



Instructions for Form CT-8

Claim for Credit or Refund of Corporation Tax Paid

Tax Law — Articles 9, 9-A, 13, 27, 32, 33, and 33-A

General Information

To avoid unnecessary delays in the processing of your claim for credit or refund:

- File a separate form for each tax period for which a credit or refund is claimed.
- Attach the required federal forms with each claim.
- If the refund is based on a net operating loss (NOL), attach a **signed copy** of your New York State franchise tax return for the loss year.
- **Do not** use an amended return to claim a credit or refund of franchise taxes paid.
- Use the correct form for the type of refund you are claiming (see below).
- CT-8 claims must be signed by an elected officer or authorized person.
- **Do not** attach the claim to your New York State franchise tax return; mail it separately.
- Do not file both Forms CT-8 and CT-9; only file one or the other.

If your refund is based on:

- An audit by the Internal Revenue Service that results in a refund
- A net operating loss carryback (see pages 1-3)
- Overpayment of money where no question of New York State Tax Law is involved.
- Article 9, Section 189 refunds
- All others

Use New York Form:

- CT-3360, *Federal Changes to Corporate Taxable Income.*
- CT-9, *Claim for Tentative Refund from Carryback of Net Operating Loss, or CT-8, Claim for Credit or Refund of Corporation Tax Paid.*
- Indicate the amount of overpayment on the original franchise tax return. If not indicated on the original return, submit a letter requesting the refund.
- CT-189-WR, *Claim for Refund — Section 189.*
- CT-8, *Claim for Credit or Refund of Corporation Tax Paid.*

Claim for Credit or Refund Based on a Net Operating Loss Carryback or Net Capital Loss Carryback

New York State Forms Required

File a separate Form CT-8 for each tax period for which a credit or refund is claimed.

Statutory Limitation for Filing a Claim

The claim for credit or refund must be filed within three years from the due date (or extended due date) of the franchise tax return for the period in which the loss occurred or within 27 months from the date of the federal credit or refund.

Federal Forms Required

You must provide a copy of the claim filed with the Internal Revenue Service (IRS) (usually federal Form 1139) and a copy of the document (usually federal Form 4188, federal Form 4428B, or federal Form 8488, *Statement of Adjustment to your Account*) sent to the corporation by the IRS indicating approval of the refund of federal income tax for the carryback year. If the above mentioned federal forms are not available, send an affidavit signed by an officer of the corporation stating that the refund was received, the

date of the refund, the amount and the applicable period. If the federal refund was adjusted, give an explanation.

If federal forms are not available because federal tax returns were filed on a consolidated basis or under Subchapter S of Chapter 1 of the Internal Revenue Code (IRC), attach a statement showing how net operating losses and/or net capital losses would have been carried back and carried forward had you filed federal Form 1120.

Amount of New York State Net Operating Loss Deduction or Operations Loss Deduction Allowed for Article 33 - Section 1503(b)(4) of the Tax Law

The New York State net operating loss deduction under Article 33 is presumably the same as the federal net operating loss deduction allowed by section 172 of the IRC or the operations loss deduction allowed by section 810 of the IRC. It can also be the amount that would have been allowed if the taxpayer had not made an election to be included in a group reporting on a federal consolidated basis.

The New York State net operating loss deduction is subject to the following rules:

- a. The net operating loss deduction or operations loss deduction may not include loss sustained in any year the insurance corporation was not subject to tax in New York State.
- b. You must adjust the federal losses allowed under sections 172 or 810 of the IRC to reflect the additions and subtractions required by section 1503(b) of Article 33.
- c. You may carry net operating losses or operations losses back or forward.*
- d. If you have elected for federal tax to relinquish the carryback of a net operating loss or operations loss, you must submit a copy of your federal election.
- e. The New York State net operating loss deduction may not exceed the federal net operating loss deduction allowable under section 172 or operations loss deduction allowable under section 810 of the IRC.

These rules also apply to corporations included in a group reporting federal tax on a consolidated basis. These corporations must carry losses to the same year and in the same manner as provided in these instructions with the following exceptions:

- Instead of a copy of the federal election to relinquish the carryback of a net operating loss or operations loss, a request in writing to relinquish the carryback must be filed on or before the due date (or extended due date) of the return for the loss year. Any corporation that does not make a timely election with the Tax Department must carry the net operating loss back before the loss can be carried forward.
- A net operating loss deduction or operations loss deduction may not exceed the amount that would have been allowed for federal tax if the corporation had not elected to be a member of a federal consolidated group.

* For net operating losses incurred in taxable years beginning after August 5, 1997, the NOL may be carried back 2 years instead of 3 years, but may be carried forward for 20 years (with an exception for certain disaster losses). For net operating losses incurred in taxable years beginning on or before August 5, 1997, the NOL may be carried back 3 years and carried forward 15 years until used up.

Amount of New York State Net Operating Loss Deduction Allowed For Article 9-A - Section 208.9(f) of the Tax Law

The New York State net operating loss deduction under Article 9-A is computed as if the corporation elected under section 172 of the IRC to relinquish the carryback provisions, except for the first \$10,000 for each loss year, which may be carried back to the preceding years.

These rules apply:

- a. The net operating loss deduction may not include loss sustained in any year the corporation was not subject to tax in New York State.
- b. You must adjust the federal losses allowed under section 172 of the IRC to reflect the additions and subtractions required by Article 9-A, sections 208.9(a) and 208.9(b).
- c. You may carry net operating losses back and forward.*
- d. If you have elected to carry back a net operating loss for federal tax, you may carry back a total of only \$10,000 of

the New York State net operating loss to the preceding years. Any portion of the \$10,000 New York State net operating loss carryback not used may be carried forward.

- e. If you have elected for federal tax to relinquish the carryback of a net operating loss, you may not carry back a net operating loss for state tax, and you must submit a copy of your federal election with your loss year report.
- f. A New York S corporation may not include any net operating loss sustained during a year in which the corporation was a New York C corporation or in a New York S year beginning before 1990.
- g. A New York C corporation may not include any net operating loss sustained while it was a New York S corporation.
- h. The New York State net operating loss deduction for any particular year is limited to the federal net operating loss deduction for that year. (For the purposes of this limitation, a corporation that has elected to carry back up to \$10,000 of its net operating loss for New York State purposes, should compute its federal net operating loss deduction as if it only carried back the same \$10,000 (see items c, d, and e)).

S corporations and corporations included in federal consolidated reports must carry losses to the same year and in the same manner as provided in these instructions with one exception. Instead of a copy of the federal election to relinquish the carryback of a net operating loss, they must file a written request to relinquish the carryback on or before the due date (or extended due date) of the return for the loss year. Any corporation that does not make a timely election with the Tax Department must carry the first \$10,000 of the net operating loss back before the loss can be carried forward.

For net operating losses incurred in taxable years beginning after August 5, 1997, the NOL or alternative net operating loss (ANOL) may be carried back only 2 years instead of 3 years, but may be carried forward for 20 years (with an exception for certain disaster losses). For net operating losses incurred in taxable years beginning on or before August 5, 1997, the NOL or ANOL may be carried back 3 years and carried forward 15 years until used up.

Net Operating Loss Deduction — Aviation Corporations

The net operating loss deductions for aviation corporations will be similar to the net operating loss deductions for all other Article 9-A corporations, with two exceptions. These two exceptions pertain to net operating loss deductions for the years 1985 through 1988 and net operating loss deductions for a tax year which includes any month in 1989. See TSB-M-89(10)C or TSB-M-89(13)C for more information.

Net Operating Loss Deduction — Merger, Acquisition and Consolidation

When a highly leveraged transaction occurs, any net operating loss of a target corporation from prior years or a loss sustained in the year of merger, acquisition or consolidation, cannot be used by the acquiring corporation. For complete details see TSB-M-89(13)C, TSB-M-89(17)C, and Form CT-244.

Alternative Net Operating Loss Deduction (ANOLD) (Article 9-A)

For any tax year beginning on or after January 1, 1994, you may carryback an alternative net operating loss deduction to reduce your minimum taxable income base. In

determining the alternative net operating losses (ANOLs) carrying into the ANOLD of any given year, the following rules apply:

- a. Losses from years when the taxpayer was not subject to Article 9-A are excluded.
- b. Pre-1990 net operating losses available for carryforward to 1990 under the regular tax are available for carryforward to 1990 under the minimum tax, and without the application of minimum tax adjustments.
- c. ANOLs must be carried to the appropriate carry years under *d*, whether or not the tax on MTI is the highest tax for the particular carry year.
- d. ANOLs must be carried using the conventions of IRC 172(b)(2)*, and exhausted in the earliest available carry year, except as provided in *e* and *f*.
- e. The carryback of each ANOL is limited to \$10,000, as is the case with the regular tax net operating loss deduction.
- f. The federal election to forego carryback of a net operating loss applies to the related New York ANOL.
- g. ANOLs must be applied against 90% of minimum taxable income (determined without regard to the ANOLD) each year, even though some lower limitation on the ANOLD actually applies for that year. Limitations on the ANOLD are described in *h* through *j*.
- h. In applying the carry out rules under *d*, ANOLs must be carried out to tax years beginning in 1990 through 1993 even though no ANOLD was allowed in those years.
- i. For any tax year beginning in 1994, the ANOLD is limited to 45% of minimum taxable income computed without regard to the ANOLD, and thereafter to 90% of minimum taxable income computed without regard to the ANOLD.
- j. The ANOLD for any particular year is limited to the federal **regular** tax net operating loss deduction for that year. (For the purposes of this limitation, a corporation that has elected to carry back up to \$10,000 of its

alternative net operating loss for New York State purposes, should compute its federal regular net operating loss deduction as if it only carried back the same \$10,000 (see items c, d, and e)).

For more information see TSB-M-94(5)c.

See **Amount of New York State Net Operating Loss Deduction Allowed For Article 9-A** on page 2 of these instructions.

Payment of Interest on Net Operating Loss or Net Capital Loss Carryback

In general, interest on an overpayment of tax resulting from a net operating loss or net capital loss carryback will begin to accrue on the date the claim for refund or credit was filed.

Exceptions

- If a carryback claim is not filed with the Tax Department within 90 days from the date a federal refund is issued, interest will not accrue.
- If a carryback claim made by an S Corporation is not filed with the Tax Department within twelve months and 180 days from the last day of the tax year in which the loss arises, interest will not accrue after that period.
- If a carryback claim is filed with the Tax Department before the due date (or extended due date) of the loss year report, no interest will be paid if the refund is made within three months of that due date or extended due date.
- No interest will be paid on any overpayment of tax if the Tax Department refunds or credits the overpayment of tax attributable to a loss year within three months from the **latest** of the following:
 - the date Form CT-8 or CT-9 is filed, or
 - the original due date, extended due date or late filing date (whichever is the latest) of the franchise tax return for the loss year in which the overpayment occurred, or
 - the filing date of an amended franchise tax return for the loss year in which the overpayment occurred.

Claims for Credit or Refund Based on Other Than Net Operating Loss Carryback

New York State Forms Required

You must file a separate Form CT-8 for each tax period for which a credit or refund is claimed.

Federal Forms Required

If there has been a change in the corresponding federal taxable income, you must provide a copy of the claim filed with the IRS (usually Form 1120X). If a refund resulted from the federal change, submit a copy of the documentation (federal Forms 4188, 8488, or 4428B, *Statement of Adjustment to Your Account*) sent to the corporation by the IRS indicating approval of the federal refund.

If the corporation filed as part of a consolidated group for federal tax but on a separate basis for state tax, submit a statement indicating the changes that would have been made had the corporation filed on a separate basis for federal tax.

Corporations filing under Subchapter S of Chapter 1 of the IRC must submit a copy of the amended Form 1120S filed.

Statutory Limitation for Filing a Claim

A claim must be filed within three years from the time the original return was filed or two years from the time the tax was paid, whichever is later, or if no report was filed, within two years from the time the tax was paid. If the claim is not filed within the three-year period but is filed within the two-year period, the amount of credit or refund cannot

exceed the portion of the tax paid during the two years immediately preceding the filing of the claim.

Payment of Interest

No interest will be paid on any overpayment of tax which is refunded or credited within three months from the **latest** of the following dates:

- the date a claim for credit or refund (Form CT-8 or CT-9) is filed, or
- the original due date, extended due date or late filing date (whichever is the latest) of the franchise tax return for the tax year in which the overpayment occurred, or
- the filing date of an amended franchise tax return for the tax year in which the overpayment occurred.

Miscellaneous Information

If you have filed a timely petition for the redetermination of a deficiency, you cannot file a separate claim for credit or refund for that year unless you have received notice of a change or correction that has been made to federal income.

Business Activity Code Number

Enter the business activity code number from your federal return. Please check the appropriate box for the type of code you are using. Check the box marked *NAICS* if you use the North American Industry Classification System. If you have entered a Principal Industrial Activity (PIA) or Standard Industrial Classification (SIC) code, check the box marked *Other*.

Need Help?

Telephone Assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday. **For business tax information and forms**, call the Business Tax Information Center at 1 800 972-1233. **For general information**, call toll free 1 800 225-5829. **To order forms and publications**, call toll free 1 800 462-8100. **From areas outside the U.S. and outside Canada**, call (518) 485-6800.

Fax-on-Demand Forms Ordering System - Most forms are available by fax 24 hours a day, 7 days a week. Call toll free from the U.S. and Canada 1 800 748-3676. You must use a Touch Tone phone to order by fax. A fax code is used to identify each form.

Internet Access - <http://www.tax.state.ny.us>

Access our website for forms, publications, and information.

Hotline for the Hearing and Speech Impaired - If you have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free from the U.S. and Canada 1 800 634-2110. Assistance is available from 8:30 a.m. to 4:15 p.m. (eastern time), Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

Persons with Disabilities - In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call the information numbers listed above.

Mailing Address - If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.