

# Instructions for Form NYC-2.3



## Prior Net Operating Loss Conversion (PNOLC) Subtraction

2016

All citations are to New York City Administrative Code sections unless specifically noted otherwise.

### GENERAL INFORMATION

Form NYC-2.3 is used by a taxpayer subject to tax under Subchapter 3-A of Chapter 6 of Title 11 of the Administrative Code to compute the prior net operating loss conversion (PNOLC) subtraction pool, and subtraction amounts, allowed in the computation of the business income base by §11-654.1(2)(a) for tax years beginning on and after January 1, 2015. Form NYC-2.3 must be filed, with all schedules completed, for every tax year that you carry a PNOLC subtraction balance, even if no such subtraction can be applied in that tax year, so that carryforward amounts are properly accounted for. Failure to file Form NYC-2.3 for any tax year for which you carry a balance of PNOLC subtraction may result in a delay in receiving such benefits. Combined groups need to file only one Form NYC-2.3 each year, computed on a combined group basis, for their group.

Unabsorbed net operating losses that were incurred for tax years beginning before January 1, 2015 are converted to a PNOLC subtraction pool to be applied, with certain limitations, as a PNOLC subtraction against the apportioned business income base. You may claim one-tenth of the pool, plus the amount of any prior tax period unused allotments, in each of the first ten tax periods following the base year. After that, you may continue to claim any unused amount, but for no longer than twenty tax periods following the base year. Alternatively, you may elect to use up to one-half of the pool in each of the tax years that begins on or after January 1, 2015, and before January 1, 2017; if the pool is not exhausted at the end of such period, the remainder of the pool is forfeited.

If an entity leaves – or joins – a combined group it takes – or brings – its own PNOLC subtraction pool, and its share of any unused PNOLC subtraction carry forward with it. An entity's PNOLC subtraction pool and its PNOLC subtraction allotment generally get computed only once, and are fixed amounts as of the last day of the entity's **base year**. If an entity filed as a member of a combined group for the base year, the member's PNOLC subtraction pool will represent that member's share of the group's PNOLC subtraction pool.

The PNOLC subtraction is applied against the business income base before the net operating loss deduction (NOLD).

The PNOLC subtraction 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 group, the PNOLC subtraction is limited in any tax year to the amount required to reduce the tax on the allocated combined business income base to the higher of the combined capital base tax or the fixed dollar minimum tax of the designated agent.

#### **Definitions**

*Base year* means the last tax year beginning on or after January 1, 2014, and before January 1, 2015. Therefore, the 1st tax year after the base year for a taxpayer generally will be the 1st tax period for which the taxpayer files a return under the corporate tax reform rules.

*Unabsorbed net operating loss* (UNOL) means the unabsorbed portion of NOL as calculated under §11-602.8(f) or §11-641(k-1) as such sections were in effect on December 31, 2014, that was not deductible in previous tax years (including the base year) and was eligible for carry-

over on the last day of the base year, subject to the limitations for deduction under such sections, and including any NOL sustained by the taxpayer during the base year. It is used for Schedule A, Part 1, line 1, and Schedule A, Part 2, column D. If the return filed for the base year was a combined return, all combined group members of that base year combined return must determine their own individual share of that base year combined group's UNOL as of the last day of that combined group's base year. The UNOL of an entity is a fixed amount as of the last day of the last tax year beginning on or after January 1, 2014 and before January 1, 2015. For your first tax period that begins on or after January 1, 2015, you must attach a statement detailing how the UNOL was computed (if filing a combined return, the statement must detail the UNOL computation for each member of the combined group).

*Base year BAP* means the taxpayer's business allocation percentage (BAP) as calculated under §11-604.3(a) for the base year, or the taxpayer's allocation percentage as calculated under §11-642 for purposes of calculating ENI for the base year, as such sections were in effect on December 31, 2014. It is used for Schedule A, Part 1, line 2, and line 2 of the worksheet for Schedule A, Part 2, column E.

*Base year tax rate* means the taxpayer's ENI base tax rate for the base year as calculated under §11-604.1(a) or §11-643.5(a), as such provisions were in effect on December 31, 2014. **The base year tax rate must be either 8.85% or 9%. If you had filed a Bank Tax return (Form NYC-1 or Form NYC-1A) for the 2014 tax year, the base year tax rate is 9%. If you had filed a General Corporation Tax return (Form NYC-3L, Form NYC-3A, Form NYC-4S or Form NYC-4S EZ) for the 2014 tax year, the base year tax rate is 8.85%.** It is the ENI base tax rate in the base year that is used, regardless of what base the taxpayer pays tax on in the base year. It is used for Schedule A, Part 1, line 3, and line 3 of the worksheet for Schedule A, Part 2, column E.

*Current tax period* means the tax period for which you are filing this form NYC-2.3.

*Financial Corporation* means a corporation, or, if the corporation is included in a combined group, a combined group, as defined in Administrative Code §11-654(1)(e)(1)(i).

### SPECIFIC INSTRUCTIONS

When filing a combined return, enter the legal name and EIN of the group's designated agent. In all cases, enter loss amounts (UNOL, PNOLC) as positives in order to ensure proper computation.

**Line A – 50% election:** In lieu of the one-tenth per tax period PNOLC subtraction, you may make a revocable election to utilize your PNOLC subtraction pool by claiming not more than 50% of your pool in each of the tax years that begins on or after January 1, 2015, and before January 1, 2017. If the pool is not exhausted at the end of such period, the remainder of the pool is forfeited. Thus, no carryforward of unused PNOLC subtraction is allowed to a tax year that begins on or after January 1, 2017 under this election. The election must be made on the first return for the first tax year that begins on or after January 1, 2015, and before January 1, 2016, by the due date for such return, determined with regard to valid extensions. The election is made by marking an **X** in the box on line A. When filing a combined return, the designated agent must also mark an **X** in the applicable box on line J of Form NYC-2-A, while each other member of the combined group must also mark an **X** in the applicable box on line 13 of its Form NYC-2-A/BC. The election applies to **all** members of a combined group. If an entity makes such election (or is included in a combined group which makes

such election) for the 1st tax period following its base year, and then, before its PNOLC subtraction pool is exhausted, joins a combined group that did not make the 50% election, that entity (or combined group) that made the 50% election for the 1st tax period following its base year must continue to use the 50% election methodology. Alternatively, that entity (or combined group) has the option of amending the tax return filed for the 1st tax period following its base year to revoke the election and use the tax period allotment chosen by the combined group the entity is joining; the entity must also then amend any intervening returns.

**Line B** – Enter the total number of members in the combined group in the current tax period, including the designated agent, all taxpayer members, and all nontaxpayer members in the group.

**SCHEDULE A**  
*PNOLC subtraction pool detail and tax period allotment*

Use Schedule A to calculate your PNOLC subtraction pool. If, after computing its tax liability for its base year, an entity has no UNOL, or its individual share of its base year combined group’s UNOL is zero, the tax value of that entity’s UNOL is zero, and the PNOLC subtraction pool for that entity is zero.

Do **not** complete Schedule A, Part 1 (skip lines 1 through 5), and proceed to Schedule A, Part 2, when:

- a) The *current tax period* is the **first** tax period **following** the **base year** **and** you are filing Form NYC-2-A and your combined group has **changed** from that which filed in the **base year**, **or**
- b) The *current tax period* is **not** the **first** tax period **following** the **base year**.

Schedule A, **Part 1**: Complete **only** when the current tax period is the **first** tax period **following** the **base year** **and**:

- a) You are filing Form NYC-2 for such *current tax period*, or
- b) You are filing Form NYC-2-A for such *current tax period* and the same combined group filed Form NYC-3-A or Form NYC-1-A in the base year.

**Line 5 - Financial Corporations as defined in Administrative Code §11-654(1)(e)(1)(i) should use 9.0%. All other corporations should use 8.85%.**

A NYC-2 filer for such *current tax period* uses Table 1 to complete lines 1 through 5. A NYC-2-A filer for such *current tax period* whose **same** combined group filed a combined return in the base year uses Table 2 to complete lines 1 through 5.

<b>Table 1: PNOLC subtraction pool computation when you are filing Form NYC-2 for the <i>current tax period</i></b>		
<b>Line</b>	<b>Separate filer in base year</b>	<b>Combined group member in base year</b>
1) UNOL	Enter your UNOL. Also, enter in Schedule A, Part 2, column D, row A.	Enter your <b>individual share</b> of your base year combined group’s UNOL. Also, enter in Schedule A, Part 2, column D, row A.
2) Base year BAP	Enter the BAP reported on your base year Form NYC-3L or Form NYC-1.	Enter the combined BAP reported on your base year Form NYC-3-A or Form NYC-1-A.
3) Base year tax rate	Enter your base year tax rate.	Enter your base year combined group’s base year tax rate.
4) Tax value of UNOL	Multiply line 1 × line 2 × line 3.	
5) PNOLC subtraction pool	Line 4 divided by 8.85% (.0885) or 9.0% (.09) if a financial corporation. Also, enter in Schedule A, Part 2, column E, row A.	

<b>Table 2: PNOLC subtraction pool computation when you are filing Form NYC-2-A for the current tax period and the same combined group filed Form NYC-3-A or Form NYC-1-A in the base year</b>	
<b>Line</b>	
1) UNOL	Enter your base year combined group’s UNOL.
2) Base year BAP	Enter the combined BAP reported on your base year Form NYC-3-A or Form NYC-1-A.
3) Base year tax rate	Enter your base year combined group’s base year tax rate.
4) Tax value of UNOL	Multiply line 1 × line 2 × line 3.
5) PNOLC subtraction pool	Line 4 divided by 8.85% (.0885) or 9.0% (.09) if a financial corp.

Schedule A, **Part 2** – All filers must complete Part 2 in its entirety. If any entity or combined member did not have a UNOL as of the last day of its base year, enter 0 for that entity or combined member in columns D, E, G, and H. If more space is needed, attach additional sheets providing the information in the same format.

**Column A:** NYC-2 filers: enter your name and EIN in row A.

NYC-2-A filers: enter the name and EIN of each member of the com-

combined group, including the designated agent and any non-taxpayers. The designated agent completes row A.

**Column B:** NYC-2 filers: enter the tax period ending date of your base year in row A.

**NYC-2-A filers:** enter, for each member of the combined group, the tax period ending date of **that** member’s **base year**.

**Column C:** For each entity listed, enter the total number of tax periods, including any short periods, that have ensued for that entity since that entity’s base year. Include the current tax period in the count. Do not enter a number higher than “11”.

**Example:** Assume the current tax period is calendar year 2018 for Company C. Company C’s base year was calendar year 2014. If Company C filed calendar year returns for 2015, 2016, and 2017, then Company C’s tax period count is 4, since there have been 4 tax periods that followed Company C’s base year, including the current tax period. If, on the other hand, Company C filed two short period returns in 2016, then Company C’s tax period count would be 5, including the *current tax period*.

**Column D: NYC-2 filers:** If the current tax period is the first tax period following the base year, this column should already be completed as a result of using Table 1. In all tax periods subsequent to the 1st tax period after the base year, enter the UNOL from Form NYC-2.3, column D filed for the previous tax year by you or on your behalf by a combined group.

**NYC-2-A filers:** For each member of the combined group listed, enter on the applicable row that member’s UNOL, as follows:

- a) If the member filed Form NYC-3L or NYC-1 in its base year, then enter its UNOL, or
- b) If the member filed as a member of a combined group in its base year, then enter its **individual share** of its base year combined group’s UNOL.

If, on the last day of its base year, an entity has no UNOL, or its individual share of its base year combined group’s UNOL is zero, enter 0 for that entity in columns D, E, G, and H.

The UNOL entered in column D for an entity will be the same for every tax period following that entity’s base year.

When filing a combined report, the designated agent must also report this amount on line H of Form NYC-2-A, while each member of the group must also report this amount on line 11 of its Form NYC-2-A/BC.

**Column E: NYC-2 filers:** If the current tax period is the 1st tax period following the base year, this column should already be completed as a result of using Table 1. In all tax periods subsequent to the 1st tax period after the base year, enter the UNOL from your row of Form NYC-2.3, column E filed for the previous tax year by you or on your behalf by a combined group.

**NYC-2-A filers:** For each member of the combined group listed, use the Column E Worksheet below to calculate the PNOLC subtraction pool for that member, and enter the line 5 result in the applicable row for that member in column E. To complete lines 2 and 3 of the Column E Worksheet, follow that line’s instruction in the applicable column shown below lines 1 through 5 of the worksheet. When filing a combined report, the designated agent must also report the line 5 amount on line G of Form NYC-2-A, while each other member of the group must also report this amount on line 10 of its Form NYC-2-A/BC.

The PNOLC subtraction pool of an entity is computed only once, on the Form NYC-2.3 for the tax year immediately succeeding the base year. Thus, once any entity has computed its PNOLC subtraction pool there is no longer the need to complete the worksheet. The PNOLC subtraction pool entered in this column for an entity will be the same for every tax year following the entity’s base year.

Attach a statement to Form NYC-2.3 showing the computation of this column for each member of the combined group.

Schedule A, Part 2, Column E - Entity worksheet for member of a combined group		
1. UNOL from the applicable row of Schedule A, Part 2, column D for that member .....1 _____		
2. Base year BAP .....2 _____		
3. Base year tax rate.....3 _____		
4. Tax value of UNOL (multiply line 1 by line 2 by line 3).....4 _____		
5. PNOLC subtraction pool (divide line 4 by 8.85% (.0885) or 9.0%(.09) if a financial corporation).....5 _____		
Line	Separate filer in base year	Combined group member in base year
2) Base year BAP	Enter the BAP reported on your base year Form NYC-3L or Form NYC-1.	Enter the combined BAP reported on your base year Form NYC-3-A or Form NYC-1-A.
3) Base year tax rate	Enter your base year tax rate.	Enter your base year combined group’s base year tax rate.

**Column F:** For each entity listed, enter that entity’s applicable PNOLC subtraction allotment %, which is generally 10%, unless an entity has made the 50% PNOLC subtraction election (enter 50%); see the instructions for line A. When filing a combined return, the designated agent must also mark an X in the box for that applicable percentage on Form NYC-2-A, line J, while each other combined group member must also mark an X in the box for the applicable % on line 13 of its Form NYC-2-A/BC.

**Column G:** For each entity listed, if any of the following conditions are met, enter 0:

- the PNOLC subtraction allotment percentage in column F is 10%, and the tax period count in column C is greater than 10;

- the PNOLC subtraction allotment percentage in column F is 50%, and the tax period count in column C is greater than 2;

For each entity listed, if none of the above conditions are met, enter the product of the amount in column E and the percentage in column F. When filing a combined return, the designated agent must also report the amount on Form NYC-2-A, line I, while each member of the group must report this amount on its Form NYC-2-A/BC, line 12.

**Column H:** For each entity listed, enter the result of subtracting from the amount in column E the product of the number in column C and the amount in column G.

**SCHEDULE B**

**Overall limitation on PNOLC subtraction**

All filers must complete Schedule B.

**SCHEDULE C**

**Computation of PNOLC subtraction used, and unused amount carried forward**

Unless the 50% election was made, the PNOLC subtraction for a tax period is one-tenth of the filer’s PNOLC subtraction pool, plus any amount of unused PNOLC subtraction carried forward from the preceding period.

For a combined group, unless the 50% election was made, the PNOLC subtraction for a tax period is the sum of adding the one-tenth allotment of all combined members to the amount of unused PNOLC subtraction carryforward of all combined members.

Any amount of unused PNOLC subtraction may be carried forward to subsequent tax years until the PNOLC subtraction pool is exhausted, but for no longer than twenty tax years, or the tax year beginning on or after

January 1, 2035 but before January 1, 2036, whichever comes first. Any such unused amount carried forward is not subject to the one-tenth limitation. However, if the 50% election is made, no unused PNOLC subtraction may be carried forward to a tax year that begins on or after January 1, 2017.

**Line 2** – Follow the appropriate instructions below based on whether you are filing Form NYC-2, or Form NYC-2-A, for the *current tax period*.

*Current tax period* **Form NYC-2** filers, follow instruction A or B, whichever applies.

- A) When the current tax period is the **1st** tax period **after** your base year: Enter 0 on line 2.
- B) When the current tax period is a tax period **subsequent** to the 1st tax period **after** your base year: The amount to be entered on line 2 depends on how you filed for the tax period **immediately preceding** the *current tax period*. Follow the instructions in the applicable column in Table 3 below to determine the amount to enter on line 2.

<b>Table 3: Schedule C, Line 2 for Form NYC-2 filer in the <i>current tax period</i></b>	
<b>Form NYC-2 filer in immediately preceding tax</b>	<b>Member of combined group in immediately preceding tax period</b>
Enter on line 2 the amount from Schedule C, line 5 of your immediately preceding tax period’s Form NYC-2.3.	Enter on line 2 <b>your</b> share of the amount from Schedule C, line 5 of your former combined group’s immediately preceding tax period’s Form NYC-2.3.

Current tax period Form NYC-2-A filers, follow instruction C, D, or E, whichever applies.

- C) When the current tax period is the 1st tax period **after** your base year **and either**, 1) the **same** combined group filed on a combined return in the base year, **or** 2) no member of the current tax period combined group has a tax period count of greater than 1 on Schedule A, Part 2, column C: Enter 0 on line 2.

**Note:** When the current tax period is the 1st tax period **after** your base year and the group has **changed** since the base year, and any member has a tax period count of greater than 1, then follow instruction E as you may have unused PNOLC subtraction carried forward from a prior short tax period of a member with a tax period count of greater than 1.

- D) When the current tax period is a tax period **subsequent** to the 1st tax period **after** your base year **and the same** combined group filed on a combined return in the immediately preceding tax period: Enter the amount from Schedule C, line 5 of the immediately preceding tax period’s Form NYC-2.3.

- E) When the current tax period is a tax period **subsequent** to the 1st tax period **after** your base period and the members of the combined group have **changed** since the immediately preceding tax period, **or** the current tax period is the 1st tax period **after** your base period and at least one member of the current tax period combined group has a tax period count of greater than 1 on Schedule A, Part 2, column C, the amount to be entered on line 2 is determined by following Steps 1 and 2 below.

**Step 1.** For **each** member of the *current tax period* combined group that filed Form NYC-2 for the tax period **immediately preceding** the *current tax period*: Add together the amounts from Schedule C, line 5 of the immediately preceding tax periods Form NYC-2.3 filed by each such member. The **sum** is the Step 1 result.

**Step 2.** For **each** member of the *current tax period* combined group that filed as part of a combined group in the tax period **immediately preceding** the *current tax period*, determine such member’s share of the amount from Schedule C, line 5 of the immediately preceding tax period’s Form NYC-2.3 that such member was included on. Add together the amounts so obtained. The sum is the Step 2 result.

**Step 3.** Add together the results of Steps 1 and 2 and enter the resulting sum on line 2.

**Line 4** – Enter the lesser of line 3 or Schedule B, line 5. However, the amount entered on this line for each entity using the 50% election is limited to 50% of each such entity’s PNOLC subtraction pool as reported on its respective row on Schedule A, Part 2, column E; see limitation described in §11-654.1(2)(b)(4). Also enter this amount on Form NYC-2 or NYC-2-A, Schedule B, line 33.

**Note:** PNOLC subtraction amounts included on line 3 that are from entities using the 50% election should be utilized first, subject to applicable limitation, before PNOLC subtraction amounts included on line 3 that are from entities not using the 50% election.

**Line 5** – Subtract line 4 from line 3. Reduce this amount by the amount of any unused PNOLC subtraction that cannot be carried forward due to limitations and enter the result.

**Note:** For any entity using the 50% election, any unused PNOLC subtraction may not be carried forward to a tax year that begins on or after January 1, 2017; for all other entities, any unused PNOLC subtraction may not be carried forward for longer than 20 tax years, or the tax year beginning on or after January 1, 2035, but before January 1, 2036, whichever comes first. (§§11-654.1(2)(b)(4) and 11-654.1(2)(d)).