



# Instructions for Form CT-3.3

## Prior Net Operating Loss Conversion (PNOLC) Subtraction

# CT-3.3-I

All citations are to New York State Tax Law sections unless specifically noted otherwise.

### General information

Form CT-3.3 is used by a taxpayer subject to tax under Tax Law Article 9-A to compute the prior net operating loss conversion (PNOLC) subtraction allowed in the computation of the business income base by §210.1(a)(viii)(B) for tax years beginning on and after January 1, 2015. Form CT-3.3 must be filed, with all schedules completed, for every tax year that a PNOLC subtraction balance is carried, even if no such subtraction can be applied in that tax year, so that carryforward amounts are properly accounted for. Failure to file Form CT-3.3 for any tax year for which a balance of PNOLC subtraction is carried may result in a delay in receiving such benefits. Combined groups need to file only one Form CT-3.3 each year, computed on a combined group basis, for their group.

The unabsorbed net operating loss (UNOL) and PNOLC subtraction pool of a taxpayer that was subject to tax under either Article 9-A or 32 in the base year (see *Definitions*) are computed only once, on the **first** Form CT-3.3 filed **after** the base year using the instructions found in the 2015 Form CT-3.3-I. 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 apportioned business income after addback of income previously reported as investment income. One-tenth of the pool (the tax period allotment), plus the amount of any unused PNOLC subtraction carryforward from previous tax years, may be claimed in each of the first ten tax periods following the base year. After that, any unused PNOLC subtraction may be claimed, but for no longer than twenty tax periods following the base year. Alternatively, an election 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, with any pool not exhausted at the end of such period being forfeited may have been made. A small business corporation at the end of the base year was able to use 100% of the PNOLC subtraction pool in the 1st year succeeding the base year, with any unused amount being eligible for carryforward for no longer than 20 tax periods following the base year without being subject to either the 10% or 50% limitation in any claim year.

If an entity leaves – or joins – a combined group it takes – or brings – its own PNOLC subtraction pool and allotment, 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.

**Note:** A qualified New York manufacturer or eligible qualified New York manufacturer as defined for purposes of the tax on the entire net income (ENI) base for the base year beginning before January 1, 2015, will not have a PNOLC subtraction pool, as the ENI tax rate for such tax year was 0%, whether or not the actual tax liability was based on ENI in such tax year.

The PNOLC subtraction is applied in the computation of 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 what would be the tax on apportioned business income after addback of income previously reported as investment income 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 what would be the tax on apportioned combined business income after addback of income previously reported as investment income 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 §208.9(f) or §1453(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 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.

**Base year BAP** means the taxpayer's ENI business allocation percentage (BAP) as calculated under §210.3(a) **for the base year**, or the taxpayer's ENI allocation percentage as calculated under §1454 **for the base year**, as such sections were in effect on December 31, 2014.

**Base year tax rate** means the taxpayer's ENI base tax rate **for the base year** as calculated under §210.1(a) or §1455(a), as such provisions were in effect on December 31, 2014. It is the **ENI base** tax rate from the tax rate schedules, tables 1, 2, 3, 4, or 5, in 2014 Form CT-3/4-I, *Instructions for Form CT-4, CT-3, and CT-3-ATT*, or CT-3-A-I, *Instructions for Form CT-3-A*, or, for Article 32 filers in the base year, 7.1%, that is used, **regardless of** what base the taxpayer pays tax on in the base year.

**Current tax period** means the tax period for which this Form CT-3.3 is being filed.

### 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.

**Small business corporations:** The PNOLC allotment of a small business corporation, as such corporation is defined in §210.1(f) as such section was in effect on December 31, 2014, in the first tax period succeeding its base year is equal to 100% of its PNOLC subtraction pool. Any unused amount is eligible for carryforward for no longer than 20 tax periods following the base year. The determination as to if you are a small business corporation is made as of the last day of the base year.

**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.

**CT-3-A filers** – 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: CT-3 filers:** enter your name and EIN in row A.

**CT-3-A 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.

**Column B: CT-3 filers:** enter the tax period ending date of your **base** year in row A.

**CT-3-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 New York State 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: CT-3 filers:** Enter the UNOL from Form CT-3.3, column D filed for the previous tax year by you or on your behalf by a combined group.

**CT-3-A filers:** Enter on the applicable row each member's UNOL from Form CT-3.3, column D filed for the previous tax

year by the member, or on the member's behalf by a combined group.

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 amount entered in column D for an entity will continue to be the amount to enter in column D on each subsequent tax period's Form CT-3.3 filed.

When filing a combined report, the designated agent must also report its amount on line H of Form CT-3-A, while each member of the group must also report its amount on line 11 of its Form CT-3-A/BC.

**Column E: CT-3 filers:** Enter the PNOLC subtraction pool from your row of Form CT-3.3, column E filed for the previous tax year by you or on your behalf by a combined group.

**CT-3-A filers:** For each member of the combined group listed, enter the PNOLC subtraction pool from that member's row of Form CT-3.3, column E filed for the previous tax year by the member or on the member's behalf by a combined group. The designated agent must also report its amount on line G of Form CT-3-A, while each other member of the group must reports its amount on line 10 of its Form CT-3-A/BC, *Member's Detail Report*.

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 CT-3.3 filed.

**Column F:** For each entity listed, enter that entity's applicable PNOLC subtraction allotment %, which is generally 10%, unless an entity is a small business corporation (enter 100%) or previously made the 50% PNOLC subtraction election (enter 50%); see the previous instructions for small business corporations or the 50% election. When filing a combined return, the designated agent must also mark an **X** in the box for that applicable percentage on Form CT-3-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 CT-3-A/BC.

**Column G:** For each entity listed, if any of the following conditions are met, enter **0** and also enter **0** in column H, then skip the column H instructions for that entity:

- 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; or
- the PNOLC subtraction allotment percentage in column F is 100%, and the tax period count in column C is greater than 1.

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 CT-3-A, line I, while each member of the group must report this amount on its Form CT-3-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 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 CT-3, or Form CT-3-A, for the *current tax period*.

**Current tax period Form CT-3 filers:** The amount to be entered on line 2 depends on how you filed for the tax period **immediately preceding** the *current tax period*.

- **Form CT-3 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 CT-3.3.
- **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 CT-3.3.

**Current tax period Form CT-3-A 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 CT-3.3.

**B)** When the members of the combined group have **changed** since the **immediately preceding tax period:** Enter on line 2 the amount determined by following Steps 1 through 3 below.

**Step 1.** For **each** member of the *current tax period* combined group that filed **Form CT-3** for the tax period **immediately preceding** the *current tax period:* Add together the amounts from Schedule C, line 5 of the **immediately preceding** tax period's Form CT-3.3 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 CT-3.3 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, column E; see limitation described in §210.1(a)(viii)(B)(2)(IV). Also enter this amount on Form CT-3 or CT-3-A, Part 3, line 16.

**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. (§§210.1(a)(viii)(B)(2)(IV) and 210.1(a)(viii)(B)(4))

## Need help? and Privacy notification

See Form CT-1, *Supplement to Corporation Tax Instructions*.