

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

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Corporation Tax
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1981 Legislation

Net Capital Loss Carryback

Chapter 548 of Laws of 1981 made technical corrections to the Tax Law concerning net capital loss carrybacks.

It conforms the New York State rules governing the determination of the date when interest begins to be payable on an overpayment based on a net capital loss carryback to the federal income tax rules. This will apply to the franchise tax on business, banking, and insurance corporations imposed by Article 9-A, 32 and 33 of the Tax Law, respectively. The bill also provides for a cutoff of interest where the taxpayer fails to notify the Tax Commission within a certain time of the granting of the application for a federal net capital loss carryback adjustment or, in the case of Subchapter S corporations, to file a refund application within a certain time.

Section 1088(d) of Article 27 of the Tax Law was amended to provide that if an overpayment of tax by a corporation results from a net capital loss carryback, then the interest due on that overpayment is payable from the first day following the close of the taxable year in which the capital loss arose. In addition, another change to this section provides that for taxable years ending on or after December 31, 1981, a Subchapter S corporation's interest computation will be limited to one year and 180 days from the close of the taxable year in which the capital loss arose if the taxpayer does not file a refund claim within this specified period.

Section 211.3 of Article 9-A, Section 1462(e) of Article 32 and Section 1515(c) of Article 33 of the Tax Law have been amended to provide that the allowance of a federal net capital loss carryback adjustment shall be treated as a final federal determination. Therefore, if a taxpayer fails to notify the Tax Commission of the granting of the federal net capital loss carryback adjustment within 90 days of its issuance, then the interest on the overpayment resulting from the net capital loss carryback is cutoff with the expiration of that 90 days in accordance with Section 1087(c) of Article 27.

Section 1083(c)(4) of Article 27 of the Tax Law was amended to provide that a deficiency attributable to the carryback of a capital loss may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

Section 1087(d) of Article 27 of the Tax Law provides that a claim for a net operating loss carryback or a capital loss carryback must be filed within 3 years from the due date of the return, including extensions, of the taxable year in which the loss arose or as otherwise provided for in this section. This section was also amended to provide that no change can be made in the allocation percentage of the taxable year to which the capital loss is being carried back to, if the regular assessment time period for the taxable year has expired.

Section 1084(f) of Article 27 of the Tax Law was amended to provide that if the amount of tax under Article 9-A for any taxable year is reduced by reason of a carryback of a capital loss, then such reduction in tax shall not effect the computation of interest on an underpayment of tax for the period ending with the last day of the taxable year in which the capital loss arises.