These proposed revisions to Part 3-9 replace the previously posted draft dated December 28, 2017.

Section 1. Subpart 3-9 of this Part is renumbered Subpart 3-10 and a new Subpart 3-9 is added to read as follows:

Subpart 3-9 Computation of the Prior Net Operating Loss Conversion (PNOLC) Subtraction

Sec.

Section 3-9.1 Definitions.

For purposes of this Subpart, the following terms shall have the following meaning.

(a) The term “base year” means a corporation’s last taxable year beginning on or after January 1, 2014 and before January 1, 2015.

(b) The term “base year BAP” means either of the following, whichever is applicable: (1) the taxpayer's or combined group’s, in the case of a combined report in the base year (“base year combined group”), business allocation percentage for purposes of calculating entire net income for the base year (whether or not liability was in fact based on entire net income), as calculated under Tax Law section 210(3)(a) as such section was in effect on December 31, 2014; or (2) the taxpayer’s or base year combined group’s allocation percentage for purposes of calculating entire net income for the base year (whether or not liability was in fact based on entire net income), as calculated under Tax Law section 1454 as such section was in effect on December 31, 2014.

(c) The term “base year tax rate” means the taxpayer's or base year combined group’s tax rate for purposes of computing the tax on entire net income for the base year (whether or not liability was in fact based on entire net income), as calculated under either Tax Law section 210(1)(a) or Tax Law section 1455(a), whichever is applicable, as such sections were in effect on December 31, 2014.

(d) The term “first 2015 taxable year” means a corporation’s first taxable year that begins on or after January 1, 2015 and before January 1, 2016.

(e)(1) The term “small business taxpayer” means a corporation that, in the first 2015 taxable year, satisfied all of the criteria specified in subparagraphs (i), (ii), and (iii) of paragraph (2) of this subdivision as of the last day of the base year; and, in the case of a combined report, means a combined group that in the first 2015 taxable year would have satisfied the criteria specified in subparagraphs (i) and (ii) of paragraph (2) of this subdivision on the last day of the base year if such group had filed a combined report in such base year, provided that each member of such combined group would have satisfied the criteria specified in subparagraph (iii) of paragraph (2) of this subdivision on the last day of the base year.

(2) The criteria that must be satisfied to qualify as a small business taxpayer are:

(i) the entire net income of the corporation or the combined group for the base year before allocation was not more than $390,000 (such amount will be annualized for a base year that constitutes a short taxable year);

(ii) the total amount of money and other property that the corporation or combined group received for stock, as a contribution to capital and as paid-in surplus, was not more than $1 million as of the last day of the base year; and

(iii) the corporation was not part of an affiliated group, as defined in IRC section 1504, unless the group itself would have satisfied the requirements in subparagraphs (i) and (ii) of this paragraph if it had filed a combined report.

Section 3-9.2 Computation of the unabsorbed net operating loss (UNOL)

(a) The "unabsorbed net operating loss" (hereinafter referred to in this Subpart as the UNOL) means the unabsorbed portion of net operating loss (NOL) as calculated under Tax Law section 208(9)(f) or Tax Law section 1453(k-1) as such sections were in effect on December 31, 2014, that was not deductible in previous taxable years (including the base year) and was eligible for carryover on the last day of the base year, including any NOL sustained by the taxpayer during the base year. The computation of such UNOL is subject to the rules in subdivisions (b) through (e) of this section.

(b) To compute the UNOL, the rules in paragraphs (1) and (2) of this subdivision must be followed.

(1) Federal and New York State NOLs available for carryover. A corporation must first compute its federal and New York State NOLs available for carryover, from taxable years beginning before January 1, 2015, as of the last day of such corporation's base year (federal and New York State NOLs available for carryover), by applying the following rules:

(i) NOLs are carried back and carried forward to taxable years beginning before January 1, 2015, and included in the determination of deductible NOLs, as well as remaining NOLs available for carryover, subject to NOL deduction limitations, as set forth in either Tax Law section 208(9)(f) or Tax Law section 1453(k-1), whichever is applicable, and as per the rules in Subpart 3-8 of this Part, as such provisions were in effect and applicable on December 31, 2014. NOLs available for carryover do not include any NOLs that were deductible in a taxable year beginning prior to January 1, 2015, regardless of whether or not the corporation actually deducted the NOL. However, if the amount of NOL actually deducted in any taxable year is greater than the amount deductible, the NOL available for carryover is reduced by such excess amount deducted. When computing the amount of NOLs available for carryover, New York State NOLs must be applied against entire net income (ENI) to reduce ENI to zero or the greatest extent possible, regardless of the tax base on which the franchise tax was actually paid.

(ii) If the carryforward period for an NOL, as determined in subparagraph (i) of this paragraph, ends prior to, or on, the last day of the corporation's base year, no portion of such NOL is included in the NOLs available for carryover.

(2) Eligible NOL carryover amounts. After computing its federal and New York State NOLs available for carryover, such corporation must then compute its federal and New York State carryover amounts as of the last day of such corporation’s base year (its eligible NOL carryover amounts), to be used in the computation of the UNOL, by applying the following rules and limitations in subparagraphs (i) through (v) of this paragraph.:

(i) A corporation’s federal and New York State NOLs available for carryover are included in the eligible federal and New York State NOL carryover amount, respectively, only when there is both a federal and New York State NOL sustained in the same taxable year and available for carryover as of the last day of the corporation’s base year.

(ii) A corporation’s federal NOL sustained in a separate return limitation year (SRLY) beginning before January 1, 2015, and any corresponding New York State NOL, that was not deductible in taxable years beginning before January 1, 2015, and that was available for carryover as of the last day of the corporation’s base year, is included in its entirety in the eligible federal and New York State NOL carryover amount, respectively, subject to the rules in this section.

(iii) If, under IRC section 381, a corporation, in a taxable year beginning prior to January 1, 2015, succeeded to the tax attributes, including federal NOL carryovers, of another corporation, and such acquiring or successor corporation also succeeded to the New York State NOL carryovers of such acquired or predecessor corporation, then any such federal and New York State NOLs that were not deductible by the acquiring or successor corporation in taxable years beginning before January 1, 2015, and that were available for carryover as of the last day of the corporation’s base year, are included in their entirety in the eligible federal and New York State NOL carryover amounts, respectively, subject to the rules in this section.

(iv) A corporation's federal NOLs subject to the limitations imposed by IRC section 382 as a result of an ownership change (pre-change losses) that were not deductible in taxable years beginning before January 1, 2015, and that were available for carryover as of the last day of the corporation's base year, are included in the eligible federal NOL carryover amount, subject to the rules in this section, but only to the extent that such pre-change losses, in the aggregate, that relate to such ownership change, do not exceed the amount computed as follows: (A) the applicable annual IRC section 382 limitation for a post-change year for such ownership change, multiplied by 20; less (B) any such pre-change losses that were deductible in taxable years beginning before January 1, 2015. Such amount shall be computed separately for each ownership change.

(v) In the case of a corporation operating on a cooperative basis under IRC section 1381 that is taxable under Article 9-A or Article 32 of the Tax Law for its base year, such corporation's federal patronage and non-patronage source NOLs, and such corporation's New York State patronage and non-patronage source NOLs, respectively, that were not deductible in taxable years beginning before January 1, 2015, and that were available for carryover as of the last day of the corporation's base year, are combined and included in the eligible federal and New York State NOL carryover amount, respectively, subject to the rules in this section.

(c) (1) After applying all other rules and limitations in this section to compute the eligible federal and New York State NOL carryover amount, respectively, whichever of the two eligible NOL carryover amounts (federal or New York State) is the lesser amount is the corporation's UNOL.

(2) When subparagraph (v) of paragraph (2) of subdivision (b) of this section applies, for purposes of applying the limitation under paragraph (1) of this subdivision to eligible federal and

New York State NOL carryover amounts to compute a corporation’s UNOL, a corporation’s eligible federal NOL carryover amount arising from federal NOLs subject to IRC section 382 limitations is used to apply such limitation to any corresponding eligible New York State NOL carryover amount, and a corporation’s eligible federal NOL carryover amount arising from federal NOLs not subject to IRC section 382 limitations is used to apply such limitation to any corresponding eligible New York State NOL carryover amount. The corporation’s UNOL is then the sum of the following amounts: (i) the lesser of the eligible federal or New York State NOL carryover amounts arising from federal NOLs subject to IRC section 382 limitations; and (ii) the lesser of the eligible federal or New York State NOL carryover amounts arising from federal NOLs not subject to IRC section 382 limitations.

(d) In computing the UNOL of a corporation that was included in a combined report for the base year, the UNOL of the base year combined group first is computed in accordance with subdivisions (a) through (c) of this section, substituting “combined group” for “corporation”. Each corporation included in the base year combined group then must compute its own UNOL for its base year, by multiplying the base year combined group’s UNOL by a percentage that represents that base year combined group member’s contribution of losses to the base year combined group’s UNOL. Such percentage is calculated by: (1) dividing the total New York State NOLs of such corporation by the total New York State NOLs of all members of the combined group having such New York State NOLs (to the extent such New York State NOLs are included in the eligible New York State NOL carryover amount of the base year combined group in accordance with this section); and (2) multiplying the result by one hundred.

Section 3-9.3 UNOL Examples.

The following examples illustrate the application of the rules and limitations as set forth in Tax Law section 208(9)(f) and section 1453(k-1) and Subpart 3-8 of this Part, as such provisions were in effect on December 31, 2014, as well as the application of the rules and limitations in section 3-9.2 of this Subpart, in computing the eligible federal and New York State (NYS) NOL carryover amounts and the amount of the UNOL for a corporation or combined group. Numbers in the examples have been rounded. To the extent the examples reference an “as if” federal NOL, it either means that the corporation was included in a federal consolidated return and, in order to compute its UNOL, computes its income and loss amounts “as if” it filed separately for federal purposes or the composition of the federal consolidated return and the New York combined group are different and in order to compute the UNOL of the combined group, the group computes its income and loss amounts “as if” the New York combined group was the federal consolidated group..

Example 1:

ABC Company, a calendar-year taxpayer, began business in 2009 and became taxable in NYS in 2011. ABC Company's base year is calendar year 2014. ABC Company had federal/NYS income and losses, and applied its NOLs for tax years beginning before 1/1/2015, as follows:

ABC Company	2009	2010	2011	2012	2013	2014	Eligible NOL carryover amount 12/31/2014
“As if” Federal							
Federal Taxable Income	(1,500)	(800)	(500)	(400)	300	600	
NOL Carried Forward from 2009 to 2013	300				(300)		
NOL Carried Forward from 2009 to 2014	600					(600)	
Balance	(600)	(800)	(500)	(400)	-	-	(900)

New York Entire Net Income	-	-	(600)	(500)	250	400	
Balance	-	-	(600)	(500)	250	400	(1,100)

Computation of ABC Company's eligible NOL carryover amounts and UNOL

A federal NOL that was sustained in a tax year in which ABC Company was not subject to tax in New York State (i.e. the NOLs incurred in 2009 and 2010) cannot be included in ABC Company's eligible federal NOL carryover amount. Therefore, ABC Company's eligible federal NOL carryover amount is ($900). ABC Company's eligible NYS NOL carryover amount is ($1,100). ABC Company's UNOL is ($900), which is the lesser of its eligible federal NOL carryover amount and its eligible NYS NOL carryover amount.

Example 2:

XYZ Company, a calendar-year NYS taxpayer, began business in 2009 and became taxable in NYS in 2009. XYZ Company's base year is calendar year 2014. XYZ Company had federal/NYS income and losses, and applied its NOLs for tax years beginning before 1/1/2015, as follows:

XYZ Company	2009	2010	2011	2012	2013	2014	Eligible NOL carryover amount 12/31/2014
"As if" Federal							
Federal Taxable Income	(1,000)	(1,200)	600	(400)	300	(700)	
NOL Carried Forward from 2009 to 2011	600		(600)	-	-	-	
NOL Carried Forward from 2009 to 2013	300				(300)	-	

Balance	(100)	(1,200)	-	(400)	-	(700)	(2,300)
New York							
Entire Net Income	200	(1,000)	(300)	(100)	400	(500)	
Balance	200	(1,000)	(300)	(100)	400	(500)	(1,600)

Computation of XYZ Company's eligible NOL carryover amounts and UNOL

XYZ Company’s federal and NYS NOLs available for carryover are only included in the eligible federal and NYS NOL carryover amount, respectively, when there is both a federal and New York State NOL sustained in the same taxable year and available for carryover as of the last day of the corporation’s base year. Thus only the federal NOLs sustained in 2010, 2012, and 2014 and available for carryover as of the last day of its base year are included in the eligible federal NOL carryover amount. The federal NOL sustained in 2009 is not included in the eligible federal NOL carryover amount as there was no corresponding NYS NOL sustained in that year and available for carryover. The NYS NOL sustained in 2011 is not included in the eligible NYS NOL carryover amount as there was no corresponding federal NOL sustained in that year and available for carryover. ABC Company's UNOL is ($1,600), which is the lesser of its eligible federal NOL carryover amount and its eligible NYS NOL carryover amount.

Example 3:

Corporations L, M, N, and O are calendar-year taxpayers that began doing business in 2011 and properly filed as members of a combined group in NYS for 2011 through 2014. The combined group's base year is calendar year 2014. The combined group had federal/NYS losses for tax years beginning before 1/1/2015, as follows:

Federal	2011 FTI	2012 FTI	2013 FTI	2014 FTI	Federal "as if" group's eligible NOL carryover amount 12/31/2014
L	(400)	100	(200)	(920)	
M	980	(3,000)	(500)	(2,300)	
N	(600)	1,900	(1,400)	140	
O	(900)	(1,100)	700	(1,500)	
Totals	(920)	(2,100)	(1,400)	(4,580)	(9,000)

NYS Combined Group	2011 ENI	2012 ENI	2013 ENI	2014 ENI	Combined group's eligible NYS NOL carryover amount 12/31/2014
L	(500)	500	(300)	(750)	
M	850	(2,000)	(600)	(2,000)	
N	(600)	2,000	(1,500)	250	
O	(1,000)	(1,000)	500	(1,000)	
Totals	(1,250)	(500)	(1,900)	(3,500)	(7,150)

Computation of base year combined group’s eligible NOL carryover amounts and UNOL and Corporation L’s, M’s, N’s and O's UNOL:

The base year combined group’s federal and NYS NOLs sustained in 2011 through 2014 and available for carryover as of the last day of its base year are included in its eligible federal and NYS NOL carryover amount, respectively, since there were both federal and NYS NOLs sustained in each of these taxable years and available for carryover as of the last day of its base year. The resulting base year combined group’s eligible federal NOL carryover amount is ($9,000) and its eligible NYS NOL carryover amount is ($7,150). The base year combined group's UNOL is ($7,150), which is the lesser of its eligible federal NOL carryover amount and its eligible NYS NOL carryover amount.

Each member of the base year combined group must then compute its own UNOL, by multiplying the base year combined group's UNOL amount of ($7,150) by a percentage that represents each member's contribution of losses to the combined group's UNOL, as described in subdivision (d) of section 3-9.2 of this Subpart, and as illustrated below:

NYS Combined Group	2011 ENI	2012 ENI	2013 ENI	2014 ENI	Losses by Member	Member's losses as a % of total losses of all members with losses	Member's UNOL
L	(500)	500	(300)	(750)	(1,550)	13.77%	(984)
M	850	(2,000)	(600)	(2,000)	(4,600)	40.89%	(2,924)
N	(600)	2,000	(1,500)	250	(2,100)	18.67%	(1,335)
O	(1,000)	(1,000)	500	(1,000)	(3,000)	26.67%	(1,907)
Totals	(1,250)	(500)	(1,900)	(3,500)	(11,250)	100%	(7,150)

Example 4: Corporations E and F are calendar-year taxpayers that began doing business in 2011 and properly filed as members of a combined group in NYS for 2011 through 2014.

The combined group's base year is calendar year 2014. The combined group had federal/NYS income and losses, and applied its NOLs for tax years beginning before 1/1/2015, as follows:

Combined Group:	2011	2012	2013	2014	Eligible NOL carryover amount 12/31/2014
"As if" Federal					
Federal Taxable Income					
Combined Group:					
Corporation E	(10,000)	(7,000)	2,000	3,000	

Corporation F	(6,000)	650	150	1,000	
Total for Federal "as if" group	(16,000)	(6,350)	2,150	4,000	
NOL Carried Forward from 2011 to 2013	2,150		(2,150)		
NOL Carried Forward from 2011 to 2014	4,000			(4,000)	
Balance	(9,850)	(6,350)	0	0	(16,200)

New York					
Entire Net Income					
Combined Group:					
Corporation E	(11,000)	(7,700)	2,500	4,000	
Corporation F	(4,000)	100	(200)	800	
Total for combined group	(15,000)	(7,600)	2,300	4,800	
NOL Carried Forward from 2011 to 2013	2,150		(2,150)		
NOL Carried Forward from 2011 to 2014	4,000			(4,000)	
Balance	(8,850)	(7,600)	150	800	(16,450)

Computation of the base year combined group's eligible NOL carryover amounts and UNOL and Corporation E's and F's UNOL:

The NYS NOLs carried forward from 2011 and deductible in 2013 and 2014 are limited to the amount of the "as if" federal NOLs carried forward from 2011 to those years. In addition, the federal deduction limitation also would limit the group's NYS NOL deduction in 2013 and 2014 to $2,150 and $4,000 respectively. The base year combined group's federal and NYS NOLs sustained in 2011 and 2012 and available for carryover as of the last day of its base year are included in its eligible federal and NYS NOL carryover amount, respectively, since there were both federal and New York State NOLs sustained in each of these taxable years and available for carryover as of the last day of the combined group's base year. The base year combined group's UNOL is ($16,200), which is the lesser of its eligible federal NOL carryover amount and its eligible NYS NOL carryover amount.

Each member of the base year combined group must then compute its own UNOL, by multiplying the base year combined group's UNOL amount of ($16,200) by a percentage that represents each member's contribution of losses to the combined group's UNOL, as described in subdivision (d) of section 3-9.2 of this Subpart, and as illustrated below. Since 2013 is a net income year for the combined group, Corporation F's loss of ($200) in 2013 is not included in the losses by member amounts below.

Member	2011 NYS NOL after carryfwd (see note)	2012 NYS NOL	2013 NYS NOL	2014 NYS NOL	Losses by Member	Member's losses as a % of total losses of all members with losses	Member's UNOL
E	(6,490)	(7,600)	-	-	(14,090)	86%	(13,932)
F	(2,360)	0	-	-	(2,360)	14%	(2,268)
Totals	(8,850)	(7,600)	0	0	(16,450)	100%	(16,200)

NOTE: Since some of the 2011 combined NOL was deductible in 2013 and 2014, the remaining available NOL from 2011 ($8,850) is allocated to Corporations E and F based on each corporation's original loss in 2011 divided by the total combined loss for 2011 ($15,000) as follows:

Corporation E 8,850 * (11,000/15,000) = 6,490

Corporation F 8,850 * (4,000/15,000) = 2,360

Example 5:

During calendar tax year 2011, Corporation T filed separately in NYS and was not part of an affiliated group. In 2012, Corporation T began filing combined in NYS as a member of Group P, which consisted of Corporations Q and R, in addition to Corporation T. Group P had no federal or NYS NOLs prior to 2012; Corporation T had no federal or NYS NOLs prior to 2011. Group P's base year is calendar year 2014. Corporation T had a NOL for both Federal and NYS purposes in 2011, which is a Separate Return Limitation Year ("SRLY"); the SRLY NOL was not subject to IRC section 382 limitations. Corporation T and Combined Group P had federal/NYS income and losses, and applied the NOLs for tax years beginning before 1/1/2015, as follows:

Corporation T	2011
Federal	
Federal Taxable Income	(250)
SRLY NOL Carried Forward from 2011 to 2012 (to Group P)	100
Balance	(150)
New York	
Entire Net Income	(300)
NOL Carried Forward from 2011 to 2012 (to Group P)	100
Balance	(200)

Group P	T's SRLY NOL available after carryforward 2011	2012	2013	2014	Group P's Eligible NOL carryover amounts 12/31/2014
"As if" Federal					
Federal Taxable Income					
Group P:					

Corporation Q		50	(150)	100	
Corporation R		50	0	150	
Prior Combined Group Q and R gain/loss		100	(150)	250	
Corporation T		100	(200)	(250)	
Total for Federal "as if" group		200	(350)	0	
SRLY NOL Carried Forward from 2011 (from Corp T) to 2012		(100)			
Balance	(150)	100	(350)	-	(500)

New York

Entire Net Income

Group P:

Corporation Q		(200)	(100)	50	
Corporation R		50	0	50	
Prior Combined Group Q and R gain/loss		(150)	(100)	100	
Corporation T		300	(150)	(150)	
Total for Combined Group P		150	(250)	(50)	
NOL Carried Forward from 2011 (from Corp T) to 2012		(100)			
Balance	(200)	50	(250)	-	(450)

Computation of base year Group P’s eligible NOL carryover amounts and UNOL and Corporation Q’s, R’s, and T's UNOL:

In applying the federal SRLY limitations, the amount of Corporation T's SRLY NOL from 2011 that can be carried forward and deducted by Group P in 2012 is limited to ($100) for federal purposes and the corresponding NYS NOL carried from 2011 and deducted by Group P in 2012 is also limited to ($100), which is the amount of Corporation T's FTI for 2012. The federal and NYS NOLs sustained in 2011 and 2013 and available for carryover as of the last day of Group P's base year are included in its eligible federal and NYS NOL carryover amount, respectively, since there were both federal and NYS NOLs sustained in each of these taxable years and available for carryover as of the last day of its base year. Group P's NYS NOL sustained in 2014 ($50) is not included in the eligible NYS NOL carryover amount as there was no corresponding federal NOL sustained by Group P in that taxable year and available for carryover.

Group P's UNOL is ($450), which is the lesser of its eligible federal NOL carryover amount and its eligible NYS NOL carryover amount. Each member of the base year combined Group P must then compute its own UNOL, by multiplying Group P's UNOL amount of ($450) by a percentage that represents each member's contribution of losses to the combined group's UNOL, as described in subdivision (d) of section 3-9.2 of this Subpart, and as illustrated below.

Member	2011 NYS NOL after carryfwd	2012 NYS NOL	2013 NYS NOL	2014 NYS NOL	Losses by Member	Member's losses as a % of total losses of all members with losses	Member's UNOL
Q		-	(100)	-	(100)	22%	(99)
R		-	-	-	-	0%	0

T	(200)	-	(150)	-	(350)	78%	(351)
Totals	(200)	0	(250)	0	(450)	100%	(450)

Corporation T's NYS loss of $150 in 2014 is not included in the losses by member amounts above. This is because the NYS NOL sustained in that year by the combined group that included Corporation T (i.e. Group P's 2014 combined ENI of ($50)) was not included in the determination of Group P's UNOL (since, as explained above, there was no corresponding federal NOL sustained by Group P in that taxable year and available for carryover).

Example 6:

Acme Company, a calendar-year taxpayer, began business in 2009 and became taxable in NYS in 2009. Acme Company's base year is calendar year 2014. Acme Company had a change in ownership effective January 1, 2013, subjecting its Federal losses sustained in 2009 through 2012 to IRC section 382 limitations. The ACME company's annual section 382 limitation amount is $2,500. After the change in ownership Acme Company continued to file on a separate basis for NYS purposes. Acme Company had federal/NYS losses for tax years beginning before 1/1/2015, as follows:

	Federal NOLs subject to IRC section 382				Federal NOLs not subject to IRC section 382		Eligible NOL carryover amounts 12/31/2014	
Acme Company	2009	2010	2011	2012	2013	2014	Arising from NOLs subject to IRC 382 (2009-2012)	Arising from NOLs not subject to IRC 382 (2013-2014)
"As if" Federal								

Federal Taxable Income	(15,000)	(10,000)	(12,000)	(20,000)	(8,000)	(5,000)		
Balance	(15,000)	(10,000)	(12,000)	(20,000)	(8,000)	(5,000)	(50,000) (See Note)	(13,000)
New York Entire Net Income	(20,000)	(12,000)	(10,000)	(18,000)	(5,000)	(4,000)		
Balance	(20,000)	(12,000)	(10,000)	(18,000)	(5,000)	(4,000)	(60,000)	(9,000)

NOTE: limited to $2,500 x 20 - 0 = $50,000, as explained further below.

Computation of Acme Company's eligible NOL carryover amounts and UNOL

Since Acme Company has both federal NOLs available for carryover that are subject to IRC section 382 limitations (from 2009 through 2012) and federal NOLs available for carryover that are not subject to IRC section 382 limitations (from 2013 and 2014), Acme Company must separately compute its eligible federal NOL carryover amount for each, and also must separately compute its corresponding eligible NYS NOL carryover amount for each. Acme Company's federal NOLs available for carryover from 2009 through 2012 total ($57,000). However, due to the IRC section 382 limitation, the maximum amount of such NOLs available for carryover that can be included in its eligible federal NOL carryover amount arising from federal NOLs subject to IRC section 382 limitations is limited to ($50,000) which is the annual section 382 limitation amount of ($2,500) multiplied by 20, less the amount of any such NOLs actually deducted (zero in this example as 2013 and 2014 are loss years). Acme Company's federal NOLs available for carryover from 2013 and 2014, totaling ($13,000), are not subject to section 382 limitations and are included in its eligible federal NOL carryover amount arising from federal NOLs not subject to IRC section 382 limitations.

Acme Company's UNOL is ($59,000), which is the sum of the following amounts: (i) the lesser of the eligible federal or NYS NOL carryover amounts arising from federal NOLs subject to IRC section 382 limitations; and (ii) the lesser of the eligible federal or NYS NOL carryover amounts arising from federal NOLs not subject to IRC section 382 limitations.

	Arising from NOLs subject to IRC section 382 2009-2012	Arising from NOLs not subject to IRC section 382 2013-2014
Eligible Federal NOLcarryover amounts (A)	(50,000)	(13,000)
Eligible NYS NOL carryover amounts (B)	(60,000)	(9,000)
Lesser of (A) and (B)	(50,000)	(9,000)
UNOL	($59,000)	

Section 3-9.4 PNOLC subtraction overview.

A corporation that has a UNOL must convert such UNOL to a PNOLC subtraction pool using the rules in section 3-9.6 of this Subpart. A taxpayer or combined group, in the case of a combined report, is then allowed a PNOLC subtraction as computed in sections 3-9.7 and 3-9.8 of this Subpart, applied before the NOL deduction, in the computation of its business income base for tax years beginning on or after January 1, 2015. A taxpayer or combined group, in the case of a combined group, that is allowed a PNOLC subtraction in a taxable year, must claim that subtraction in that taxable year.

Section 3-9.5 Corporations that are not allowed a PNOLC subtraction.

The following corporations are not allowed a PNOLC subtraction:

(a) A corporation that does not have a UNOL, including a corporation that was a regulated investment company (RIC), as defined in Tax Law Section 209(7), in its base year;

(b) A corporation that has a base year BAP of zero percent or a corporation that is a member of a base year combined group that has a combined base year BAP of zero percent, whether or not such corporation has a UNOL;

(c) A corporation that has or is a member of a base year combined group that has a base year tax rate of zero percent, including a corporation that in its base year was a New York S Corporation, as defined in Tax Law Section 208(1-A), whether or not such corporation has a UNOL;

(d) A corporation that in its base year was not a member of a combined group subject to tax under Tax Law Article 9-A or Article 32 and that was not subject to tax itself under Tax Law Article 9-A or Article 32, whether or not such corporation has a UNOL;

Section 3-9.6 Computation of PNOLC subtraction pool.

(a) The PNOLC subtraction pool for a taxpayer that was not a member of a combined group in its base year is computed as follows:

(1) Determine the tax value of the taxpayer's UNOL. The tax value of the UNOL is the product of (i) the amount of the taxpayer's UNOL; (ii) the taxpayer's base year BAP; and (iii) the taxpayer's base year tax rate.

(2) Compute the PNOLC subtraction pool. Divide the tax value of the UNOL, as determined pursuant to paragraph (1) of this subdivision, by 6.5 percent (the conversion percentage). The result is the taxpayer's PNOLC subtraction pool.

(b) The PNOLC subtraction pool for a corporation that was a member of a combined group in its base year, whether or not such corporation was a taxpayer in its base year, is computed as follows:

(1) Determine the tax value of the corporation's UNOL. The tax value of the corporation's UNOL is the product of (i) the amount of the corporation's UNOL; (ii) the combined group's base year BAP; and (iii) the combined group's base year tax rate.

(2) Compute the PNOLC subtraction pool. Divide the tax value of the corporation's UNOL, as determined pursuant to paragraph (1) of this subdivision, by 6.5 percent (the conversion percentage). The result is the corporation's PNOLC subtraction pool.

Section 3-9.7 Computation of the PNOLC subtraction. (a) PNOLC subtraction available for use. (1) In the case of a taxpayer that is not a member of a combined group, its PNOLC subtraction available for use in its first 2015 taxable year is equal to its tax period PNOLC subtraction allotment (as described in subdivision (b) of this section) for such taxable year. The amount of PNOLC subtraction available for use in any taxable year following the taxpayer's first 2015 taxable year is equal to its tax period PNOLC subtraction allotment for such taxable year plus any unused PNOLC subtraction carryforward.

(2) In the case of a combined group, the PNOLC subtraction available for use in its first 2015 taxable year is the sum of the tax period PNOLC subtraction allotments for such taxable year of all members of the combined group. The amount of PNOLC subtraction available for use by a combined group in any taxable year following its first 2015 taxable year is the sum of the tax period PNOLC subtraction allotments for each such taxable year of all members of the combined group plus the sum of any unused PNOLC subtraction carryforwards of all members of the combined group.

(b) Tax period PNOLC subtraction allotment.

(1) A corporation's tax period PNOLC subtraction allotment is the percentage of its PNOLC subtraction pool that may be claimed in a taxable year as provided in paragraph (2). If a corporation cannot utilize the entire tax period PNOLC subtraction allotment in a taxable year, the unused portion for that taxable year is considered an unused PNOLC subtraction carryforward.

(2) Tax period PNOLC subtraction allotment methods.

(i) One hundred percent allotment method for small business taxpayers. A small business taxpayer's tax period PNOLC subtraction allotment for its first 2015 taxable year is equal to 100 percent of its PNOLC subtraction pool. A small business taxpayer has no tax period PNOLC subtraction allotment after the first 2015 taxable year but any unused portion of its 2015 PNOLC subtraction allotment is considered an unused PNOLC subtraction carryforward, eligible to be utilized without any allotment limitations.

(ii) Ten percent allotment method. For any corporation that is not a small business taxpayer or electing the 50 percent method in subparagraph (iii), the tax period PNOLC subtraction allotment is equal to 10 percent of its PNOLC subtraction pool in each of its first ten taxable years after the base year. There is no tax period PNOLC subtraction allotment after the tenth taxable year. Unused portions of each allotment are considered PNOLC subtraction carryforwards. Taxpayers with unused PNOLC subtraction carryforwards are eligible to use them in future periods without regard to the 10 percent allotment limitation.

(iii) Fifty percent allotment method. (A) In the case of a corporation electing the 50 percent allotment method, the tax period PNOLC subtraction allotment in each of such corporation's first two taxable years after its base year is equal to 50 percent of its PNOLC subtraction pool. There is no tax period PNOLC subtraction allotment after the second taxable year. Unused portions of the subtraction allotments are considered unused PNOLC subtraction carryforwards. This method may be used only for taxable years beginning before January 1, 2017. However, PNOLC subtraction carryforwards cannot be used to exceed 50 percent of the PNOLC subtraction pool in any tax period beginning prior to January 1, 2017.

(B) For the 50 percent allotment method to be valid and effective, a taxpayer, or designated agent in the case of a combined report, must make the election to use the 50 percent allotment method on an original, timely filed return for the first 2015 taxable year, determined with regard to extensions of time for filing. Such election is binding on the taxpayer or, in the case of a combined group, all members of the combined group, whether or not that corporation remains in that combined group in subsequent taxable years. However, such election may be revoked by a taxpayer or, in the case of a combined group, the designated agent of a combined group by timely filing an amended return for each year the taxpayer or combined group used the 50 percent allotment method. If such election is revoked, the revocation shall apply to the taxpayer or, in the case of a combined report, all members of the combined group at the time such election is revoked.

(3) Combined groups. In the case of a combined group, each member of the group:

(i) shall compute its own tax period PNOLC subtraction allotment using the allotment method determined by its designated agent in the group's first 2015 taxable year if it was included in the combined report in the group's first 2015 taxable year; or

(ii) compute its own tax period PNOLC subtraction allotment determined by the method used in the member's first 2015 taxable year if the member was not included in a combined report in such year. The combined group's tax period PNOLC subtraction allotment in a taxable year is the sum of the tax period PNOLC subtraction allotments for all members of the combined group for such taxable year.

(c) PNOLC subtraction. (1) 100 percent allotment method for small business taxpayers and 10 percent allotment method. (i) For all corporations not electing the 50 percent allotment method, the amount of PNOLC subtraction in a given taxable year is the lesser of:

(A) the applicable PNOLC subtraction allotment plus available PNOLC subtraction carryforwards (the PNOLC subtraction available for use); or

(B) The amount required to reduce the tax on total business income prior to the deduction of a PNOLC subtraction and net operating losses to the higher of the tax on the capital base or the fixed dollar minimum tax (the maximum amount of PNOLC subtraction to be deducted).

(ii) For corporations not electing the 50 percent allotment method, a PNOLC subtraction may be claimed for no longer than 20 taxable years or the taxable year beginning on or after January 1, 2035 but before January 1, 2036, whichever comes first.

(2) Fifty percent allotment method. (i) In the case of a corporation electing the 50 percent allotment method, the amount of PNOLC subtraction in a taxable year (regardless of the number of taxable years the taxpayer has during the period beginning on and after January 1, 2015 and before January 1, 2017) is the lesser of:

(A) the applicable PNOLC subtraction allotment plus available PNOLC subtraction carryforwards (the PNOLC subtraction available for use); or

(B) The amount required to reduce the tax on total business income prior to the deduction of a PNOLC subtraction and net operating losses to the higher of the tax on the capital base or the fixed dollar minimum tax (the maximum amount of PNOLC subtraction to be deducted).

(ii) The amount computed in subparagraph (i) is further limited in each taxable year to 50 percent of the corporation's PNOLC subtraction pool.

(iii) In the case of a corporation utilizing the 50 percent allotment method, a PNOLC subtraction is allowed only in taxable years beginning before January 1, 2017. Any amount of a corporation's unused PNOLC subtraction carryforward is forfeited and cannot be carried forward and subtracted in any tax year beginning on or after January 1, 2017.

(d) Maximum amount of the PNOLC subtraction to be deducted. (1) In the case of a taxpayer that is not a member of a combined group, the maximum amount of the PNOLC subtraction to be deducted in a taxable year is computed as follows:

(i) multiply the business income tax rate for the taxable year by the apportioned business income before the PNOLC subtraction and the net operating loss deduction for the taxable year;

(ii) subtract from the amount computed in subparagraph (i) of this paragraph, the greater of the capital base tax or the fixed dollar minimum tax for the taxable year; and

(iii) divide the result in subparagraph (ii) of this paragraph by the taxpayer's business income tax rate for the taxable year.

(2) In the case of a combined report, the maximum amount of PNOLC subtraction to be deducted in a taxable year is computed as follows:

(i) multiply the business income tax rate for the taxable year by the combined apportioned business income before the PNOLC subtraction and the net operating loss deduction for the taxable year;

(ii) subtract from the amount computed in subparagraph (i) of this paragraph, the greater of the combined capital base tax or the fixed dollar minimum tax attributable to the designated agent for the taxable year; and (iii) divide the result in subparagraph (ii) of this paragraph by the combined group's business income tax rate for the taxable year.

Section 3-9.8 Impact of combined group changes on the PNOLC subtraction.

(a) If a taxpayer that was not a member of a combined group in any taxable year beginning on or after January 1, 2015 subsequently joins a combined group in a later taxable year, such taxpayer's PNOLC subtraction allotment and unused PNOLC subtraction carryforward are added to the combined group's PNOLC subtraction allotment and unused PNOLC subtraction carryforward respectively, subject to the rules in Tax Law section 210.1(a)(viii)(B) and this Subpart.

(b) If a corporation is a member of a combined group for any taxable year beginning on or after January 1, 2015 and subsequently leaves that group in a later taxable year, the outgoing member of the combined group takes its own PNOLC subtraction allotment with it to use in future taxable years. In addition, such member also takes its own share of the combined group's combined unused PNOLC subtraction carryforward, which shall be based upon its share of the combined group's PNOLC subtraction available for use in the last year it was included in the combined group. If such corporation joins another combined group, its PNOLC subtraction allotment and unused PNOLC subtraction carryforward are added to the combined group's PNOLC subtraction allotment and unused PNOLC subtraction carryforward, respectively, subject to the rules in Tax Law section 210.1(a)(viii)(B) and this Subpart. If such corporation does not join another combined group, it is allowed its PNOLC subtraction allotment and unused PNOLC subtraction carryforward on a separate basis, subject to the rules in Tax Law section 210.1(a)(viii)(B) and this Subpart.

Section 3-9.9 PNOLC Examples.

Note that the numbers in the examples have been rounded.

Example 1:

2014 Calendar Year (Base Year)

Corporations L, M, N and O are properly included in a combined report. The combined group's base year BAP is 12.50 percent and the group's base year tax rate is 7.1 percent.

2015 Calendar Year (First 2015 Taxable Year)

Corporation O files on a separate basis. It is not a small business taxpayer. To compute its PNOLC subtraction pool, Corporation O first multiplies its UNOL by its base year combined group's base year BAP and base year tax rate ($7,325*12.50 percent*7.1 percent). The result of $65 is divided by the 6.5 percent conversion percentage to arrive at a PNOLC subtraction pool of $1,000. Since Corporation O properly elected to use the 50 percent allotment method, its PNOLC subtraction pool is multiplied by 50 percent to determine its tax period PNOLC subtraction allotment of $500 for the first 2015 taxable year. In the first 2015 taxable year, the PNOLC subtraction available for use is $500, which is equal to its tax period PNOLC subtraction allotment for such year.

Corporation	UNOL	Base Year BAP	Base Year Tax Rate	Conversion Percentage	PNOLC Subtraction Pool	PNOLC Subtraction Allotment Method	Tax Period PNOLC Subtraction Allotment	2015 Calendar Year PNOLC Subtraction Available for Use
O	$7,325	12.50%	7.10%	6.50%	$1,000	50%	$500	$500

Corporations L, M, and N are properly included in a combined report. The combined group is not a small business taxpayer and it does not elect to use the 50 percent allotment method. Each member of the combined group computes its own PNOLC subtraction pool by multiplying its own UNOL by the base year combined group's base year BAP and base year tax rate. The result is then divided by the 6.5 percent conversion percentage to compute the member's PNOLC subtraction pool. Since the combined group is utilizing the 10 percent allotment method, each member's PNOLC subtraction pool is multiplied by 10 percent to arrive at the member's PNOLC subtraction allotment for the first 2015 taxable year. The combined group's tax period PNOLC subtraction allotment for the first 2015 taxable year of $3,505 is the sum of L, M, and N's tax period PNOLC subtraction allotments for such year. The combined group's PNOLC subtraction available for use in the first 2015 taxable year is $3,505, which is equal to the combined group's tax period PNOLC subtraction allotment for such year.

2015 Group Member	Member's UNOL	Base Year BAP	Base Year Tax Rate	Conversion Percentage	Member's PNOLC Subtraction Pool	PNOLC Subtraction Allotment Method	Tax Period PNOLC Subtraction Allotment	2015 Calendar Year PNOLC Subtraction Available for Use
L	$70,000	12.5%	7.1%	6.50%	$9,558	10%	$956	$956
M	$186,700	12.5%	7.1%	6.50%	$25,492	10%	$2,549	$2,549
N	0	12.5%	7.1%	6.50%	-	--	-	-
Totals	$256,700				$35,050		$3,505	$3,505

Example 2:

2014 Calendar Year (Base Year)

Corporations E, F, and G are properly included in a combined report. The combined group's base year BAP is 9.5 percent and the group's base year tax rate is 7.1 percent.

Corporation H is a small business taxpayer and files on a separate basis, with a base year BAP of 4.8250 percent and a base year tax rate of 6.5 percent.

Corporation I was not subject to tax in New York State in the base year.

Corporation J files on a separate basis, with base year BAP of 9.75 percent and a base year tax rate of 7.1 percent.

2015 Calendar Year (First 2015 Taxable Year)

Corporations E, F, G, H, and I are properly included in a combined report. Even though Corporation H qualified as a small business taxpayer in 2014, the combined group does not qualify as one in 2015. The designated agent of the combined group does not elect to use the 50 percent allotment method. Each member computes its own PNOLC subtraction pool by multiplying its own UNOL by the base year BAP and base year tax rate. Corporations E, F, and G have the same base year BAP and base year tax rate as they were included in the same base year combined group. Corporation H must use its separately filed base year BAP and base year tax rate. As Corporation I was not subject to tax in the base year, it has a zero percent base year BAP and zero percent base year tax rate. The result is then divided by the 6.5 percent conversion percentage to compute the member's PNOLC subtraction pool. Since the combined group is utilizing the 10 percent allotment method, each member's PNOLC subtraction pool is multiplied by 10 percent to arrive at the member's PNOLC subtraction allotment for the first 2015 taxable year. The combined group's PNOLC subtraction allotment for the first 2015 taxable year is $2,900, which is the sum of E, F, G, H, and I's tax period PNOLC subtraction allotments for such year. The combined group's PNOLC subtraction available for use in the first 2015 taxable year is $2,900, which is equal to the tax period PNOLC subtraction allotment for such year. The combined group is able to utilize the entire PNOLC subtraction available for use so there is no carryforward of PNOLC subtraction from the first 2015 taxable year.

2015 Group Member	Member's UNOL	Base Year BAP	Base Year Tax Rate	Conversion Percentage	Member's PNOLC Subtraction Pool	PNOLC Subtraction Allotment Method	PNOLC Subtraction Allotment	2015 Calendar Year PNOLC Subtraction Available for Use
E	$115,600	9.5%	7.10%	6.50%	$11,996	10%	$1,200	$1,200
F	$28,900	9.5%	7.10%	6.50%	$2,999	10%	$300	$300
G	$57,800	9.5%	7.10%	6.50%	$5,998	10%	$600	$600
H	$165,800	4.825%	6.50%	6.50%	$8,000	10%	$800	$ 800
I	$0	-	-	-	-	-	-	-
Total	$368,100				$28,993		$2,900	$2,900

Corporation J files on a separate basis and properly elects to use the 50 percent allotment method. To compute its PNOLC subtraction pool, Corporation J first multiplies its UNOL by its base year BAP and base year tax rate ($16,000*9.750 percent*7.1 percent). The result of $111 is divided by the 6.5 percent conversion percentage to arrive at a PNOLC subtraction pool of $1,704. Since Corporation J properly elected to use the 50 percent allotment method, its PNOLC subtraction pool is multiplied by 50 percent to determine its tax period PNOLC subtraction allotment of $852 for the first 2015 taxable year. In the first 2015 taxable year, the PNOLC subtraction available for use is $852, which is equal to its tax period PNOLC subtraction allotment for such year. Corporation J is able to use the entire PNOLC subtraction available for use so there is no carryforward of PNOLC subtraction from the first 2015 taxable year.

Corporation	UNOL	Base Year BAP	Base Year Tax Rate	Conversion Percentage	PNOLC Subtraction Pool	PNOLC Subtraction Allotment Method	Tax Period PNOLC Subtraction Allotment	2015 Calendar Year PNOLC Subtraction Available for Use
J	$16,000	9.75%	7.10%	6.50%	$1,704	50%	$852	$852

2016 Calendar Year (Second Year Following the Base Year)

Corporations E, F, G, H, I, and J are properly included in a combined report. The group has $3,752 of PNOLC subtraction available for use, which is the sum of each member's PNOLC subtraction available for use for the tax period.

2016 Group Member	Member's PNOLC Subtraction Pool	PNOLC Subtraction Allotment Method	Tax Period PNOLC Subtraction Allotment	Unused PNOLC Subtraction Carryforward from 2015 Calendar Year	2016 Calendar Year PNOLC Subtraction Available for Use
E	$11,996	10%	$1,200	$0	$1,200
F	$2,999	10%	$300	$0	$300
G	$5,998	10%	$600	$0	$600
H	$8,000	10%	$800	$0	$800
I	-	-	-	$0	$0
J	$1704	50%	$852	$0	$852
Total	$30,697		$3,752	$0	$3,752

Even though combined group E, F, G, H, I elected in 2015 to use the 10 percent allotment method, Corporation J is required to continue to use the 50 percent allotment method elected on its original, timely filed return for the first 2015 taxable year when it joined the combined group in 2016. However, if Corporation J properly revokes such election in accordance with the rules in this Subpart, it would then use the 10 percent allotment method in the 2016 taxable year.

Example 3:

2014 Calendar Year (Base Year)

In the base year, Taxpayer X files a separate report. Taxpayer X's base year BAP is 15 percent and its base year tax rate is 7.1 percent.

2015 Short Period 1/1/2015 - 5/31/15 (First 2015 Taxable Year)

To compute its PNOLC subtraction pool, Taxpayer X first multiplies its UNOL by its base year BAP and base year tax rate ($97,650*15 percent*7.1 percent). The result of $1,040 is then divided by the 6.5 percent conversion percentage to arrive at its PNOLC subtraction pool of $16,000.

Since taxpayer X properly elected to use the 50 percent allotment method, it multiplies its PNOLC subtraction pool by 50 percent to determine its tax period PNOLC subtraction allotment of $8,000 for the first 2015 taxable year. In the first 2015 taxable year, the PNOLC subtraction available for use is $8,000, which is equal to the tax period PNOLC subtraction allotment for such year.

	UNOL	Base Year BAP	Base Year Tax Rate	Conversion Percentage	PNOLC Subtraction Pool	PNOLC Subtraction Allotment Method	Tax Period PNOLC Subtraction Allotment	First 2015 Taxable Year PNOLC Subtraction Available for Use
X	$97,650	15.00%	7.10%	6.50%	$16,000	50%	$8,000	$8,000

Taxpayer X computes its maximum amount of PNOLC subtraction to be deducted in the first 2015 taxable year of $1,408 as follows:

Apportioned Business Income Before PNOLC Subtraction and NOLD	$5,900,000
2015 Business Income Tax Rate	7.1%
Product of Apportioned Business Income Before PNOLC Subtraction and NOLD and the 2015 Business Income Tax Rate	$418,900
Capital Base Tax	$418,800
FDM	$5,000
Greater of Capital Base Tax and FDM	$418,800
Difference Between (a) Greater of Capital Base Tax and FDM and (b) the Product of Apportioned Business Income Before PNOLC Subtraction and NOLD and the 2015 Business Income Tax Rate	$100
2015 Business Income Tax Rate	7.1%
Maximum Amount of PNOLC Subtraction to be Deducted ($100/7.1%)	$1,408

The lesser of Taxpayer X's PNOLC subtraction available for use ($8,000) and its maximum PNOLC subtraction to be deducted ($1,408) is $1,408. Since this value is less than 50 percent of its PNOLC subtraction pool, $1,408 is Taxpayer X's PNOLC subtraction in the first 2015 taxable year.

The difference between the PNOLC subtraction available for use and the PNOLC subtraction is Taxpayer X's unused PNOLC subtraction carryforward of $6,592:

PNOLC Subtraction Available for Use in First 2015 Taxable Year	$8,000
Maximum PNOLC Subtraction to be Deducted in First 2015 Taxable Year	$1,408
PNOLC Subtraction in First 2015 Taxable Year	$1,408
Unused PNOLC Subtraction Carryforward from First 2015 Taxable Year	$6,592

2015 Short Period 6/1/2015 - 12/31/15 (Second Taxable Year Following the Base Year)

Taxpayer X's tax period allotment is $8,000 in the second taxable year following the base year, which is 50 percent of its PNOLC subtraction pool. Taxpayer X's PNOLC subtraction available for use in the second taxable year following the base year is the sum of its unused PNOLC subtraction carryforward from the first 2015 taxable year and its current tax period PNOLC subtraction allotment:

Tax Period PNOLC Subtraction Allotment	$8,000
Unused PNOLC Subtraction Carryforward from First 2015 Taxable Year	$6,592
PNOLC Subtraction Available for Use in Second Taxable Year Following the Base Year	$14,592

Taxpayer X computes its maximum amount of PNOLC subtraction to be deducted in the second year following the base year of $2,113 as follows:

Apportioned Business Income Before PNOLC Subtraction and NOLD	$4,900,000
2015 Business Income Tax Rate	7.1%
Product of Apportioned Business Income Before PNOLC Subtraction and NOLD and the 2015 Business Income Tax Rate	$347,900
Capital base tax	$347,750
FDM	$5,000
Greater of Capital Base Tax and FDM	$347,750
Difference Between (a) Greater of Capital Base Tax and FDM and (b) Product of Apportioned Business Income Before PNOLC Subtraction and NOLD and the 2015 Business Income Tax Rate	$150
2015 Business Income Tax Rate	7.1%
Maximum Amount of PNOLC Subtraction to be Deducted ($150/7.1%)	$2,113

The lesser of Taxpayer X’s PNOLC subtraction available for use ($14,592) and its maximum PNOLC subtraction to be deducted ($2,113) is $2,113. Since it is less than 50 percent of

Taxpayer X’s PNOLC subtraction pool, its PNOLC subtraction is $2,113 in the second taxable year following the base year.

Since its PNOLC subtraction is less than its PNOLC subtraction available for use, the difference between these two items is taxpayer X's unused PNOLC subtraction carryforward of $12,479:

PNOLC Subtraction Available for Use in Second 2015 Taxable Year	$14,592
Maximum PNOLC Subtraction to be Deducted in Second 2015 Taxable Year	$2,113
PNOLC Subtraction in Second 2015 Taxable Year	$2,113
Unused PNOLC Subtraction Carryforward from Second 2015 Taxable Year	$12,479

2016 Calendar Year (Third Taxable Year Following the Base Year)

Taxpayer X's PNOLC subtraction available for use in the third taxable year following the base year is its unused PNOLC subtraction carryforward from the second 2015 taxable year because it has no tax period PNOLC subtraction allotment in its third taxable year following the base year:

Tax Period PNOLC Subtraction Allotment in 2016 Calendar Year	$0
Unused PNOLC Subtraction Carryforward from the Second Taxable Year Following the Base Year	$12,479
PNOLC Subtraction Available for Use in 2016 Calendar Year	$12,479

Taxpayer X computes its maximum PNOLC subtraction to be deducted in the third year following the base year of $1,323,944 as follows:

Apportioned Business Income Before PNOLC Subtraction and NOLD	$14,000,000
2015 Business Income Tax Rate	7.1%
Product of Apportioned Business Income Before PNOLC Subtraction and NOLD and the 2015 Business Income Tax Rate	$994,000
Capital base tax	$900,000
FDM	$10,000
Greater of Capital Base Tax and FDM	$900,000
Difference Between (a) Greater of Capital Base Tax and FDM and (b) the Product of Apportioned Business Income Before PNOLC Subtraction and NOLD and the 2015 Business Income Tax Rate	$94,000
2015 Business Income Tax Rate	7.1%
Maximum Amount of PNOLC Subtraction to be Deducted ($94,000/7.1%)	$1,323,944

The lesser of Taxpayer X's PNOLC subtraction available for use ($12,479) and its maximum PNOLC subtraction to be deducted ($1,323,944) is $12,479. However, its PNOLC subtraction for the year cannot exceed 50 percent of its PNOLC subtraction pool. As a result, Taxpayer X's PNOLC subtraction in the third year following the base year is limited to $8,000, which is 50 percent of its PNOLC subtraction pool.

Finally, although its PNOLC subtraction is less than its PNOLC subtraction available for use, Taxpayer X is required to forfeit any unused amounts of PNOLC subtraction carryforward since such amounts cannot be carried forward to any tax year that begins on or after January 1, 2017.

NOTE: Taxpayers that have properly elected to use the 50 percent allotment method have the option of revoking such election in accordance with the rules found in section 3-9.7(b)(2) of this Subpart.

Example 4:

2014 Calendar Year (Base Year)

Corporations A, B, and C are properly included in a combined report. The combined group's base year BAP is 55 percent and the group's base year tax rate is 7.1 percent.

2015 Calendar Year (First 2015 Taxable Year)

Corporations A, B, and C continue to be properly included in a combined report. The group is not a small business taxpayer and the designated agent properly elects to use the 50 percent allotment method. Each member computes its own PNOLC subtraction pool by multiplying its own UNOL by the base year combined group's base year BAP and base year tax rate. The result is then divided by the 6.5 percent conversion percentage to compute each member's PNOLC subtraction pool. Since the combined group is utilizing the 50 percent allotment method, each member's PNOLC subtraction pool is multiplied by 50 percent to arrive at the member's PNOLC subtraction allotment for the first 2015 taxable year. The combined group's tax period PNOLC subtraction allotment is the sum of A, B, and C's tax period PNOLC subtraction allotments for the year. The combined group's PNOLC subtraction available for use in the first 2015 taxable year is $36,046, which is also its tax period PNOLC subtraction allotment and 50% of its PNOLC subtraction pool.

Member	Member's UNOL	Base Year BAP	Base Year Tax Rate	Conversion Percentage	Member's PNOLC Subtraction Pool	PNOLC Subtraction Allotment Method	Tax Period PNOLC Subtraction Allotment	2015 Calendar Year PNOLC Subtraction Available for Use
A	$40,000	55%	7.1%	6.50%	$24,031	50%	$12,015	$12,015
B	$50,000	55%	7.1%	6.50%	$30,038	50%	$15,019	$15,019
C	$30,000	55%	7.1%	6.50%	$18,023	50%	$9,012	$9,012
Totals	$120,000				$72,092		$36,046	$36,046

Combined group ABC computes the maximum PNOLC subtraction to be deducted in the first 2015 taxable year of $50,000 as follows:

Apportioned Business Income Before PNOLC Subtraction and NOLD	$11,317,606
2015 Business Income Tax Rate	7.1%
Product of Apportioned Business Income Before PNOLC Subtraction and NOLD and the 2015 Business Income Tax Rate	$803,550
Capital base tax	$800,000
FDM	$10,000
Greater of Capital Base Tax and FDM	$800,000
Difference Between (a) Greater of Capital Base Tax and FDM and (b) the Product of Apportioned Business Income Before PNOLC Subtraction and NOLD and the 2015 Business Income Tax Rate	$3,550
2015 Business Income Tax Rate	7.1%

Maximum Amount of PNOLC Subtraction to be Deducted ($3,550/7.1%)	$50,000

Since combined group ABC's PNOLC subtraction available for use ($36,046) is less than its maximum PNOLC subtraction ($50,000) and does not exceed 50 percent of its PNOLC subtraction pool ($36,046), combined group ABC's PNOLC subtraction in the first taxable year following the base year is $36,046. Since combined group ABC will be able to deduct its entire PNOLC subtraction available for use, it does not have an unused PNOLC subtraction carryforward.

PNOLC Subtraction Available for Use in First Year 2015 Taxable Year	$36,046
Maximum Amount of PNOLC Subtraction to be Deducted in First 2015 Taxable Year	$50,000
PNOLC Subtraction in First Year 2015 Taxable Year	$36,046
Unused PNOLC Subtraction Carryforward from First 2015 Taxable Year	$0

2016 Calendar Year (Second Taxable Year Following the Base Year)

Corporations A and B are properly included in a combined report but Corporation C files on a separate basis.

Combined group AB

Combined group AB's tax period allotment is $27,034 in the second taxable year following the base year, which is the sum of 50 percent of member A's PNOLC subtraction pool and 50 percent of member B's PNOLC subtraction pool. As combined group AB has no unused PNOLC subtraction carryforward from the first 2015 taxable year following the base year, its PNOLC subtraction available for use is $27,034. There is no limitation on this amount as it does not exceed fifty percent of the PNOLC subtraction pool.

Member	Member's PNOLC Subtraction Pool	PNOLC Subtraction Allotment Method	Tax Period PNOLC Subtraction Allotment	Unused PNOLC Subtraction Carryforward from First 2015 Calendar Year	2016 Calendar Year PNOLC Subtraction Available for Use
A	24,031	50%	$12,015	$0	$12,015
B	30,038	50%	$15,019	$0	$15,019
Total	$54,069		$27,034	$0	$27,034

Combined group AB computes the maximum PNOLC subtraction to be deducted in the second year following the base year of $20,000 as follows:

Apportioned Business Income Before PNOLC Subtraction and NOLD	$7,062,254
2015 Business Income Tax Rate	7.1%
Product of Apportioned Business Income Before PNOLC Subtraction and NOLD and the 2015 Business Income Tax Rate	$501,420
Capital base tax	$500,000
FDM	$10,000
Greater of Capital Base Tax and FDM	$500,000
Difference Between (a) Greater of Capital Base Tax and FDM and (b) the Product of Apportioned Business Income Before PNOLC Subtraction and NOLD and the 2015 Business Income Tax Rate	$1,420
2015 Business Income Tax Rate	7.1%
Maximum Amount of PNOLC Subtraction to be Deducted ($1,420/7.1%)	$20,000

The lesser of Combined group AB's PNOLC subtraction available for use ($27,043) and its maximum amount of PNOLC subtraction to be deducted ($20,000) is $20,000. As this value is less than 50 percent of its PNOLC subtraction pool, Combined group AB's PNOLC subtraction in the second taxable year following the base year is $20,000. Finally, although its PNOLC subtraction is less than its PNOLC subtraction available for use, Combined group AB is required to forfeit any unused amounts of PNOLC subtraction carryforward since such amounts cannot be carried forward to any tax year beginning on or after January 1, 2017.

PNOLC Subtraction Available for Use	$27,034
Maximum Amount of PNOLC Subtraction to be Deducted	$20,000
50% of PNOLC Subtraction Pool	$27,035
PNOLC Subtraction	$20,000
Difference between PNOLC Subtraction Available for Use and PNOLC Subtraction	$7,034
Unused PNOLC Subtraction Carryforward	$0

NOTE: Taxpayers that have properly elected to use the 50 percent allotment method have the option of revoking such election in accordance with the rules found in section 3-9.7(b)(2).

Taxpayer C

Taxpayer C's tax period allotment is $9,012 in the second taxable year following the base year, which is 50 percent of its PNOLC subtraction pool. As Taxpayer C has no unused PNOLC subtraction carryforward from the first 2015 taxable year following the base year, its PNOLC subtraction available for use is $9,012. There is no limitation on this amount as it does not exceed fifty percent of the PNOLC subtraction pool.

Taxpayer	PNOLC Subtraction Pool	PNOLC Subtraction Allotment Method	Tax Period PNOLC Subtraction Allotment	Unused PNOLC Subtraction Carryforward from 2015 Calendar Year	2016 Calendar Year PNOLC Subtraction Available for Use
C	$18,023	50%	$9,012	$0	$9,012

Taxpayer C computes the maximum PNOLC subtraction to be deducted in the second year following the base year of $10,000 as follows:

Apportioned Business Income Before PNOLC Subtraction and NOLD	$1,418,451
2015 Business Income Tax Rate	7.1%

Product of Apportioned Business Income Before PNOLC Subtraction and NOLD and the 2015 Business Income Tax Rate	$100,710
Capital base tax	$100,000
FDM	$5,000
Greater of Capital Base Tax and FDM	$100,000
Difference Between (a) Greater of Capital Base Tax and FDM and (b) the Product of Apportioned Business Income Before PNOLC Subtraction and NOLD and the 2015 Business Income Tax Rate	$710
2015 Business Income Tax Rate	7.1%
Maximum Amount of PNOLC Subtraction to be Deducted ($710/7.1%)	$10,000

The lesser of Taxpayer C's PNOLC subtraction available for use ($9,012) and its maximum PNOLC subtraction to be deducted ($10,000) is $9,012. As this amount does not exceed 50 percent of Taxpayer C's PNOLC subtraction pool, Taxpayer C's PNOLC subtraction in the second taxable year following the base year is $9,012. Since its PNOLC subtraction exhausts the entire amount of its PNOLC subtraction available for use, Taxpayer C does not have an unused PNOLC subtraction carryforward.

PNOLC Subtraction Available for Use	9,012
Maximum Amount of PNOLC Subtraction to be Deducted	10,000
50% of PNOLC Subtraction Pool	9,012
PNOLC Subtraction	9,012
Difference between PNOLC Subtraction Available for Use and PNOLC Subtraction	$0
Unused PNOLC Subtraction Carryforward	$0

Section 3-9.10 Impact of certain corporate acquisitions on the PNOLC subtraction.

In a transaction to which section 381(a) of the Internal Revenue Code applies, the acquiring corporation shall succeed to the balance of the PNOLC subtraction allotments and unused PNOLC subtraction carryforward of the distributor or transferor corporation, subject to the same restrictions and limitations on the use of that PNOLC subtraction allotments and unused PNOLC subtraction carryforward to which the distributor or transferor corporation was subject.

Section 3-9.11 Record-keeping.

A taxpayer or combined group with a PNOLC subtraction pool must attach to its report, Form CT-3.3 and a detailed schedule showing the computation of the UNOL, amount of unused PNOLC subtraction allotment carryforward and, in the case of a combined group, each member's UNOL and amount of unused PNOLC subtraction allotment carryforward, together with all material and pertinent facts related to the taxpayer's or combined group's, if applicable, claim. Such records shall be retained during the period in which the statute of limitations for a change to the PNOLC subtraction may be made by the taxpayer or the Department.

Section 3-9.12 Subsequent changes.

(a) Any change in the amount of a corporation's UNOL must be made within the statute of limitations referenced in Tax Law section 1083(a), determined with regard to an extension of such time period agreed to pursuant to Tax Law section 1083(c)(2) and the extension of such time period allowed by Tax Law section 1083(c)(12), for the report on which a PNOLC subtraction as computed in section 3-9.7 of this Subpart is first claimed by the taxpayer. Any federal changes that are finalized after the statute of limitations described in the preceding sentence has expired will not be considered in the computation of the UNOL.

(b) Any change in the base year tax rate or base year BAP must be made within the statute of limitations referenced in Tax Law section 1083(a) for the base year, determined with regard to an extension of such time period agreed to pursuant to Tax Law section 1083(c)(1)(2) and the extension of such time period allowed by Tax Law section 1083(c)(12). Any federal changes that are finalized after the statute of limitations described in the preceding sentence has expired will not be considered in the computation of the base year tax rate or base year BAP.

(c) Except as otherwise provided in this section, if it is determined by either the department or the taxpayer that an error was made in the calculation in or application of the UNOL or the PNOLC subtraction in a tax year or tax years for which the statute of limitations referenced in Tax Law section 1083(a), as determined with regard to an extension of such time period agreed to pursuant to Tax Law section 1083(c)(2) and the extension of such time allowed by Tax Law section 1083(c)(12), has expired, the taxpayer and the department shall be bound by the position taken by the taxpayer on the report or reports for such year or years as they pertain to the calculation of the UNOL and the PNOLC subtraction, and the PNOLC subtraction and the unused PNOLC subtraction carryforward shall be corrected for the taxable years for which the statute of limitations is still open and for future taxable years. In the first year in which such correction may be made, the amount of recomputed PNOLC subtraction pool shall be reduced by the amount of PNOLC subtraction that was used erroneously in the tax year or tax years for which the statute of limitations has expired. A new PNOLC subtraction allotment must be computed for the remaining years of the corporation's allotment method using the re-computed PNOLC subtraction pool, and any unused PNOLC subtraction carryforward from the tax year or tax years for which the statute of limitations has expired is disallowed.

(d) Example 1.

Taxpayer A files its 2014 report using a BAP of 15 percent. However, on its 2015 report, it computes its PNOLC subtraction using a base year BAP of 100 percent. Taxpayer A had a UNOL of $1,500,000 and a base year tax rate of 7.1 percent. It computed a PNOLC subtraction pool of $1,638, 461 and used the 10 percent allotment method in the determination of its PNOLC subtraction. In 2015, Taxpayer A had a PNOLC subtraction of $100,000 and claimed a PNOLC subtraction carryforward of $63,846 (10% allotment of $163,846 - $100,000).

The Department does not audit Taxpayer A's 2014 and 2015 reports and does not discover the discrepancy in the 2014 reported BAP and the base year BAP used in the PNOLC subtraction pool computation until it audits Taxpayer A's 2016 report in 2019, after the statute of limitations for the 2014 and 2015 tax years have expired. Taxpayer A is bound by the BAP it used on its 2014 report when computing the PNOLC subtraction pool. Thus, as part of the audit of the 2016 report, the Department properly recomputes Taxpayer A's PNOLC subtraction pool using the 15 percent BAP Taxpayer claimed on its 2014 report. Accordingly, Taxpayer A's PNOLC subtraction pool should have been $245,769 ($1,500,000 * .15 * .071/.065). The re-computed PNOLC subtraction pool is reduced by the $100,000 used in 2015 to determine the remaining PNOLC subtraction pool of $145,769. Since Taxpayer A used the 10 percent allotment method and there are nine remaining years of allotments to determine, the remaining PNOLC subtraction pool is divided by nine. The PNOLC subtraction allotment for 2016 and the next 8 tax years is $16,197. The PNOLC subtraction carryforward of $63,846 reported on its 2015 return is disallowed. As a result, Taxpayer A has a PNOLC subtraction available for use of $16,197 in the 2016 taxable year.

Example 2.

On its 2014 report, Taxpayer B claims to be a qualified manufacturer and used a zero percent tax rate for its entire net income base. However, on its 2015 report, it computed a PNOLC subtraction using a base year tax rate of 7.1 percent and the 10 percent allotment method. The Department does not audit Taxpayer B's 2014 and 2015 reports and does not discover the discrepancy in the 2014 reported tax rate and the base year tax rate used in the PNOLC subtraction pool computation until it audits Taxpayer B's 2016 report in 2019, after the statute of limitations for the 2014 and 2015 tax years have expired. Taxpayer B is bound by the tax rate it used on its 2014 report and, as part of the 2016 audit, the Department properly re-computes a PNOLC subtraction pool of $0 and denies the PNOLC subtraction in 2016. Taxpayer B is not entitled to use any PNOLC subtraction in future years.

Example 3.

Same facts as Example 2, except that Taxpayer B is a small business taxpayer as defined in section 3-9.1(e)(1) of this Subpart and Taxpayer B used 100 percent of its PNOLC subtraction pool on its 2015 report. Because the statute of limitations for the 2015 tax year has expired, the Department is bound by the taxpayer's actions in 2015 and cannot recoup the PNOLC subtraction the taxpayer used in 2015.