

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

TSB-H-80 (11)C  
Corporation Tax  
June 11, 1980

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C800331C

On March 31, 1980, a Petition for Advisory Opinion was received from Allied Fence, Inc., 64 Hayes Place, Buffalo, New York 14210.

The issue raised in the petition is whether a New York net operating loss for the fiscal year ending January 31, 1979 may be carried back to prior taxable years in a case where no federal net operating loss exists.

For the fiscal year ended January 31, 1979, the taxpayer reported taxable income of \$2,380.35 on its federal return and claimed a Federal Job Credit of \$6,960.91. On its New York franchise tax return, the taxpayer reduced its New York entire net income by the portion of wages and salary for which a deduction was not allowed for federal purposes due to the use of the Federal Job Credit. As a result of this reduction, the taxpayer had a net operating loss of \$2,245.82. The taxpayer applied for a refund for prior taxable years based upon a net operating loss deduction carryback even though the taxpayer had no federal net operating loss.

Section 208.9(a) of Article 9-A of the Tax Law provides that "Entire net income shall not include... (7) that portion of wages and salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of section two hundred eighty-C of the internal revenue code."

Section 208.9(f) of Article 9-A of the Tax Law provides that "A net operating loss deduction shall be allowed which shall be presumably the same as the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code of nineteen hundred fifty-four...except that... (3) such deduction shall not exceed the deduction for the taxable year allowable under section one hundred seventy-two of the internal revenue code of nineteen hundred fifty-four, or the deduction for the taxable year which would have been allowable if the taxpayer had not made an election under subchapter s of chapter one of the internal revenue code .... "

Thus, although section 205.9(a) (7) of the Tax Law allows a reduction of New York entire net income by the portion of salary and wages not allowed on the federal return due to the use of the Federal Job Credit, section 208.9(f) of the Tax Law limits the amount of any resulting net operating loss deduction to not more than the net operating loss deduction allowed for federal purposes.

Accordingly, since no federal net operating loss existed, no net operating loss deduction may be carried back to prior taxable years for New York franchise tax purposes.

DATED: May 28, 1980

s/MICHAEL ALEXANDER  
Deputy Director  
Technical Services Bureau  
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