

Net Operating Loss Carryback

As a result of the State Tax Commission decision in the matter of United Artist Inc. (see TSB-H-80(8)C), Corporation Franchise Tax audit policy concerning the statute of limitations for filing a claim for credit or refund attributable to a net operating loss carryback has been revised.

The new audit policy states that a claim for credit or refund based upon a net operating loss carryback will be considered to be filed within the statutory period if the claim is filed within three years of the due date of the loss year report, including any extensions* of time for filing the loss year report.

The old audit policy stated that the granting of an application for an automatic extension* and/or additional extensions* for filing the loss year report did not extend the statute of limitation for filing a claim for credit or refund attributable to a net operating loss carryback.

The new audit policy shall take effect immediately and shall apply to all taxable periods open by statute.

When reading section 8-2.4(a)(1) of the regulations pertaining to business corporations taxed under Article 9-A of the Tax Law, the phrase "time the return was due for the taxable year of the loss" shall refer to the original due date plus any extension of time for filing the loss year report.

*A valid automatic extension and/or an additional extension are described in Section 211.1 of Article 9-A of the Tax Law and Section 6-4.4 of the regulations pertaining to business corporations taxed under Article 9-A. Insurance Corporations should refer to Section 1515(c) of Article 33 of the Tax Law.