

Instructions for Form NYC-2.4



Net Operating Loss Deduction (NOLD)

2018

GENERAL INFORMATION

Form NYC-2.4 is used by a taxpayer subject to tax under Subchapter 3-A of Title 11 of the NYC Administrative Code (Ad. Code) to compute the net operating loss deduction (NOLD) allowed in the computation of the business income base by Ad. Code section 11-654.1(3) for tax years beginning on and after January 1, 2015. It is also used to make the election to waive the carryback of a net operating loss (NOL) in the year in which such NOL occurs, as well as to report the specific tax years **from** which NOLs have been used in the computation of the business income base (see Schedule A). Schedule A must be completed for every tax year. Therefore, Form NYC-2.4 must be filed for every tax year, even when no NOLD is being used in the computation of the business income base. Failure to file Form NYC-2.4 **each** tax year may result in a delay receiving NOLD benefits. Combined groups need to file only one Form NYC-2.4, computed on a combined group basis, for their group. If filing an amended return to claim a carryback of an NOL, you must file Form NYC-2.4 with the amended return.

Affiliations Schedule Requirements for Net Operating Losses (NOLs) or Amended Returns Regarding Previous Tax Years: Taxpayers with any NOLs from any tax year to be carried back to previous tax years, or with any NOLs from previous tax years to be carried forward to any tax year must complete and submit an affiliations schedule for those tax years if an NOL is to be carried forward from or back to those tax years. Use the affiliations schedule that is part of the 2018 NYC-2A form for the relevant tax year.

NOLs that are incurred for tax years beginning on or after January 1, 2015, are applied in the computation of the business income base and cannot be carried back to tax years that began before January 1, 2015.

The NOLD must be applied in the computation of the business income base **after** the prior net operating loss conversion (PNOLC) subtraction (see Form NYC-2.3, Prior Net Operating Loss Conversion (PNOLC) Subtraction).

The NOLD is limited in any tax year to the amount required to reduce the tax on the allocated business income base to the higher of the capital base tax or the fixed dollar minimum tax. **For a combined return, the fixed dollar minimum tax of the designated agent is used for this purpose.**

An NOL is the amount of a business loss incurred in a particular tax year, multiplied by the allocation factor for that year as determined under Ad. Code section 11-654. For a combined return, a combined NOL is the combined business loss incurred in a particular tax year, multiplied by the combined allocation factor for that year as determined under Ad. Code section 11-654.3(5).

The NOLD is the amount of NOL or NOLs from one or more tax years that are carried forward or carried back to a particular tax year and allowed to reduce business income in such tax year. For a combined return, a combined NOLD is the amount of combined NOL or NOLs from one or more tax years that are carried forward or carried back to a particular tax year and allowed to reduce the combined business income base in such tax year.

The NOLD does **not** include any NOL incurred during any tax year beginning prior to January 1, 2015, or during any tax year in which the taxpayer was not subject to tax under Subchapter 3-A. This includes any tax year in which the taxpayer was subject to tax under Subchapters 2 or

3 of this Chapter. However, any tax year beginning after January 1, 2015 in which the taxpayer was subject to tax under Subchapters 2 or 3 of this Chapter must count as a tax year for purposes determining the number of tax years to which the NOL may be carried forward. See Ad. Code section 11-654.1(3)(e).

The NOLD is not limited to the amount allowed under Internal Revenue Code (IRC) section 172. A taxpayer that files as part of a federal consolidated return but on a separate basis for purposes of Subchapter 3-A must compute its deduction and loss as if it were filing on a separate basis for federal income tax purposes.

If there are two or more NOLs, or portions thereof, carried back or carried forward to be deducted from allocated business income in one particular tax year, the earliest NOL incurred must be applied first.

An NOL may be carried back three tax years preceding the tax year of the loss (the loss year). However, a loss **cannot** be carried back to a tax year beginning before January 1, 2015. The loss is first carried to the earliest of the three tax years. If it is not entirely used in that year, the remainder is carried to the second tax year preceding the loss year, and any remaining amount is carried to the tax year immediately preceding the loss year. Any unused amount of loss then remaining may be carried forward for as many as 20 tax years following the loss year. Losses carried forward are carried forward first to the tax year immediately following the loss year, then to the second tax year following the loss year, and then to the next immediately subsequent tax year or years until the loss is used up or the 20th tax year following the loss year, whichever comes first.

For a corporation that files a combined return, either in the tax year the NOL is incurred or in the tax year in which a deduction is claimed on account of the loss, the combined NOLD is determined as if the combined group is a single corporation and, to the extent possible and not otherwise inconsistent with Ad. Code section 11-654.3(4)(a), is subject to the same limitations that would apply for federal income tax purposes under the IRC and the code of federal regulations as if such corporation had filed for such tax year a consolidated federal income tax return with the same corporations included in the combined return. If a corporation files a combined return, regardless of whether it filed a separate return or consolidated return for federal income tax purposes, the NOL and NOLD for the combined group must be computed as if the corporation had filed a consolidated return for the same corporations for federal income tax purposes. Ad. Code section 11-654.3(4)(d)(3).

In general, any NOL carryover from a year in which a combined return was filed shall be based on the combined NOL of the group of corporations filing such return. The portion of the combined loss attributable to any member of the group that files a separate return for a succeeding tax year will be an amount bearing the same relation to the combined loss as the NOL of such corporation bears to the total NOL of all members of the group having such losses to the extent that they are taken into account in computing the combined NOL. Ad. Code section 11-654.3(4)(d)(4).

Election to waive carryback.

You may elect to waive the entire carryback period with respect to an NOL. You must make the election on your original timely filed return (determined with regard to valid extensions) for the tax year of the NOL for which the election is to be in effect. Once an election is made for a

tax year, it is irrevocable for that tax year. You must make a separate election for each loss year. This election applies to all members of a combined group. See Ad. Code section 11-654.1(3)(g). To make the election, check "YES" on line C.

LINE INSTRUCTIONS

Name as Shown on NYC-2 or NYC-2A.

When filing a combined return, enter the legal name and EIN of the group's designated agent.

SCHEDULE A –

If the amount on Form NYC-2 or NYC-2A, Schedule B, line 34, is a loss:

- Enter 0 on lines 1 through 4 and line 6.
- Complete lines 5a through 5f and 7.

If the amount on Form NYC-2 or NYC-2A, Schedule B, line 34, is a gain, complete lines 1 and 2, and:

If line 1 is greater than line 2, complete lines 3 through 7.

If line 2 is greater than or equal to line 1:

- Enter 0 on lines 3 and 4.
- Complete lines 5a through 5f.
- Enter 0 on line 6.
- Complete line 7.

Computation of available net operating losses (NOLs)

Lines 5a through 5e – All amounts should be entered as positive values.

Line 5a - Enter the sum of all amounts reported on the prior years' Form NYC-2 or NYC-2A, Schedule B, line 36, that were not previously used, and have not expired.

Line 5b - Complete this line only if the current year's Form NYC-2 or NYC-2A, line 34 is a loss.

Line 5c - Complete this line only when filing an amended return reflecting the carryback of an NOL.

Line 5e - Complete this line only if the carryforward period of a previously earned, but never used, NOL has expired. Since this form only includes NOLs incurred on or after January 1, 2015, none of these losses will have expired prior to 2018.

NOLD to be used in the current tax year

Line 6 - The amount of NOLD, after all applicable NOL limitations are applied in the current year, cannot be more than the amount on line 4. Enter on line 6 the lesser of line 4 or line 5. Also enter this amount on NYC-2 or NYC-2A, Schedule B, line 35.

SCHEDULE C – New members included in the combined group for the current tax period; Form NYC 2-A filers only

For each new member that is included in the combined group in this tax period, but was not included in the combined group in the tax period immediately preceding this tax period, enter in column C the amount of unused NOL available at the beginning of this tax period. If the new member's unused NOL available at the beginning of this tax period was zero, enter 0. Also enter in columns D and E the new member's tax period beginning and ending dates, respectively. In column F explain why

the new member(s) was not included in the prior year's combined tax return.

SCHEDULE D – Former members not included in the combined group for the current tax period; Form NYC 2-A filers only

For each former member that was included in the combined group in the tax period immediately preceding this tax period and that is no longer included in the combined group for this tax period, enter in column C the amount of unused NOL available at the beginning of this tax period. If the former member's unused NOL available at the beginning of this tax period was zero, enter 0. Also enter in columns D and E the former member's tax period beginning and ending dates, respectively. In column F explain why the former member(s) is not included in this year's combined tax return.

SCHEDULE E

NOTE: In any tax year where an NOL is generated, you may not have an NOL utilized

Column A:

If the form does not accurately reflect your tax years, e.g. short-year filings, attach a schedule showing the information requested in each of the columns.

Column B:

Enter the amount from Form NYC-2 or NYC-2A, Schedule B, line 34.

Column C:

When the amount from Column B is negative, enter the negative amount in Column C. If Column B is positive, enter 0.

Column D:

Include the amount of the NYC Net Operating Loss utilized by the taxpayer in each of the years listed since the year generated. Any NYC Net Operating Loss amount carried back to a previous year should be reflected in Column D in the year or period in which the Net Operating Loss was generated. Except as indicated in the previous sentence, in any tax period in which an NYC NOL is generated, you may not have an NYC NOL utilized.

Column E:

Since this form only includes NOLs incurred on or after January 1, 2015, none of these losses will expire in 2018.

Column F:

For the earliest year from which an NYC Net Operating Loss utilized in the current year is generated, the amount in Column F should be the same as the amount in Column C, unless the taxpayer has carried back an amount to a prior year in which case the amount in Column F is the amount in Column C, less the amount in Column D. For all subsequent years, except the current year, the amount in Column F is the amount in Column F for the immediately preceding year, plus the amount in Column C, less the amount, if any, in Column D. For the current year on line 3 of Schedule B, the amount in Column F is the amount in Column F for the immediately preceding year, plus the amount in Column C, less the amounts, if any, in Column D and/or Column E. (For 2018, there is no amount in Column E.)