APPENDIX

SUBPART 3-10

NET OPERATING LOSS (NOL) EXAMPLES

The following examples assume that the corporation has (1) no PNOLC subtraction in the year and (2) at least the amount of computed NOLD required to be utilized is available for deduction. While some examples may highlight multiple rules contained in this Subpart, the introductory text of the example is intended to highlight the main rule highlighted in each such example.

Example 1:

This example is intended to highlight that New York investment capital losses must be added back in computing the business income base and any net operating loss.
Taxpayer has a Federal loss of ($500,000), which includes a ($40,000) New York investment capital loss that resulted from the sale of its investment capital. The taxpayer must adjust its Federal taxable income (FTI) to account for such loss when computing the business income base and its NOL.

Business Income Loss Schedule		
Federal taxable income (loss)	$	(500,000)
Adjustment for New York investment capital loss	$	40,000
Federal taxable income (loss) adjusted for New York investment capital loss	$	(460,000)

Example 2:

This example is intended to highlight that the NOLD required to be utilized is the amount that reduces the tax on the business income base to the higher of the capital base tax or the fixed dollar minimum.

Taxpayer X computes its NOLD of $6,730,769 required to be utilized in 2016 as follows:

NOL Deduction Schedule	
Apportioned total business income after the PNOLC but before the NOLD	7,500,000
Business income base tax rate	6.50%
Product of apportioned total business income after the PNOLC but before the NOLD and the business income base tax rate	487,500
Capital base tax	50,000
FDM	25,000
Greater of capital base tax and FDM	50,000
Difference between (a) greater of capital base tax and FDM and (b) product of apportioned total business income after PNOLC but before the NOLD and the business income base tax rate	437,500
Business income base tax rate	6.50%
Net operating loss deduction required to be utilized ($437,500/6.5%)	6,730,769

Example 3:

This example is intended to highlight that the NOLD may offset income from investment capital that remains in business income due to the 8 percent of ENI limitation on gross investment income.

Taxpayer Y incurred an NOL in 2015 of ($3,750) that it carried forward to 2016. In 2016, the gross investment income limitation reduced the amount the taxpayer was allowed to deduct as investment income from $500 to $360 (8% of $4,500). As such, $140 of income from investment capital was considered business income in 2016.

NOL Schedule		
	2015	2016
Entire net income	(5,000)	4,500
Investment income		360
Total business income	(5,000)	4,140
BAF	75%	85%
Apportioned total business income after the PNOLC but before the NOLD	(3,750)	3,519
Business income base tax rate		6.5%
Product of apportioned total business income after the PNOLC but before the NOLD and the business income base tax rate		229
Capital base tax		200
FDM		100
Greater of capital base tax and FDM		200
Difference between (a) greater of capital base tax and FDM and (b) product of apportioned total business income after PNOLC but before the NOLD and the business income base tax rate		29
Business income base tax rate		6.5%
NOLD required to be utilized		442
NOL carryforward from 2015 to be used in 2016	442	(442)
Balance of 2015 NOL available for carryforward after the 2016 tax year	(3,308)	

Example 4:

This example is intended to highlight how a separate filer carries back its NOL to previous years.

Company A, a calendar-year taxpayer, was incorporated and began doing business in New York as of 1/1/2016. Company A had New York income and losses as follows:

NOL Schedule				
	2016	2017	2018	2019
Apportioned total business income after the PNOLC but before the NOLD	7,500,000	3,500,000	(10,000,000)	2,000,000
Business income base tax rate	6.5%	6.5%	6.5%	6.5%
Product of apportioned total business income after PNOLC but before the NOLD and the business income base tax rate	487,500	227,500	0	130,000
Capital base tax	28,000	25,000		17,000
FDM	50,000	50,000		50,000
Greater of capital base tax and FDM	50,000	50,000		50,000
Difference between (a) greater of capital base tax and FDM and (b) product of apportioned total business income after PNOLC but before the NOLD and the business income base tax rate	437,500	177,500		80,000
Business income base tax rate	6.5%	6.5%		6.5%
NOLD required to be utilized (if available)	6,730,769	2,730,769		1,230,769
NOL sustained			(10,000,000)	
NOL carryback from 2018 to 2016	(6,730,769) ←	←	← 6,730,769	
NOL carryback from 2018 to 2017		(2,730,769)	← 2,730,769	
NOL carryforward from 2018 to 2019			538,462 →	(538,462)
Business income base	769,231	769,231	(10,000,000)	1,461,538
Business income base tax	50,000	50,000	0	95,000

Example 5:

This example is intended to highlight how a combined group member computes its share of NOLs sustained in the loss year.

Taxpayers L, M, N & O began doing business and properly filed a combined report in New York in the 2015. As the combined group sustained an NOL, each member computes its share of the NOL as follows:

Computation of the NOL for Members of a Combined Group				
			(1)	(2)
Combined Group	Business Income/(Losses) 2015	Business Loss by Member	Member's business losses as a % of total business losses of all members with losses	Member's 2015 NOL (2015 Total BI*(1))
L	(750)	(750)	20%	(700)
M	(2,000)	(2,000)	53%	(1,867)
N	250	0	0%	0
O	(1,000)	(1,000)	27%	(933)
Totals	(3,500)	(3,750)	100%	(3,500)

If taxpayers L, M, N, and O file a combined report in 2016, the NOL carryforward available for use by the group would be $3,500. However, if taxpayers L,M, and N file a combined report in 2016, the group would have an NOL carryforward available for use by the group of $2,567 ($700 + $1,867) and taxpayer O would have an NOL carryforward available for use of $933 on its separate return in 2016.

Example 6 (page i of ii):

This example is intended to highlight how a combined group member computes its share of NOLs and how the share of such NOLs is carried back to previous years.

In taxable year 2015, Corporation A filed a separate New York State tax return and Corporations B and C properly filed a combined report. In 2016, Corporation A was purchased by unrelated group that includes corporations B and C. The newly formed combined group A, B, and C properly files a combined New York State return and sustains an NOL in 2016. Each member of the combined group must compute its share of the NOL sustained in 2016 based on its share of the loss. Corporation A may carry back its share of the 2016 loss to its separately filed 2015 return and Corporations B and C may carry back their share of 2016 losses to the 2015 combined report filed by combined group B and C.

NOL Schedule			
	A is an unrelated separate Filer	BC Group	ABC Group
Corporation	2015	2015	2016
A	6,000,000		(1,750,000)
B		1,250,000	(1,275,000)
C		250,000	(1,300,000)
Apportioned total business income after the PNOLC but before the NOLD	6,000,000	1,500,000	(4,325,000)
Business income base tax rate	7.10%	7.10%	
Product of apportioned total business income (loss) after the PNOLC but before the NOLD and the business income base tax rate	426,000	106,500	
Capital base tax	45,000	18,000	
FDM	20,000	50,000	
Greater of capital base tax and FDM	45,000	50,000	
Difference between (a) greater of capital base tax or FDM and (b) product of apportioned business income before PNOLC and NOLD and the business income base tax rate	381,000	56,500	
Business income base tax rate	7.10%	7.10%	
NOLD required to be utilized (if available)	5,366,197	795,775	

Example 6 (page ii of ii):

NOL APPLICATION				
	A is an unrelated separate Filer	BC Group		ABC Group
	2015	2015		2016
Corporation				
A	6,000,000			(1,750,000)
B		1,250,000		(1,275,000)
C		250,000		(1,300,000)
Combined Apportioned Business Income after the PNOLC but before the NOLD	6,000,000	1,500,000		(4,325,000)
Carryback A's NOLs from 2016 to 2015	(1,750,000)			1,750,000
Carryback B and CNOLs from 2016 to 2015		(795,775)		795,775
Business income base	4,250,000	704,225		(4,325,000)
Balance of NOL incurred in 2016 after carryback to 2015				(1,779,225)

Corporation A carried back its share of the 2016 loss of $1,750,000 to reduce its 2015 tax. As its carryback of $1,750,000 is less than the NOLD required to be utilized (if available), Corporation A completely exhausted its 2016 NOL. While Corporations B and C carried back a portion of the 2016 NOLs, the total NOL available for carryback of $2,575,000 is greater than the NOLD required to be utilized of $795,775. As such, Corporations B and C must determine their share of NOL carryback based on the share of losses in 2016. Of the $795,775 carried back to 2015, Corporation B's share is $393,909 (1,275,000/2,575,000 *$795,775) and Corporation C's share is $401,866 (1,300,000/2,575,000 * $795,775). Corporation B's 2016 NOL carryforward is $881,091 ($1,275,000 - $393,909) and Corporation C's 2016 NOL carryforward is $898,134 ($1,300,000-$401,866).

Example 7:

This example is intended to highlight how NOLs are impacted by subsequent adjustments to the loss year as well as the time period for assessing deficiencies when an adjusted NOL is carried to other periods.

Corporation B sustains an NOL for the taxable year ending 12/31/2018 and on 10/15/2019 files its first amended 2015 CT-3 form to carryback the NOL of $50,000 to its 2015 taxable year ($100,000 business loss multiplied by a BAF of 50%). Corporation B receives a refund of $3,550 for the 2015 taxable year.
Based on a subsequent correction to the BAF by the taxpayer that changes its 2018 BAF from 50% to 80%, it is determined that the actual NOL for the taxable year ending 12/31/2018 was $80,000 ($100,000 business loss multiplied by a BAF of 80%). Corporation B files a second amended report for the 2015 taxable year in July 2020 to claim the additional refund for 2015.

In December 2020, the IRS completes their examination of Corporation B and makes their final determination. The IRS required Corporation B to recognize in 2018 a deferred receipt from undelivered sales. Corporation B files a second amended 2018 report timely to report the correction to its 2018 FTI and also amend its BAF since the RAR directly impacted the 2018 BAF. As the RAR changed the 2018 NOLD, the Department calculates Corporation B's proper liability for the 2015 tax year upon receiving a copy of the RAR. As a result, Corporation B owes $1,207 for the 2015 and the Department may assess a deficiency due by the authority granted under section 1083(c)(4).

	2018		
	As Filed	First Amended	Second Amended
Total business income before RAR	(100,000)	(100,000)	(100,000)
Adjustment to federal taxable income due to RAR			10,000
Total business income after RAR	(100,000)	(100,000)	(90,000)
BAF	50%	80%	70%
Business income base	(50,000)	(80,000)	(63,000)

	2015			
	Original	First Amended	Second Amended	Third Amended
Apportioned Business Income before NOLD	300,000	300,000	300,000	300,000
2018 NOL carryback to 2015	-	(50,000)	(80,000)	(63,000)
2015 business income base	300,000	250,000	220,000	237,000
Business income tax base current year tax rate	7.10%	7.10%	7.10%	7.10%
Business income base tax	21,300	17,750	15,620	16,827
Prepayments	21,000	21,300	17,750	15,620
Refund/Additional Tax*	300	(3,550)	(2,130)	1,207

Example 8 (page i of ii):

This example is intended to highlight how IRC section 382 and SRLY principles impact the computation of a NOL.

During taxable year 2016 Corporation T and Z began doing business in New York State. Corporation T and Z filed separate returns and sustained NOL's for New York State purposes in tax period 2016. Corporations A, B, and C began doing business in NYS in 2015 and sustained losses in 2015 and 2016. They properly filed a combined report together for those years.

Effective January 1, 2017 Corporations “T” and "Z" were acquired by the “A,B,C” group. The operating loss sustained by Corporation “T” in 2016 represents a Separate Return Loss Year (“SRLY”) and is not subject to the IRC section 382 limitation. The operating loss sustained by Corporation Z is subject to IRC section 382 and is limited to $1,000. A, B, C, T, Z group’s BAF for taxable periods ending 2017, 2018, 2019, and 2020 is 50%. The application of the net operating loss is as follows:

Example 8 (page ii of ii):

	A, B, C Group	T	Z	A, B, C Group	A, B, C, T, Z Group			
Combined Group: A, B, C	2015	2016	2016	2016	2017	2018	2019	2020
A	(500)			(1,250)	(4,500)	0	900	5,500
B	(375)			(750)	(250)	0	1,250	2,250
C	(125)			(300)	(5,500)	0	1,750	1,000
T		(12,500)			0	5,000	6,000	0
Z			(9,500)			1,500	350	0
Combined Apportioned Business Income after the PNOLC but before the NOLD	(1,000)	(12,500)	(9,500)	(2,300)	(10,250)	6,500	10,250	8,750
$1,100 of A, B, C groups 2015 losses must be used as a deduction against A, B, C, T, Z groups income in 2018	1,000					(1,000)		
$5,000 of T's individual net operating loss can be used in 2018 as a deduction against T's business income		5,000				(5,000)		
Section 382 limit for NYS purposes is $500 (Federal $1,000 382 limit x 50% NYS BAF); SRYL loss limit for NYS purposes in $1,500. $500 of Z's 2016 382 losses can be used as a deduction against 2018 income because it's the lesser of 382			500			(500)		
$6,000 of T's individual loss can be used in 2019 as a deduction against T's individual gain		6,000					(6,000)	
382 limit x 50% NYS BAF); SRYL loss limit for NYS purposes in $350. $350 of Z's 2016 382 losses can be used as a deduction against 2019 income because it's the lesser of 382 and SRLY			350				(350)	
$2,300 of A, B, C groups 2016 losses must be used as a deduction against A, B, C, T, Z group's income in 2019				2,300			(2,300)	
$1,600 of A, B, C, T, Z groups 2017 losses must be used as a deduction against A, B, C, T, Z group's income in 2019					1,600		(1,600)	
Section 382 limit for NYS purposes is $500 (Federal $1,000 382 limit x 50% NYS BAF); SRYL loss limit for NYS purposes in $0. $0 of Z's 2016 losses can be used as a deduction against 2020 income because it's the lesser of 382 and SRLY. Available losses can be carried forward against T and Z's future gains subject to the limitations								
$8,650 of A, B, C, T, Z groups 2017 losses must be used as a deduction against A, B, C, T, Z group's income in 2020					8,650			(8,650)
Apportioned Business Income (Loss)	0	(1,500)	(8,650)	0	0	0	0	100

Example 9 (page i of ii):

Corporation B began doing business in 2019. It sustains the following net operating losses (NOL) in calendar year 2019 and short period ending May 2020. Corporation B waives the entire NOL carryback period for these losses so they are available to carryforward to future tax years.

	2019	Short Period 2020
Total business income	$ (300,000)	$ (100,000)
BAF	50%	40%
Apportioned business income (loss)	$ (150,000)	$ (40,000)

Corporation A files separately in calendar year 2019. It does not have any NOLs available for use in 2019.

In May 2020, Corporation A acquires Corporation B. As a result of the acquisition, Corporation A is included in a combined report with Corporation B for calendar year 2020. Neither corporation has PNOLC subtractions available for use in 2020. The combined apportioned business income before NOLD is computed as follows:

	CY 2020
Corporation A total business income	425,000
Corporation B total business income	75,000
Combined group AB total business income	500,000
Combined group AB BAF	35%
Combined group AB's apportioned business income before NOLD	175,000

For federal purposes, Corporation B has $2.5 million in NOLs subject to IRC section 382 and the resulting annual limitation is $100,000. Although Corporation B has $190,000 in NOLs, the amount of NOL carryforward available for use in the current tax year is limited to the lesser of:

(1) the IRC section 382 limitation adjusted for New York of $35,000, which in 2020 is the IRC section 382 limitation multiplied by the combined 2020 BAF ($100,000 * 35%); or

(2) the SRLY amount of $26,250, which is Corporation B's 2020 apportioned business income ($75,000 * 35%).

As a result of these limitations, Combined group AB's NOLD may not exceed $26,250 of NOLs in 2020. Since its NOLD required to be utilized (if available) exceeds the limit, Combined group AB has a NOLD of $26,650 in 2020 . As the IRC section 382 limit adjusted for New York is greater than the SRLY amount, Corporation B may carryforward the difference of $8,750 to the next period ($35,000 - $26,250).

In 2021, Corporation A merges Corporation B into itself. It has total business income of $700,000 and a BAF of 50%. The new corporation AB acquires the limitations on Corporation B's NOLs. As such, the amount of NOL available for deduction in 2021 is limited to the lesser of:

Example 9 (page ii of ii):

(1) the IRC section 382 limitation adjusted for New York of $58,750, which in 2021 is the unused limited NOL carryforward from 2020 ($8,750) plus the current year IRC section 382 limit multiplied by the combined 2021 BAF ($100,000 * 50%); or

(2) the SRLY amount of $350,000, which is Corporation AB's 2021 apportioned business income ($700,000 * 50%).

Since Corporation AB's NOLD required to be utilized (if available) exceeds the limit above, its NOLD in 2021 is $58,750.

In 2022, Corporation AB has total business income of $400,000 and a BAF of 60%. The amount of NOL available for deduction in 2021 is limited to the lesser of:

(1) the IRC section 382 limitation adjusted for New York of $60,000, the current year IRC section 382 limit multiplied by the combined 2021 BAF ($100,000 * 60%); or

(2) the SRLY amount of $240,000, which is Corporation AB's 2021 apportioned business income of $240,000 ($400,000 * 60%).

Since Corporation AB's NOLD required to be utilized (if available) exceeds the limit above, its NOLD in 2022 is $60,000.

The NOL carryforward schedule of Corporation AB is:

NOL Schedule	CY 2019	Short Period 2020	CY 2020	CY 2021	CY 2022
Apportioned business income(loss) before NOLD	$ (150,000)	$ (40,000)	$ 175,000	$ 350,000	$240,000
2019 NOL Carryforward to CY 2020	$ 26,250		$ (26,250)		
2019 NOL Carryforward to CY 2021	$ 58,750			$ (58,750)	
2019 NOL Carryforward to CY 2022	$ 60,000				$ (60,000)
Balance	$ (5,000)	$ (40,000)	$ 148,750	$ 291,250	$180,000