ 6,000	
2015 New York investment capital loss	(2,000)	
2018 total capital loss carryback	(4,000)	
Total net capital gains/losses	<u>\$ -</u>	

294
 295 For New York State purposes, the tax year 2015 New York net investment capital loss cannot
 296 offset the tax year 2015 New York business capital losses (as adjusted on the original tax year
 297 2015 return). Additionally, Corporation A may only carry back the tax year 2018 New York net
 298 business capital loss to tax year 2015 as it has no New York investment capital gains in tax year
 299 2015. Therefore, Federal taxable income must be re-computed on the amended tax year 2015 return
 300 as follows:

Recomputation of federal taxable income without regard to federal application capital losses		
Federal taxable income (before NOLD & Special Deductions)		\$ 171,000
Add: 2018 Federal capital loss carryback applied against capital gains on 2015 federal return	\$ 4,000	
Add: 2015 New York investment capital loss	\$ 2,000	
Subtract: 2018 New York net business capital loss carryback	\$ (3,000)	
Federal taxable income adjusted for New York capital loss utilization ("as if" federal line 28)		<u>\$ 174,000</u>

301
 302 The re-computed Federal taxable income must be used in the computation of tax year 2015
 303 business income as follows:

Computation of business income		
Federal taxable income adjusted for NY capital loss utilization ("as if" federal line 28)	\$ 174,000	
Add: State income taxes deducted	\$ 7,000	
Entire Net Income	\$ 181,000	
Less: Investment Income		
Business Income	<u>\$ 181,000</u>	

304

305 Corporation A does not have New York net capital gains in tax years 2016 or 2017 to apply against
 306 New York capital losses. As a result, at the end of tax year 2018, it has no New York net business
 307 capital loss carryforward and a \$7,000 New York net investment capital loss carryforward as
 308 follows:

Balance of New York net capital loss at the end of 2018	Total New York net capital gains/losses	New York net business capital gains/losses	New York net investment capital gains/losses
Net capital loss sustained in 2018	\$ (8,000)	\$ (3,000)	\$ (5,000)
Add: 2015 New York net investment capital loss			\$ (2,000)
Less: 2018 New York net business capital loss carried back to 2015	3,000	3,000	
Less: 2018 capital loss utilized against capital gains classified as business income in 2015			\$ -
			\$ (7,000)

310 Example 8: Corporation X was incorporated and began doing business in New York on January 1,
 311 2015. In calendar year 2015, it sustained a \$35,500 Federal net capital loss comprised of a \$24,500
 312 New York net business capital loss and an \$11,000 New York net investment capital loss. These
 313 New York net capital losses cannot be carried back to a tax year that begins before 2015.
 314 Corporation X has New York filing years in 2015, 2016, and 2018. Calendar year 2017 is a New
 315 York non-filing year. As a result, the 2015 New York net capital loss cannot be used in tax year
 316 2017 but this year counts toward the five-year carryforward period. Such New York net capital
 317 losses are used as follows:

	Filing Year				Non-Filing Year	Filing Year	
	2015		2016		2017	2018	
	New York Net Business Capital Gain/(Loss)	New York Net Investment Capital Gain/Loss	New York Net Business Capital Gain/(Loss)	New York Net Investment Capital Gain/Loss	Federal Capital Gain/Loss	New York Net Business Capital Gain/(Loss)	New York Net Investment Capital Gain/Loss
Capital Gains/ Losses	(24,500)	(11,000)	12,500	-	15,000	1,000	3,000
New York net business capital loss carryforward from 2015 to 2016	12,500		(12,500)				
New York net business capital loss carryforward from 2015 to 2018	1,000					(1,000)	
New York net investment capital loss carryforward from 2015 to 2018		3,000					(3,000)
Capital gain net income	-	-	-	-	15,000	-	-
Net Capital Loss Available	(11,000)	(8,000)	-	-	-	-	-

319 Example 9: Taxpayer A properly filed a combined report with members B, C and D in tax years
 320 2015, 2017 and 2017 and the group applies its New York net capital losses as follows:

Combined NYS Capital Loss Application Schedule						
	2015		2016		2017	
	New York Business Capital Gains/(Losses)	New York Investment Capital Gains/ (Losses)	New York Business Capital Gains/(Losses)	New York Investment Capital Gains/ (Losses)	New York Business Capital Gains/(Losses)	New York Investment Capital Gains/ (Losses)
Combined Group: A, B, C & D						
A	(12,500)	(1,250)	2,500	250	50,000	7,250
B	950	95	(1,000)	(100)	(250)	150
C	(11,250)	(1,125)	(1,500)	(150)	6,000	(1,250)
D	(5,575)	580	(2,500)	(250)	(3,500)	(1,100)
Total	(28,375)	(1,700)	(2,500)	(250)	52,250	5,050
New York net business capital loss carryforward from 2015 to 2017	28,375				(28,375)	
New York net investment capital loss carryforward from 2015 to 2017		1,700				(1,700)
New York net business capital loss carryforward from 2016 to 2017			2,500		(2,500)	
New York net investment capital loss carryforward from 2016 to 2017				250		(250)
Capital gain net income (loss available)	-	-	-	-	21,375	3,100

321

322 Example 10: Corporations A, B, C and D, are calendar-year taxpayers that began doing business

323 in tax year 2015 and properly filed as members of a combined group in tax year 2015. Corporation

324 D departs the ABCD combined group at the end of tax year 2015. The combined group ABCD

325 sustained a New York net business capital loss and a New York net investment capital loss for tax

326 year 2015. Each member of the group must compute its individual New York net capital loss

327 carryforward separately for each type of capital loss by multiplying the total New York net capital

328 loss carryforward by the individual member's contribution to that type of capital loss over the total

329 capital loss for that type of capital. The individual members of the combined group compute their

330 individual New York net business capital loss carryforward and New York net investment capital

331 loss carryforward as follows:

Combined NYS Capital Loss Application Schedule						
	2016		Member's losses as a % of total losses of all members with losses		Members Loss Carryforward	
	Business Capital Gains/ (Losses)	Investment Capital Gains/ (Losses)	Business Capital Gains/ (Losses)	Investment Capital Gains/ (Losses)	Business Capital Gains/ (Losses)	Investment Capital Gains/ (Losses)
Combined Group Members: A, B, C & D						
A	25,000	750	-	-	-	-
B	(25,000)	(200)	50%	20%	(12,500)	(50)
C	(15,000)	(500)	30%	50%	(7,500)	(125)
D	(10,000)	(300)	20%	30%	(5,000)	(75)
Combined Group ABCD	(25,000)	(250)	100%	100%	(25,000)	(250)
Capital Loss Available	(25,000)	(250)	-	-	(25,000)	(250)
Total contribution of losses	(50,000)	(1,000)				

332

333 When it leaves, departing member D takes its New York net business capital loss carryforward of
 334 \$5,000 (\$25,000 multiplied by 20%) and its New York net investment capital loss carryforward of
 335 \$75(\$250 multiplied by 30%).

336 Example 11: Corporation D, a calendar-year taxpayer, began doing business in New York in tax
 337 year 2015 and files on a stand-alone basis in tax years 2015 and 2016. Corporations A, B and C
 338 have New York non-filing years in 2015 and 2016 but, in tax year 2017, file a combined report
 339 with Corporation D. Combined group ABCD sustains a New York net business capital loss in tax
 340 year 2017.

Combined NYS Capital Loss Application Schedule							
	2015	2016	2017	2018	2019	2020	2021
Combined Group Members	New York Business Capital Gains/(Losses)						
A	-	-	(4,500)	-	-	-	1,250
B	-	-	(250)	-	-	-	2,250
C	-	-	(5,500)	-	-	-	5,000
D	(12,500)	-	-	-	-	-	2,500
Total	(12,500)		(10,250)	-	-	-	11,000
New York net business capital loss carryforward from 2017 to			10,250				10,250
New York capital gain/(loss)	(12,500)	-	-	-	-	-	750

341 Corporation D’s New York net business capital loss sustained in tax year 2015 is forfeited at the
 342 end of tax year 2020, five years after the loss year, even though there were no New York business
 343 capital gains to apply it against in tax years 2016 through 2020.
 344

345 Combined group ABCD’s New York net business capital loss sustained in tax year 2017 is carried
 346 forward to 2021 and offsets the New York business capital gains of the combined group.