

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

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Income Tax
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New York State Nonresident NOL

The New York State Personal Income Tax Regulations, Parts 131, 145 and 148, have been amended regarding the New York State nonresident net operating losses. The following is a brief explanation of the changes.

A New York State nonresident return is required to be filed in any year a net operating loss is incurred for New York State income tax purposes but not for federal income tax purposes. The information contained on the nonresident return will enable the Department of Taxation and Finance to determine the amount of the loss derived from New York State sources.

Where a nonresident has incurred a net operating loss for New York State purposes but not for federal purposes, such net operating loss must, unless an irrevocable election to forego the carryback is made, first be carried back to each of the three taxable years preceding the loss year and then carried forward until absorbed to each of the 15 years following the taxable year of such loss. However, the loss may not be carried back or carried forward to a taxable year in which the taxpayer was or is a resident of New York State.

Where a nonresident has incurred a net operating loss for New York State purposes but not for federal purposes, an election to forego the entire three year carryback period may be made. Accordingly, the net operating loss would then be carried forward (until absorbed) to each of the 15 years following the loss year. To make this election, a nonresident return must be filed for the year the net operating loss is incurred and a statement must be attached to the return stating that this election to forego the three year carryback is being made. This election must be made by the due date (including extensions) of the nonresident return and once made, is irrevocable.

The term nonresident, as used above, refers to nonresident individuals, estates and trusts.

This amendment to the New York State Personal Income Tax Regulations will take effect immediately and will be applicable to taxable years ending on and after December 31, 1984.