

SECTION 3-7.8-APPENDIX-SUBPART 3-7

CAPITAL LOSS EXAMPLES

The following examples illustrate the application of the rules in Subpart 3-7.

### Example 1:

Corporation X incorporated and began doing business in New York on January 1, 2015. For tax year 2015, Corporation X has \$5,000 of interest expense directly and indirectly attributable to investment capital. Corporation X sustained a \$9,000 Federal net capital gain which was comprised of a \$3,000 NY net business capital loss and a \$12,000 NY net investment capital gain. Corporation X had no other investment income. As NY net business capital loss offsets NY 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 NY net business capital loss	\$	(3,000)
2015 NY net investment capital gain		12,000
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2015 Federal net capital gain	\$	9,000

#### Recomputation of 2015 FTI without NY net investment capital gain offsetting NY net business capital loss

Federal taxable income (FTI) before NOLD & special deduction	\$	150,000
Increase FTI by the amount of the 2015 NY net business capital loss that offsets NY investment capital gains		3,000
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FTI adjusted for NY capital loss utilization ("as if" federal line 28)	\$	153,000

#### Calculation of business income base

FTI adjusted for NY capital loss utilization ("as if" federal line 28)	\$	153,000
Add: State income taxes deducted		11,000
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Entire Net Income	\$	164,000
Less: Investment Income (\$12,000 investment capital gain less \$5,000 of interest attribution)		7,000
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Business Income	\$	157,000

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

Example 2:

Corporation X incorporated and began doing business in NY on January 1, 2011. For tax year 2014, it sustained a \$75,000 NY net business capital loss. Corporation X has NY business capital gains and losses and uses the NY net business capital loss sustained in tax year 2014 as follows:

Tax Year	2011	2012	2013	2014	2015	2016	2017	2018	2019
NY net business capital gains or loss	3,000	6,000	9,000	(75,000)	12,000	10,000	15,000	13,000	5,000
NY net business capital loss carryback to 2011	(3,000)	←		3,000					
NY net business capital loss carryback to 2012		(6,000)	←	6,000					
NY net business capital loss carryback to 2013			(9,000)	← 9,000					
NY net business capital loss carryforward to 2015				12,000	→ (12,000)				
NY net business capital loss carryforward to 2016				10,000	→	(10,000)			
NY net business capital loss carryforward to 2017				15,000	→		(15,000)		
NY net business capital loss carryforward to 2018				13,000	→			(13,000)	
NY net business capital loss carryforward to 2019				5,000	→				(5,000)
NY net business capital loss	-	-	-	(2,000)	-	-	-	-	-

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

### Example 3:

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

#### The 2015 Federal 1120 contains the following information:

Federal taxable income (FTI) before NOLD & special deduction	\$ 150,000
State income taxes deducted	15,000

#### 2015 FTI income includes the following capital gains/losses (Schedule D):

2015 NY business capital gains	\$ 4,000
2015 NY investment capital gains	7,000
Less: 2014 NY net business capital loss forward	\$ (9,000)
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Total 2015 Federal capital gains after Federal capital loss carryforward	\$ 2,000

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

2015 Federal taxable income (FTI) before NOLD & special deduction	\$ 150,000
2014 Federal capital loss carried forward to 2015	9,000
2014 NY net business capital loss applied against NY business capital gains	(4,000)
Increase FTI by the amount of the 2014 NY net business capital loss applied against NY investment capital gains	5,000      5,000
Federal taxable income adjusted for NY capital loss utilization ("as if" federal line 28)	\$ 155,000

#### Calculation of business income base

FTI 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
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Less: Investment Income (Investment capital gain after interest attribution)	(7,000)
Business Income	\$ 163,000

The 2014 NY net business capital loss carryforward is computed as follows:

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

Example 4:

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

<b>Tax Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>NY capital loss application</b>				
NY business capital gain/loss	8,000	10,000	(30,000)	20,000
NY net business capital loss carryback from 2016 to 2015		(10,000) ←	10,000	
NY net business capital loss carryforward from 2016 to 2017			20,000 →	(20,000)
NY net business capital gain/loss	8,000	-	-	-

Example 5:

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

Tax Year	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)
NY net capital gain/loss	-	(8,000)	10,000	3,000	9,000	7,000
NY net investment capital loss carryforward from 2015 to 2016		3,000	→ (3,000)			
NY net investment capital loss carryforward from 2015 to 2017		5,000			→ (5,000)	
NY net capital gain/loss	-	-	10,000		9,000	2,000

Example 6:

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

Tax Year	2015		2016		2017	
	NY Business Capital Gain/(Loss)	NY Investment Capital	NY Business Capital Gain/(Loss)	NY Investment Capital	NY Business Capital Gain/(Loss)	NY Investment Capital
NY net capital gain/loss	(10,000)	-	6,000	5,000	14,000	-
NY net investment capital loss carryforward from 2015 to 2016	6,000		→(6,000)			
NY net investment capital loss carryforward from 2015 to 2017	4,000				→(4,000)	
NY net capital gain/loss	-	-	-	5,000	10,000	-

Example 7 (page i of ii):

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

**The 2015 original Federal 1120 contains the following information:**

Federal taxable income (FTI) before NOLD & special deduction	\$	175,000
State income taxes deducted		7,000

**2015 FTI income includes the following capital gains (Schedule D):**

2015 NY business capital gains	\$	6,000
2015 NY investment capital loss		(2,000)
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2015 Federal net capital gain	\$	4,000

**Recomputation of federal taxable income without NY net business capital gain offset by NY net investment capital loss on original 2015 return**

Federal taxable income (before NOLD & Special Deductions)	\$	175,000
Increase FTI by the amount of the 2015 Net York investment capital loss that offset NY business capital gain	\$	2,000
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Federal taxable income adjusted for NY capital loss utilization ("as if" federal line 28)	\$	177,000

For tax year 2018, Corporation A sustained a Federal net capital loss of \$8,000 comprised of a \$3,000 NY net business capital loss and a \$5,000 NY net investment capital loss. Corporation A carries the Federal net capital loss back to the 2015 tax year and computes its 2015 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

**Amended 2015 FTI income includes the following capital gains (Schedule D):**

2015 NY business capital gains	\$	6,000
2015 NY investment capital loss		(2,000)
2018 NY total capital loss carryback		(4,000)
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2015 Federal net capital gain		-

For NY State purposes, the tax year 2015 NY net investment capital loss cannot offset the tax year 2015 NY business capital loss (as adjusted on the original tax year 2015 return). Additionally, Corporation A may only carry back the tax year 2018 NY net business capital loss of \$3,000 to tax year 2015 as it has no NY investment capital gains in tax year 2015. Therefore, Federal taxable income must be re-computed on the amended tax year 2015 return 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

Example 7 (page ii of ii):

Add: 2015 NY investment capital loss	\$ 2,000
Subtract: 2018 NY net business capital loss carryback	\$ (3,000)
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Federal taxable income adjusted for NY capital loss utilization ("as if" federal line 28)	\$ 174,000

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

**Calculation of business income base**

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	0
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Business Income	\$ 181,000

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

<b>Balance of NY net capital loss at the end of 2018</b>	<b>Total NY net capital gains/losses</b>	<b>NY net business capital gains/losses</b>	<b>NY net investment capital gains/losses</b>
Net capital loss sustained in 2018	\$ (8,000)	\$ (3,000)	\$ (5,000)
Add: 2015 NY net investment capital loss			\$ (2,000)
Less: 2018 NY 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)

Example 8:

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

<b>NYS Capital Loss Application Schedule</b>							
	<b>2015</b>		<b>2016</b>		<b>2017</b>	<b>2018</b>	
	<b>NY Business Capital Gain/(Loss)</b>	<b>NY Investment Capital Gain/(Loss)</b>	<b>NY Business Capital Gain/(Loss)</b>	<b>NY Investment Capital Gain/(Loss)</b>	<b>Federal Capital Gain/Loss</b>	<b>NY Business Capital Gain/(Loss)</b>	<b>NY Investment Capital Gain/(Loss)</b>
<b>Capital Gains/Losses</b>	(24,500)	(11,000)	12,500	-	15,000	1,000	3,000
NY net business capital loss carryforward from 2015 to 2016	12,500		▶ (12,500)				
NY net business capital loss carryforward from 2015 to 2018	1,000					▶ (1,000)	
NY net investment capital loss carryforward from 2015 to 2018		3,000					▶(3,000)
Capital gain	-	-	-	-	15,000	-	-
Net capital loss available	(11,000)	(8,000)	-	-	-	-	-

Example 9:

Taxpayer A properly filed a combined report with members B, C and D in tax years 2015, 2016 and 2017 and the group applies its NY net capital losses as follows:

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

Example 10:

Corporations A, B, C and D, are calendar-year taxpayers that began doing business in tax year 2015 and properly filed as members of a combined group in tax year 2015. Corporation D departs the ABCD combined group at the end of tax year 2015. The combined group ABCD sustained a NY net business capital loss and a NY net investment capital loss for tax year 2015. Each member of the group must compute its individual NY net capital loss carryforward separately for each type of capital loss by multiplying the total NY net capital loss carryforward by the individual member's contribution to that type of capital loss over the total capital loss for that type of capital. The individual members of the combined group compute their individual NY net business capital loss carryforward and NY net investment capital loss carryforward as follows:

<b>Combined NYS Capital Loss Application Schedule</b>						
	<b>2015</b>		<b>Member's losses as a % of total losses of all members with losses</b>		<b>Members Loss Carryforward</b>	
	<b>Business Capital Gains/(Losses)</b>	<b>Investment Capital Gains/(Losses)</b>	<b>Business Capital Gains/(Losses)</b>	<b>Investment Capital Gains/(Losses)</b>	<b>Business Capital Gains/(Losses)</b>	<b>Investment Capital Gains/(Losses)</b>
<b>Combined Group Members: A, B, C &amp; D</b>						
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)
<b>Combined Group ABCD</b>	<b>(25,000)</b>	<b>(250)</b>	<b>100%</b>	<b>100%</b>	<b>(25,000)</b>	<b>(250)</b>
Capital Loss Available	(25,000)	(250)	-	-	(25,000)	(250)
Total contribution of losses	(50,000)	(1,000)				

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

Example 11:

Corporation D, a calendar-year taxpayer, began doing business in NY in tax year 2015 and files on a stand-alone basis in tax years 2015 and 2016. Corporations A, B and C have NY non-filing years in 2015 and 2016 but in tax year 2017 file a combined report with Corporation D. Combined group ABCD sustains a NY net business capital loss in tax year 2017.

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

Corporation D's NY net business capital loss sustained in tax year 2015 is forfeited at the end of tax year 2020, five years after the loss year, even though there were no NY business capital gains to apply it against in tax years 2016 through 2020. Combined group ABCD's NY net business capital loss sustained in tax year 2017 is carried forward to 2021 and offsets the NY business capital gains of the combined group.