

Instructions for Form NYC-2.3



Prior Net Operating Loss Conversion (PNOLC) Subtraction

2019

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 or after January 1, 2015. Part 2 of Schedule A provides the PNOLC subtraction pool detail and tax period allotment of the taxpayer or, in the instance of a combined group, each member of a combined group. Schedule B calculates the overall limitation of the PNOLC subtraction for the current period. Schedule C computes the amount of PNOLC subtraction used and the amount to be carried forward to the next tax period. Schedules D and E are to be completed by NYC-2A filers when there have been changes to taxpayer's combined group.

Note: 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. A combined group completes only one Form NYC-2.3 each year for the entire group.

The unabsorbed net operating loss (UNOL) and PNOLC subtraction pool of a taxpayer, or of a corporation that was a member of a combined group, that was subject to tax under either Subchapter 2 (the General Corporation Tax) or Part 4 of Subchapter 3 (the Banking Corporation Tax) in the base year (see Definitions) are computed only once, on the **first** Form NYC-2.3 filed **after** the base year. The UNOL and PNOLC subtraction pool will be the same for every tax year following that taxpayer's base year.

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 2015 tax year. Alternatively, on the first return for the first tax year that began on or after January 1, 2015 and before January 1, 2016, by the due date of such return determined with extensions, you could have made a revocable election to utilize your PNOLC subtraction pool by claiming not more than 50% of your PNOLC subtraction pool ("50% election") in each of the tax years that begins on or after January 1, 2015 and before January 1, 2017. If the pool was 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.

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 carryover 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. 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 base year. 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).

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.

50% election: In lieu of the one-tenth per tax period PNOLC allotment method, a revocable election to utilize the PNOLC subtraction pool by claiming not more than 50% of such pool in each of the tax years that begins on or after January 1, 2015, and before January 1, 2017, may have been made. 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 have been 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 applies to all members of a combined group. If an entity made such election (or is included in a combined group which made such election), and then, before its PNOLC subtraction pool is exhausted, joins a combined group that did not make the 50% election, that entity must continue to use the 50% election methodology. Alternatively, that entity (or that entity's former combined group, when applicable) has the option of amending the tax return filed for the 1st tax period following its base year to revoke the election and to, instead, use the one-tenth per tax period PNOLC allotment method; the entity (or that entity's former combined group, when applicable) must also then amend any intervening returns.

Line A – 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

All filers **must** complete Schedule A 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-2A filers: enter the name and EIN of each member of the combined group, including the designated agent and any non-taxpayers. The designated agent completes row A. All corporations within the group must continue to be reported on their own row, even after a merger or liquidation.

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

NYC-2A 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 2019 for Company C. Company C's base year was calendar year 2014. If Company C filed calendar year returns for 2015 through 2018, then Company C's tax period count is 5, since there have been 5 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 6, including the *current tax period*.

Column D: NYC-2 filers: Enter the UNOL from Form NYC-2.3, column D filed for the previous tax period by you or on your behalf by a combined group.

NYC-2A 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. Therefore, enter the UNOL from that member's row of Form NYC-2.3, column D filed for the previous tax period by the member or on the member's behalf by a combined group.

When filing a combined report, the designated agent must also report this amount on Schedule A, line 35 of Form NYC-2A, while each member of the group must also report this amount on Schedule A, line 6 of its Form NYC-2-A/BC.

Column E: NYC-2 filers: Enter the PNOLC subtraction pool from your row of Form NYC-2.3, column E filed for the previous tax period by you or on your behalf by a combined group.

NYC-2A filers: For each member of the combined group listed, enter the PNOLC subtraction pool from that member's row of Form NYC-2.3, column E filed for the previous tax period by the member, or on the member's behalf by a combined group. When filing a combined report, the designated agent must also report the amount on Schedule A, line 34 of Form NYC-2-A, while each other member of the group must also report this amount on Schedule A, line 5 of its Form NYC-2-A/BC.

The PNOLC subtraction pool amount entered in this column for an entity will be the same for every tax year following the entity's base year. Therefore, the PNOLC subtraction pool amount entered in column E for an entity will continue to be the amount to enter in column E on each subsequent tax period's Form NYC-2.3 filed.

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

Column F: For each entity listed, enter that entity's applicable PNOLC subtraction allotment %, which is generally 10%.

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-2A, Schedule A, line 36, while each member of the group must report this amount on its Form NYC-2A/BC, Schedule A, line 7.

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. If the amount is less than zero, enter **0**.

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

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) Member of combined group in immediately preceding tax period:

Enter on line 2 your share of the amount from Schedule C, line 5 of your former combined group's immediately preceding tax period's Form NYC-2.3.

B) Form NYC-2 filer in immediately preceding tax period:

Enter on line 2 the amount from Schedule C, line 5 of your immediately preceding tax period's Form NYC-2.3.

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

A) When 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.

B) When the members of the combined group have **changed** since the **immediately preceding tax period**, the amount to be entered on line 2 is determined by following Steps 1, 2 and 3 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 3 – Add lines 1 and 2 and subtract amount, if any, on line 2a. Enter result.

Line 4 – Enter the lesser of line 3 or Schedule B, line 5. Also enter the line 4 amount on Form NYC-2 or NYC-2A, Schedule B, line 33. Do not enter less than zero.

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: Any unused PNOLC subtraction may not be carried forward for longer than 20 tax years, following the 2015 tax year or to any tax year beginning on or after January 1, 2036, whichever comes first. (§§11-654.1(2)(b)(4) and 11-654.1(2)(d)).