

**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

If your refund is based on:	File:
An audit by the Internal Revenue Service (IRS) that results in a refund	Form CT-3360, <i>Federal Changes to Corporate Taxable Income</i>
A net operating loss (NOL) carryback (see pages 1 through 3)	Form CT-9, <i>Claim for Tentative Refund Based upon Carryback of Net Operating Loss</i> , an amended return or Form CT-8. A claim for refund based on an NOL carryback is allowable only under Articles 9-A and 33.
An overpayment of money where there is no question of New York State Tax Law involved	The original franchise tax return indicating the amount of overpayment. If the amount is not indicated on the original return, submit a letter requesting the refund dated and signed by an authorized corporate officer or person.
Article 9 section 189 refunds	Form CT-189-WR, <i>Claim for Refund of Section 189 Tax and Tax Surcharges</i>
Any other refund claims	An amended return or Form CT-8

General information**To claim a credit or refund:**

- You may file **either** an amended return **or** Form CT-8; **do not** file both forms.
- **Do not** file an amended return or Form CT-8 if you filed Form CT-9.
- File a separate form (an amended return, Form CT-8, or CT-9) for each tax period for which you are claiming a credit or refund.
- Attach the required federal forms with each claim.
- If the refund is based on an NOL, attach a signed copy of your New York State franchise tax return for the loss year.
- Claims must be signed by an authorized person.
- **Do not** attach the claim to the back of your New York State franchise tax return; mail it separately.

Claim for credit or refund (except NOL carrybacks)**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, *Amended U.S. Corporation Income Tax Return*). If a refund resulted from the federal change, submit a copy of the documentation (federal *Statement of Adjustment to Your Account*) sent to the corporation by the IRS that indicates approval of the federal refund.

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

Corporations filing under Subchapter S of Chapter 1 of the Internal Revenue Code (IRC) must submit a copy of the amended Form 1120S that was filed.

When to file a claim for credit or refund

You may claim a credit or refund on either an amended return or Form CT-8 only after the corporation has filed its original return. Generally, a claim for credit or refund must be filed within three years of the time the original return was filed or within two years of the time the tax was paid, whichever is later; or, if no report was filed, within two years of 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

We will not pay interest on any overpayment of tax that we refund or credit to you within three months from the **latest** of the following dates:

- the date a claim for credit or refund (an amended return, 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.

Claims after petitions for redetermination of deficiency

If you have filed a 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.

Claim for credit or refund based on an NOL carryback or net capital loss carryback

When to file a claim for credit or refund based on an NOL or net capital loss carryback

You may claim a credit or refund on an amended return, Form CT-8, or CT-9 only after the corporation has filed its original return. Generally, a claim for credit or refund must be filed within three years of the due date (or extended due date) of the franchise tax return for the period in which the loss occurred or within 27 months of the date of the federal credit or refund.

Federal forms required

You must provide a copy of the claim filed with the IRS (usually federal Form 1139, *Corporation Application for Tentative Refund*) and a copy of the document (usually a federal *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 these federal forms are not available, send an affidavit signed by an authorized person 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 IRC, attach a statement showing how NOLs and 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 (NOLD) or operations loss deduction carryback allowed under Tax Law Article 33, section 1503(b)(4)

The New York State NOLD under Article 33 is presumably the same as the federal NOLD allowed by IRC section 172, or the operations loss deduction allowed by IRC section 810. 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.

These rules apply under Article 33:

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

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 an NOL or operations loss, you must file a request in writing 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 an election with the Tax Department by the due date or extended due date must carry the NOL back before the loss can be carried forward.
- An NOLD 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.

Amount of New York State NOLD carryback allowed under Tax Law Article 9-A, section 208.9(f)

Compute the New York State NOLD under Article 9-A as if the corporation had elected under IRC section 172 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 under Article 9-A:

- The NOLD may **not** include a loss sustained in any year the corporation was not subject to tax in New York State.
- You must adjust the federal losses allowed under IRC section 172 to reflect the additions and subtractions required by Tax Law Article 9-A, sections 208.9(a), 208.9(b), and 208.9(g).
- If you have elected to carry back an NOL for federal tax purposes, you may carry back a total of only \$10,000 of the New York State NOL to the preceding years. You may carry forward any portion of the \$10,000 New York State NOL carryback not used.
- If you have elected for federal tax purposes to relinquish the carryback of an NOL, you may **not** carry back an NOL for state tax, and you must submit a copy of your federal election with your loss year report.
- A New York S corporation may **not** include any NOL sustained during a year in which the corporation was a New York C corporation or in a New York S year beginning before 1990.
- A New York C corporation may **not** include any NOL sustained while it was a New York S corporation.
- The New York State NOLD for any particular year is limited to the federal NOLD for that year. (For the purposes of this limitation, a corporation that has elected to carry back up to \$10,000 of its NOL for New York State purposes should compute its federal NOLD as if it only carried back the same \$10,000. See items c and d above.)

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 an NOL, 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 an election with the Tax Department by the due date or extended due date must carry the first \$10,000 of the NOL back before the loss can be carried forward.

Carryback and carryforward time limits for both Articles 9-A and 33.

- For certain NOLs incurred in tax years ending in 2001 and 2002, the NOL or alternative net operating loss (ANOL) may be carried back five years instead of two or three years, unless the taxpayer elects for federal tax purposes to disregard the five-year carryback.
- For NOLs incurred in tax years beginning after August 5, 1997, the NOL or ANOL may be carried back two years (with an exception for certain disaster losses) and carried forward 20 years.
- For NOLs incurred in tax years beginning on or before August 5, 1997, the NOL or ANOL may be carried back three years and carried forward 15 years.

NOLD for aviation corporations

The NOLDs for aviation corporations are similar to the NOLDs for all other Article 9-A corporations, with two exceptions. These two exceptions pertain to NOLDs for the years 1985 through 1988, and NOLDs for a tax year that includes any month in 1989. For more information see TSB-M-89(10)C *Taxability of Aviation Corporations under Article 9-A*, or TSB-M-89(13)C, *1989 Legislation New York State Net Operating Losses*.

Alternative net operating loss deduction (ANOLD) (Article 9-A)

For any tax year beginning on or after January 1, 1994, you may carry back an ANOLD to reduce your minimum taxable income (MTI) base. In determining the 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 NOLs 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 in item d below, 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 section 172(b)(2), and must be exhausted in the earliest available carry year except as provided in items e and f below. (See *Amount of New York State NOLD*

carryback allowed under Tax Law Article 9-A, section 208.9(f), on page 2.)

- e. The carryback of each ANOL is limited to \$10,000, as is the case with the NOL.
- f. The federal election to forego carryback of an NOL applies to the related New York ANOL.
- g. ANOLs must be applied against 90% of MTI (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 items h through j below.
- h. In applying the carry-out rules in item d above, 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 MTI (without regard to the ANOLD) and thereafter to 90% of MTI (without regard to the ANOLD).
- j. The ANOLD for any particular year is limited to the federal NOLD for that year. (For the purposes of this limitation, a corporation that has elected to carry back up to \$10,000 of its ANOL for New York State purposes should compute its federal regular NOLD as if it only carried back the same \$10,000. See items c, d, and e above.)

For more information, see TSB-M-94(5)C, *Computation of Minimum Taxable Income and Minimum Tax Credit*.

Payment of interest on NOL or net capital loss carryback

In general, interest on an overpayment of tax resulting from an NOL or net capital loss carryback begins 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 12 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, we will not pay interest if we pay the refund within three months of that due date or extended due date.
- We will not pay interest on any overpayment of tax if we refund or credit the overpayment of tax attributable to a loss year within three months from the **latest** of the following:
 - the date a claim for credit or refund (an amended return, 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.

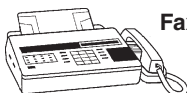
Private delivery services

If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to file your return and pay tax. However, if, at a later date, you need to establish the date you filed your return or paid your tax, you cannot use the date recorded by a private delivery service **unless** you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services*. See *Need help?* see below for instructions for information on ordering forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your return, contact that private delivery service for instructions on how to obtain written proof of the date your return was given to the delivery service for delivery.

Need help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: Forms are
available 24 hours a day,
7 days a week. 1 800 748-3676



Telephone assistance is available from 8:00 A.M. to
5:00 P.M. (eastern time), Monday through Friday.
To order forms and publications: 1 800 462-8100
Business Tax Information Center: 1 800 972-1233
From areas outside the U.S. and
outside Canada: (518) 485-6800



Hotline for the hearing and speech impaired:

If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. 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 1 800 972-1233.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.