

NEW YORK CITY TAX APPEALS TRIBUNAL

-----X  
:  
In the Matter of : DECISION  
PLASMANET, INC. : TAT (E) 12-17 (GC)  
Petitioner. :  
:  
-----X

Plasmanet, Inc. (Petitioner) filed an exception to a Determination of an Administrative Law Judge (ALJ) dated September 29, 2015 (ALJ Determination) that sustained, in part, a revised Notice of Determination issued to Petitioner (Final NOD) by the New York City Department of Finance (Department). The Final NOD asserted New York City General Corporation Tax (GCT) deficiencies for the calendar years ended December 31, 2008 and December 31, 2009 (Tax Years) as described below.

The Commissioner of Finance of the City of New York (Respondent) appeared by Amy H. Bassett, Esq., Senior Counsel of the New York City Law Department. Petitioner appeared by Steven R. Schaeffer, CPA, of Cohen & Schaeffer, P.C., Certified Public Accountants.

Petitioner is a Delaware corporation and conducts its business in New York City.<sup>1</sup> Petitioner owns and operates “freelotto.com” and “plasmanetic.com” and is an internet-based sweepstakes provider. Petitioner also offers clinical trial recruitment, advertising and marketing services.

Petitioner timely filed GCT returns for the Tax Years. On its GCT return for the 2008 Tax Year, Petitioner claimed a net operating loss deduction equal to the net operating loss deduction claimed on its federal income tax return for that Tax Year. As a

---

<sup>1</sup> Except as otherwise noted, the ALJ’s Findings of Fact, although paraphrased and summarized herein, generally are adopted for purposes of this Decision. Certain Findings of Fact not necessary to this Decision have not been restated and can be found in the ALJ Determination.

result, Petitioner paid GCT of \$23,087.44 calculated on the basis of allocated capital.<sup>2</sup> On its GCT return for the 2009 Tax Year, Petitioner claimed a net operating loss deduction equal to the net operating loss deduction claimed on its federal income tax return for that Tax Year. As a result, Petitioner paid GCT of \$19,994.72 calculated on the basis of allocated capital.

Following a field audit, the Department disallowed portions of the net operating loss deductions claimed by Petitioner on its GCT returns for the Tax Years as described below. As a result, the Department issued a Notice of Determination, dated August 18, 2011, (Original NOD) asserting GCT deficiencies for the Tax Years totaling \$52,872.54, consisting of a deficiency for the 2008 Tax Year in the principal amount of \$8,833.01, interest of \$1,551.49 and penalty of \$883.30, and a deficiency for the 2009 Tax Year in the principal amount of \$34,939.89, interest of \$3,170.86 and penalty of \$3,493.99. The penalties were imposed under Administrative Code §11-676.11 for substantial understatements of tax liability.

Prior to the issuance of the ALJ Determination, Respondent submitted several revised calculations of the asserted deficiencies. On August 6, 2014, Respondent submitted to the ALJ the Final NOD, which asserted a deficiency in the aggregate amount of \$80,263.20, consisting of a principal amount of \$583.39 and interest of \$264.79 for the 2008 Tax Year and a principal amount of \$54,810.17, interest of \$19,123.83 and a penalty for a substantial understatement of tax liability in the amount of \$5,481.02 for the 2009 Tax Year. The ALJ concluded that no penalty should be imposed and the Department did not take an exception to that portion of the ALJ Determination. Therefore, the penalty is no longer at issue in this case.

Briefly, on the Final NOD, the Department made the following adjustments to Petitioner's net operating loss deduction for GCT purposes for each Tax Year: (1) the Department allowed Petitioner to deduct only those GCT net operating losses arising in

---

<sup>2</sup> Under the law as in effect for the Tax Years, the GCT due was the highest of amounts calculated under three alternative bases or a minimum tax. (§11-604.1.E of the Administrative Code of the City of New York [Administrative Code].)

the same years as the federal net operating losses used to compute Petitioner's federal net operating loss deduction; (2) the Department limited the amount of the net operating loss deduction for GCT purposes to the amount of the federal net operating loss deduction; (3) the Department further limited the amount of the net operating loss deduction for GCT purposes to the amount of Petitioner's net income reported on its GCT return; and (4) for purposes of calculating the amount of available net operating loss carryovers for federal income tax and GCT purposes, the Department did not take into account Petitioner's charitable contributions for the 2006, 2007, 2008 or 2009 years.

Petitioner contends that in recalculating its allowable net operating loss deductions for the Tax Years, the Department improperly applied the "same source year rule" and the "aggregate rule" as described below. Petitioner also contends that the Department should have taken into account Petitioner's charitable contributions for the years 2006, 2007, 2008 and 2009 in calculating its federal and GCT net operating loss carryovers.

Respondent argues that under the "same source year rule" the net operating loss deduction for GCT purposes is limited to losses arising in the same year or years as the losses comprising the federal net operating loss deduction. Respondent further argues that the "same source year rule" is not inconsistent with the "aggregate rule", which provides that the total net operating loss deduction for GCT purposes is the aggregate of the available net operating loss carryovers to a given tax year subject to the limitations described below. Respondent also contends that Petitioner did not claim deductions for charitable contributions in the years 1999 through 2009 on its federal income tax or GCT returns and that the statute of limitations bars Petitioner from amending its returns to claim such deductions. Respondent asserts that, therefore, no charitable contributions should be taken into account in calculating Petitioner's federal net operating loss deductions or net operating loss deductions for GCT purposes for the Tax Years.

For the following reasons we affirm in part and modify in part the ALJ Determination.

For federal income tax purposes, a net operating loss is defined as the amount by which a corporate taxpayer's allowable deductions for a given tax year, with certain modifications, exceed that taxpayer's gross income for that year. (Internal Revenue Code [IRC] §172[c].) For federal income tax purposes, a corporation can carry a net operating loss forward 20 years or back two years to be deducted in computing federal taxable income for those years with certain limitations and adjustments. (IRC §172[b][1].) The aggregate amount of net operating losses carried forward or back and deducted for federal income tax purposes in a given tax year is referred to as the net operating loss deduction. (IRC §172[a].)

Under Administrative Code §11-602.8(f), the net operating loss deduction allowed for GCT purposes is the same as the federal net operating loss deduction allowed under IRC §172, with certain adjustments. However, for GCT purposes, the federal net operating loss deduction is computed as if the taxpayer elected to carry back no more than the first \$10,000 of net operating losses and to carry the balance forward. (Administrative Code §11-602.8[f][5].)

First we address Petitioner's contention that the "same source year rule" does not apply to restrict the net operating losses Petitioner can deduct for GCT purposes to those losses originating in the same tax years as the net operating losses Petitioner deducted for federal income tax purposes. The "same source year rule" is derived from the statutory language limiting the net operating loss deduction for GCT purposes to "the deduction for the taxable year under section one hundred seventy-two of the internal revenue code." (Administrative Code §11-602.8[f][3].) The same language appears in Tax Law §208.9(f)(3) governing the New York State Franchise Tax on Business Corporations (NYS BCT). The Department and the New York State Department of Taxation and Finance have interpreted that language to require conformity not only with the amount of the federal net operating loss deduction but also with the source years of the federal deduction. The courts have upheld that interpretation. The court in *Matter of Aetna Cas. and Sur. Co. v Tax Appeals Trib. of the State of New York*, 214 AD2d 238, 241 (3d Dept 1995) stated:

“Because the statute begins with the deduction claimed on the Federal return, the Department has taken the position--which we have implicitly upheld (*see, Matter of Eveready Ins. Co. v New York State Tax Commn.*, 129 AD2d 958, 959, *lv denied* 70 NY2d 604; *Matter of American Employers’ Ins. Co. v State Tax Commn.*, 114 AD2d 736, 737-738)--that it allows the deduction of only those losses that made up the Federal deduction, namely, those incurred in the same year(s).”<sup>3</sup>

This Tribunal also has upheld that interpretation in *Matter of Andal Corp. (Formerly National Kinney Corp.)*, 1995 WL 405575 (NYC Tax Appeals Trib. TAT[E]93-179[GC], June 30, 1995).

Petitioner contends that the 1989 amendment to Administrative Code §11-602.8(f), which limited the amount of the net operating loss that may be carried back to \$10,000, implicitly abolished the requirement that Petitioner use the same source years for both its federal and GCT net operating loss deduction computations. Petitioner argues that because it could carry back the full amount of its federal net operating loss for two years for federal income tax purposes but could not carry back the same net operating loss for GCT purposes, the federal and GCT net operating loss deductions will necessarily be based on different source years and that, therefore, “[i]t is clear that the legislature did away with the Judiciary created ‘same source year rule.’” (Pet Br at 2.<sup>4</sup>)

We reject Petitioner’s contention because it ignores the provision in Administrative Code §11-602.8(f)(5) that:

“the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code shall for purposes of this paragraph be determined as if the taxpayer had elected under such section to relinquish the entire carryback period with respect to net operating losses, except with respect to the first ten thousand dollars of each of such losses. . . .”  
(Emphasis added.)

---

<sup>3</sup> The quoted case dealt with the same language appearing in the Tax Law governing the taxation of insurance companies. (Tax Law §1503[b][4][B].) *See also, Matter of Five Star Equip., Inc.*, 2015 WL 1875281 (NY St Div of Tax Appeals DTA Nos. 824861 and 825006, April 15, 2015) and *Matter of Lehigh Valley Indus., Inc.*, 1988 WL 168138 (NY St Div of Tax Appeals DTA No. 801617, May 5, 1988).

<sup>4</sup> Petitioner’s Brief is erroneously entitled “Respondent’s Appellate Brief”.

Under this provision, for purposes of limiting the net operating loss deduction for GCT purposes to the amount of the federal deduction, the federal net operating loss deduction is modified to conform carryovers for federal income tax purposes to the GCT treatment and ensures that the “same source year rule” can be applied when computing the federal and GCT net operating loss deductions.

Petitioner further argues that the Department did not take into account its charitable contributions for the years 2006 through 2009 in calculating the allowable federal net operating loss carryovers and deductions for those years. (Pet Br at 3.) In the Original NOD, in calculating the net operating loss carryovers available for the Tax Years, the Department reduced Petitioner’s federal taxable income and net income for GCT purposes by the amount of charitable contributions made in 2006 through 2009. As a result, the amount of federal and GCT net operating losses available as carryovers to 2008 and 2009 was greater than it otherwise would have been without consideration of those contributions.

In the Final NOD, the Department changed its position and gave no consideration to charitable contributions for federal and GCT purposes in computing the net operating loss carryovers for the taxable years 2006 through 2009. Respondent argues that Petitioner did not claim deductions for charitable contributions on its federal and GCT returns for those years. Moreover, Respondent asserts that because, at the time of the audit, the statute of limitations barred any amendment of those returns to claim such deductions, no such deductions are allowable in calculating the net operating loss deductions for the Tax Years. The effect of disregarding any of Petitioner’s charitable contributions in 2006 through 2009 was to increase the amount of net income in 2006 and 2007 thereby increasing the net operating loss deductions for those years. Deducting a greater amount of the net operating losses in 2006 and 2007 left a smaller amount of net operating losses available to be carried over and deducted in the Tax Years thereby increasing the GCT deficiencies for the Tax Years.

Although Petitioner generally bears the burden of proof in a proceeding before the Tribunal, the burden shifts to the Department to the extent that the Department asserts a greater deficiency “after a notice of deficiency was mailed and a petition under this section filed. . . .” (Administrative Code §11-680.5[c].) Because the total deficiency asserted in the Final NOD was greater than the total deficiency asserted in the Original NOD, based principally on the different treatment of the charitable contributions, the Department bears the burden of proof on the increase in the amount of the deficiency asserted in the Final NOD.

IRC §170(a)(1) allows a deduction for federal income tax purposes for the amount of charitable contributions paid within the taxable year. IRC §170(b)(2)(A) limits the charitable contribution deduction for corporations to ten percent of the taxpayer’s taxable income. However, IRC §170(d)(2)(A) provides that to the extent that the amount of any otherwise deductible charitable contribution exceeds that limit, the excess can be carried forward for five years and deducted, subject to the same limitation, in those future years.

IRC §§170(d)(2)(B) and 172(b)(2) govern the interplay between net operating loss deductions and the deductions for charitable contributions in a given tax year. IRC §172(b)(2) provides, in effect, that, for the limited purpose of determining the amount of a net operating loss carryover to future tax years, charitable contributions are treated as deductible up to the ten percent limit without regard to the net operating loss deduction for the current tax year. IRC §170(d)(2)(B) correspondingly decreases the amount of the charitable contribution carried over to future tax years by the amount by which those charitable contributions increased the net operating loss carryover under IRC §172(b)(2). The application of these provisions is illustrated by an example in Treasury Regulation 26 CFR §1.170A-11(c)(2):

“A corporation, which reports its income on the calendar year basis, makes a charitable contribution of \$10,000 during 1971. Its taxable income for 1971 is \$80,000 (computed without regard to any net operating loss deduction and computed in accordance with section 170(b)(2) without regard to any deduction for charitable contributions). The corporation has a net operating loss carryover from 1970 of \$80,000. In the

absence of the net operating loss deduction the corporation would have been allowed a deduction for charitable contributions of \$4,000 (5 percent of \$80,000).<sup>5]</sup> After the application of the net operating loss deduction the corporation is allowed no deduction for charitable contributions, and there is a tentative charitable contribution carryover from 1971 of \$10,000. For purposes of determining the net operating loss carryover to 1972 the corporation computes its taxable income for 1971 under section 172(b)(2) by deducting the \$4,000 charitable contribution. Thus, after the \$80,000 net operating loss carryover is applied against the \$76,000 of taxable income for 1971 (computed in accordance with section 172(b)(2)), there remains a \$4,000 net operating loss carryover to 1972. Since the application of the net operating loss carryover of \$80,000 from 1970 reduces the taxable income for 1971 to zero, no part of the \$10,000 of charitable contributions in that year is deductible under section 170(b)(2). However, in determining the amount of the allowable charitable contributions carryover from 1971 to 1972, 1973, 1974, 1975, and 1976, the \$10,000 must be reduced by the portion thereof (\$4,000) which was used to reduce taxable income for 1971 (as computed for purposes of the second sentence of section 172(b)(2)) and which thereby served to increase the net operating loss carryover from 1970 to 1972 from zero to \$4,000.”

Those provisions apply to Petitioner’s taxable years 2006 through 2009 (in which it had net income before any deductions for charitable contributions and net operating losses) to increase the amount of net operating loss carryovers and to reduce the amount of charitable contribution carryovers from 2006 through 2009.

Respondent contends that Petitioner’s charitable contributions for those years should not be taken into account because Petitioner did not claim any charitable contribution deductions in those years and was barred by the statute of limitations from amending its returns for those years to claim such deductions.<sup>6</sup> (Resp Br at 16-17.)

---

<sup>5</sup> In 1971, the year referred to in the regulation, a corporation’s net operating loss deduction was limited to 5% of its net income. For the Tax Years, the limit was 10%.

<sup>6</sup> See IRC §6511 (statutory period to claim federal tax refund) and Administrative Code §11-678 (statutory period to claim GCT refund).



We reject Respondent's contention. Petitioner reported the amount of its current charitable contributions made in, and charitable contributions carried over to, each of the years 2006, 2007, 2008 and 2009 on schedules attached to its federal income tax returns for those years.<sup>7</sup> The ten percent income limitation of IRC §170(b)(2)(A) barred Petitioner from claiming a deduction for charitable contributions on its federal income tax returns for those years because Petitioner had no federal taxable income after net operating loss deductions. Therefore, Petitioner could not have claimed a deduction for those charitable contributions but did disclose the amount of charitable contributions on its federal income tax returns to the greatest extent possible. As noted above, by asserting a higher total deficiency after the issuance of the Original NOD and the filing of the petition in the present case, the Department bears the burden of proof on this issue. (Administrative Code §11-680.5[c].) Therefore, the Department bore the burden of proving that IRC §§170(d)(2)(B) and 172(b)(2) did not apply to increase the available net operating loss carryovers to the Tax Years. We conclude that the Department has failed to meet its burden and further conclude that Petitioner's charitable contributions for the years 2006 through 2009 must be taken into account in calculating the net operating loss deductions for the Tax Years.<sup>8</sup> However, we disagree with Petitioner's application of IRC §170(d)(2)(B) to increase the net operating loss deduction for the 2009 Tax Year by the amount of the charitable contributions for the years 2006 through 2008. (Pet Br worksheet.) We conclude that the charitable contributions should be taken into account as provided in the tabulations below.

Finally, Petitioner argues that, in calculating the net operating loss deductions for the Tax Years, the Department did not properly apply the "aggregate method" of computing the net operating loss deduction for GCT purposes.<sup>9</sup> Petitioner relies on 20 NYCRR §3-8.5 and *Matter of Brooke-Bond Group (U.S.), Inc.*, 1995 WL 774860, (NY St

---

<sup>7</sup> City's Ex. C at J25(a), J39(a), J46(a), J52(a), J54(a), J56(a), J65(a) and K(9) and City's Ex. D at K9, K30, K31, K33, and L5.

<sup>8</sup> There is a question as to the amount of the charitable contribution for the 2008 Tax Year. We modify the ALJ's finding insofar as she found that Petitioner had charitable contributions in 2008 of \$279,237. We could find nothing in the Record to substantiate that amount, which appears to have been based on a document not included in the Record. We conclude that the correct amount is \$145,479. (City's Ex. D at L5.)

<sup>9</sup> Pet Br at 6.

Div of Tax Appeals DTA No. 810951, December 28, 1995). Under the “aggregate rule” as described in 20 NYCRR §3-8.5, a taxpayer must calculate the total amount of the net operating loss carryovers deducted in a given taxable year for federal income tax purposes and separately calculate the total amount of the available net operating loss carryovers to that same taxable year for NYS BCT purposes.<sup>10</sup> The net operating loss deduction allowable for the taxable year for NYS BCT purposes is the lower of the two amounts.<sup>11</sup>

Petitioner’s reading of the “aggregate rule” disregards the impact of the “separate source year rule” on the “aggregate rule”. As the court stated in *Matter of Aetna Cas. and Sur. Co. v Tax Appeals Trib. of the State of New York*, 214 AD2d 238, 242 *supra*:

“Petitioners’ attempt to rely on the regulation governing aggregation of losses from multiple years (*see*, 20 NYCRR 3–8.5) to circumvent the source year conformity rule is also unavailing, for . . . that regulation incorporates similar limitations on deductibility.”

Because we have concluded that the “same source year rule” is still in effect and applies in the present case, and because we have concluded that Petitioner’s charitable contributions in the years 2006 through 2009 must be taken into account in calculating the amount of net operating loss carryovers for federal income tax and GCT purposes, it is unnecessary to address Petitioner’s argument regarding the “aggregate rule”.

Based on the foregoing analysis we conclude that Petitioner’s GCT liability for the Tax Years should be determined as follows:

---

<sup>10</sup> After taking into account the “separate source year rule” as well.

<sup>11</sup> *See also*, TSB-A-90(15)C, (August 14, 1990). Although the same language does not appear in the rules governing net operating loss deductions for GCT purposes, Respondent does not dispute that the “aggregate rule” applies to the GCT. *See* Resp Br at 19.

For each of the taxable years 2006 through 2009, Petitioner's federal net income and net income for GCT purposes, determined before any charitable contribution deduction and before any net operating loss deduction was as follows:<sup>12</sup>

Year	Federal	GCT
2006	\$1,664,680	\$1,724,146
2007	\$8,304,655	\$8,270,198
2008 <sup>13</sup>	\$10,851,773	\$11,219,246 <sup>14</sup>
2009	\$2,635,093	\$2,720,466

Petitioner had the following charitable contributions that would have been deductible for federal income tax and GCT purposes for the years 2006, 2007, 2008, and 2009, but for the available net operating loss deductions:<sup>15</sup>

2006 \$79,674  
2007 \$236,000  
2008 \$145,479<sup>16</sup>  
2009 \$105,857

As of the end of the taxable year 2005, Petitioner had the following net operating loss carryovers from the tax years indicated that were available for federal income tax and GCT purposes for the years 2006 through 2009:

Year	Federal	GCT
1999	\$4,471,409 <sup>17</sup>	\$4,443,149
2000	\$7,619,131	\$7,595,552
2001	\$3,937,788	\$3,862,811
2002	\$3,099,832	\$2,897,260
2003	\$3,477,231	\$3,178,935
2004	\$763,862	\$0 <sup>18</sup>
2005	\$549,394	\$641,329

<sup>12</sup> City's Ex. E and Final NOD at B-1. These amounts do not appear to be in dispute.

<sup>13</sup> These amounts include an adjustment resulting from a federal income tax audit that is not in dispute.

<sup>14</sup> See Final NOD at B-1.

<sup>15</sup> Except for the amount for 2008, these amounts do not appear to be in dispute.

<sup>16</sup> See *supra* n 8.

<sup>17</sup> The federal and GCT amounts for 1999 are adjusted. Petitioner erroneously claimed a charitable deduction on its 1999 federal income tax return in excess of the 10% limitation. That amount has been added back for both federal and GCT purposes. This adjustment does not appear to be in dispute.

<sup>18</sup> For GCT purposes, Petitioner reported net income in 2004 although it reported a net loss for federal income tax purposes. Because Petitioner could not take a federal net operating loss deduction for 2004, Petitioner could not take a net operating loss deduction for GCT purposes for that year under Administrative Code §11-602.8(f)(3).

For its 2006 taxable year for federal income tax and GCT purposes, Petitioner's net income should be reduced to zero by a net operating loss deduction for a portion of the 1999 net operating loss as follows:

	Federal	GCT
Income before net operating loss deduction	\$1,664,680	\$1,724,146
Net operating loss deduction	(\$1,664,680)	(\$1,664,680) <sup>19</sup>
1999 net operating loss applied	\$1,664,680	\$1,664,680
Remaining 1999 net operating loss carried to 2007 <sup>20</sup>	\$2,886,403	\$2,858,143

For its 2007 taxable year for federal income tax and GCT purposes, Petitioner's net income should be reduced to zero by a net operating loss deduction composed of the remaining portion of the 1999 net operating loss carryover and a portion of the 2000 net operating loss carryover as follows:

	Federal	GCT
Income before net operating loss deduction	\$8,304,655	\$8,270,198
Net operating loss deduction	(\$8,304,655)	(\$8,270,198)
1999 net operating loss applied	\$2,886,403	\$2,858,143
1999 net operating loss remaining	\$0	\$0
2000 net operating loss applied	\$5,418,252	\$5,412,055
Remaining 2000 net operating loss carried to 2008 <sup>21</sup>	\$2,436,879	\$2,419,497

<sup>19</sup> The net operating loss deduction for GCT purposes cannot exceed the federal net operating loss deduction under Administrative Code §11-602.8(f)(3).

<sup>20</sup> This amount includes the \$79,674 charitable contribution from 2006. See discussion at 7-8 *supra*.

<sup>21</sup> This amount includes the \$236,000 charitable contribution from 2007.

For the 2008 Tax Year, Petitioner's net income should be reduced for federal income tax and GCT purposes by a net operating loss deduction composed of the remaining portion of the 2000 net operating loss carryover, the entire 2001 and 2002 net operating loss carryovers and a portion of the 2003 net operating loss carryover as follows:

	Federal	GCT
Net income before net operating loss deduction	\$10,851,773	\$11,219,246
Net operating loss deduction	(\$10,851,773)	(\$10,851,773) <sup>22</sup>
2000 net operating loss applied	\$2,436,879	\$2,419,497
2000 net operating loss remaining	\$0	\$0
2001 net operating loss applied	\$3,937,788	\$3,862,811
2001 net operating loss remaining	\$0	\$0
2002 net operating loss applied	\$3,099,832	\$2,897,260
2002 net operating loss remaining	\$0	\$0
2003 net operating loss applied	\$1,377,274	\$1,672,205
Remaining 2003 net operating loss carried to 2009 <sup>23</sup>	\$2,245,436	\$1,652,209
Taxable net income	\$0	\$367,473
Allocated taxable income <sup>24</sup>		\$245,104.49
Tax on allocated income		\$21,691.75
Less tax paid <sup>25</sup>		(\$23,087.44)
Tax due		\$0

<sup>22</sup> Although there are additional net operating loss carryovers from 2003 otherwise available in 2008 for GCT purposes, the net operating loss deduction for GCT purposes cannot exceed the amount deductible for federal income tax purposes, *i.e.* \$10,851,773, under Administrative Code §11-602.8(f)(3).

<sup>23</sup> This amount includes the \$145,479 charitable contribution from 2008.

<sup>24</sup> The allocation percentage for the 2008 Tax Year was 66.67%. *See* City's Ex. E at B-1.

<sup>25</sup> The tax originally paid was calculated on the capital base and is still higher than the tax calculated by the Tribunal on net income for the 2008 Tax Year. *See supra* n 2. Therefore, no additional tax is due for the 2008 Tax Year and there is no overpayment of tax for the 2008 Tax Year.

For its 2009 Tax Year, Petitioner's net income for federal income tax purposes should be reduced by a net operating loss deduction composed of the remaining portion of the 2003 net operating loss carryover and a portion of the 2004 net operating loss carryover and Petitioner's net income for GCT purposes should be reduced by the remaining portion of the 2003 net operating loss carryover as follows:

	Federal	GCT
Net income before net operating loss deduction	\$2,635,093	\$2,720,466
Net operating loss deduction	(\$2,635,093)	(\$1,652,209) <sup>26</sup>
2003 net operating loss applied	\$2,245,436	\$1,652,209
2003 net operating loss remaining	\$0	\$0
2004 net operating loss applied	\$389,657	\$0 <sup>27</sup>
Remaining 2004 net operating loss carried to 2010 <sup>28</sup>	\$480,062	\$0
Taxable net income	\$0	\$1,068,257
Allocated taxable income <sup>29</sup>		\$640,954.20
Tax on allocated income		\$56,724.45
Less tax paid		(\$19,994.72)
Tax due		\$36,729.73

<sup>26</sup> Although there are additional net operating loss carryovers from 2005 for GCT purposes, no portion of the federal net operating loss deduction for 2009 was from the 2005 year and therefore, under the "same source year rule", none of the 2005 net operating loss from 2005 can be deducted in 2009 for GCT purposes.

<sup>27</sup> Because there was no net operating loss for GCT purposes for 2004, there is no 2004 net operating loss available to be carried to 2009 for GCT purposes.

<sup>28</sup> This amount includes the \$105,857 charitable contribution from 2009.

<sup>29</sup> The allocation percentage for the 2009 Tax Year was 60%. See City's Ex. E at B-1.

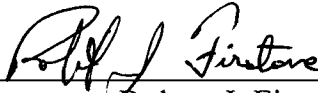
Consequently, for the reasons stated above, we conclude that the Final NOD should be modified to eliminate any deficiency for the 2008 Tax Year and to reduce the principal amount of GCT due for the 2009 Tax Year to \$36,729.73, with interest calculated accordingly. Therefore, we modify the ALJ Determination as noted above and sustain the Final NOD as modified.<sup>30</sup> Commissioner Frances J. Henn did not participate in this decision.

Dated: January 20, 2017  
New York, NY



---

Ellen E. Hoffman  
President and Commissioner



---

Robert J. Firestone  
Commissioner

---

<sup>30</sup> We have considered all of the other arguments of the Parties and find them unpersuasive.