

FINANCE MEMORANDUM

2018/2019/2020 Supplemental Business Tax Form Instructions Effectuating New York City's Decoupling From CARES Act Amendments to IRC § 163(j), IRC § 172 and IRC § 461(l)

The federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Public Law 116-136) included several amendments to the Internal Revenue Code (IRC), including modifications to three key business tax provisions enacted by the federal Tax Cuts and Jobs Act (TCJA) (Public Law 115-97): the business interest expense limitation under IRC § 163(j), the net operating loss limitations under IRC § 172, and the non-business loss limitations under IRC § 461(l).

New York City's Business Corporation Tax (BCT), General Corporation Tax (GCT), Unincorporated Business Tax (UBT) and Banking Corporation Tax (BTX) are decoupled from CARES Act changes to the interest expense provisions under IRC § 163(j)(10) for tax years beginning in 2019 and 2020. Additionally, for tax years beginning before January 1, 2021, the GCT, UBT, and BTX are decoupled from CARES Act changes to the net operating loss provisions under IRC § 172, and the UBT is decoupled from CARES Act changes to the limitation on excess business losses of non-corporate taxpayers under IRC § 461(l).¹

This Finance Memorandum describes the City's decoupling under its BCT, GCT, UBT and BTX from certain business tax provisions of the CARES Act and provides instructions to taxpayers for completing their tax year 2018, 2019, and 2020 business tax returns.

- If a BCT, GCT, UBT or BTX taxpayer has already filed 2019 or 2020 business tax returns with the City on which it reflected in Entire Net Income the increase in the federal deduction allowed pursuant to IRC § 163(j)(10), it **must** file an amended return using the instructions in this Finance Memorandum.
- If a GCT, UBT or BTX taxpayer has already filed 2018, 2019, or 2020 business tax returns with the City on which it applied CARES Act amendments to IRC § 172 when computing its NOL deduction, it **must** file an amended return using the instructions in this Finance Memorandum.
- If a UBT taxpayer has already filed 2018, 2019, or 2020 business tax returns with the City on which it did not add back to federal gross income the amount of the increase in the federal deduction allowed pursuant to CARES Act amendments to IRC § 461(l), it **must** file an amended return using the instructions in this Finance Memorandum.

Penalty Abatement

New York City's decoupling from CARES Act changes to IRC § 163(j)(10), IRC § 172, and IRC § 461(l) may result in increases to the City tax liability of some business taxpayers. The Department of Finance (DOF) has determined that the enactment of the CARES Act as well as the City's decoupling legislation so late in tax year 2020 constitutes reasonable cause for taxpayers to have underpaid the portion of their City tax liabilities attributable to the City's decoupling from CARES Act changes to IRC § 163(j)(10), IRC § 172, and IRC § 461(l). Accordingly, if a taxpayer receives a bill from DOF that includes a penalty for failing to pay the correct amount of tax when due, and the underpayment is attributable to the City's decoupling from CARES Act changes to IRC § 163(j)(10), IRC § 172, or IRC § 461(l), the taxpayer may request an abatement of the penalty.

¹On April 3 2020, New York enacted legislation (L. 2020, Ch. 58, part WWW) specifically decoupling from certain provisions of the federal CARES Act. Under that legislation, New York City partially decoupled its BCT, GCT, and UBT from CARES Act changes to IRC § 163(j). On June 17, 2020, New York enacted additional legislation (L. 2020, Ch. 121) further decoupling New York City's BCT, GCT, BTX, and UBT from all CARES Act changes to IRC § 163(j). The Bill also decoupled the GCT, BTX, and UBT from all CARES Act changes to IRC § 172, and the UBT from all CARES Act changes to IRC § 461(l).

An abatement request submitted pursuant to this Memorandum must be submitted by email to Penalty_Abatements@finance.nyc.gov. Requests may also be mailed to the Adjustments & Discrepancies Unit, 59 Maiden Lane, 19th Floor, New York, NY 10038. Questions may be submitted through DOF's online portal for inquiries by tax type, which may be accessed through the URL: <http://www1.nyc.gov/site/finance/about/contact-us.page>.

Abatement requests for underpayments attributable to CARES Act changes to IRC § 163(j)(10) must include a copy of the taxpayer's federal or pro forma Form 8990, along with a statement detailing the taxpayer's computation of its NYC interest expense limitation.

If a taxpayer submits a penalty abatement request according to these instructions and, by October 15, 2020, either pays the remaining tax and applicable interest due or enters into an installment payment agreement to pay the remaining tax and applicable interest due, DOF will waive the applicable penalty.

Interest Expense Limitations Under IRC § 163(j)

The modifications described in this Finance Memorandum **must** be applied by BCT taxpayers in conjunction with Finance Memorandum 16-2, *Direct and Indirect Attribution of Interest Deductions Under the Business Corporation Tax (Corporate Tax of 2015)* (2/25/16), by GCT taxpayers in conjunction with Finance Bulletin 2-84, and by BCT, GCT, UBT, and BTX taxpayers in conjunction with Finance Memorandum 18-11, *Attribution of Interest Deductions for Taxpayers with IRC § 163(j) Limitations under the Business Corporation Tax, General Corporation Tax, Banking Corporation Tax, and Unincorporated Business Tax*, (Rev 1/27/2021), which has been updated to reflect the City's decoupling from CARES Act changes to IRC § 163(j)(10) for tax years 2019 and 2020.

Section 2306 of the CARES Act added IRC § 163(j)(10), which increases the business interest expense limitation from 30% to 50% of Adjusted Taxable Income (plus business interest income and floor plan financing income) for tax years beginning in 2019 and 2020, allows partners to deduct 50% of the 2019 excess business interest allocated to them from a partnership for tax years beginning in 2020 whether or not excess taxable income has been allocated to them by the partnership, and allows taxpayers an election to compute their 2020 interest expense limitation using their 2019 Adjusted Taxable Income.

New York City's BCT, GCT, BTX, and UBT are decoupled from all changes to IRC § 163(j)(10) made by the CARES Act for taxable years beginning in 2019 and 2020.² **Required modifications to NYC interest expense computations for Tax Year 2019 and 2020 have been incorporated into FM 18-11**, and instructions for completing City business tax forms are included below.

Reporting Instructions for Taxpayers Filing Form NYC-2

Schedule B, Line 14: For tax year 2019, include on this line the amount of any increase in the federal interest expense deduction allowed pursuant to IRC § 163(j)(10).

Schedule B, Line 13: For tax year 2020, include on this line the amount of any increase in the federal interest expense deduction allowed pursuant to IRC § 163(j)(10). Note that for taxable years beginning in 2020, a BCT taxpayer that includes on its BCT returns a distributive share of income or loss from a partnership that files a UBT return must also add back its allocable portion of supplemental federal interest taken by the partnership on this line.

Reporting Instructions for Taxpayers Filing Form NYC-2A

Schedule B, Line 14, Column A: For tax year 2019, include on this line the amount of any increase in the federal interest expense deduction allowed pursuant to IRC § 163(j)(10). Note that the addback of interest expenses deducted pursuant to IRC § 163(j)(10) is included on this line for convenience, and that although Column A is typically reserved for reporting amounts attributable to the designated agent, the entirety of the combined group's interest expense deducted pursuant to IRC § 163(j)(10) must be included in Column A.

Schedule B, Line 13: For tax year 2020, include on this line the amount of any increase in the federal interest expense deduction allowed pursuant to IRC § 163(j)(10). Note that for taxable years beginning in 2020, a BCT taxpayer that includes on its BCT returns a distributive share of income or loss from a partnership that files a UBT return must also add back its allocable portion of supplemental federal interest taken by the partnership on this line.

²See Admin Code §§ 11-652(b)(22), 11-602(b)(21), 11-641(b)(17), and 11-506(b)(17).

Reporting Instructions for Taxpayers Filing Form NYC-ATT-S-CORP

Part 2, Line 17: For tax years 2019 and 2020, compute the amount of interest expense that would have been deductible in the current year if the taxpayer was a C Corporation (line 30 of pro forma Form 990), subtract amounts that would have been deducted pursuant to CARES Act changes to IRC § 163(j)(10) if the taxpayer was a C corporation, and include the result on line 17.

Note that for taxable years beginning in 2020, a GCT taxpayer that includes on its GCT return a distributive share of income or loss from a partnership that files a UBT return must add back to ENI its allocable portion of supplemental federal interest taken by the distributing partnership by subtracting this amount from the amount to be included on line 17 of Form NYC-ATT-S-CORP.

Reporting Instructions for Taxpayers Filing Form NYC-202 or NYC-202EIN

Schedule B, Line 11: For tax years 2019 and 2020, include on this line the amount of any increase in the federal interest expense deduction allowed pursuant to IRC § 163(j)(10).

Reporting Instructions for Taxpayers Filing Form NYC-204

CARES Act increases to the interest expense deduction under IRC § 163(j)(10) do not apply to partnerships for tax year 2019. Follow the form instructions as they currently exist.³

Form NYC-204, Schedule B, Line 15: For tax year 2020, include on this line the amount of any increase in the federal interest expense deduction allowed pursuant to IRC § 163(j)(10). Taxpayers must attach a statement detailing the computation of their NYC interest expense limitation to their New York City return.

For taxable years beginning in 2020, a taxpayer that includes a distributive share of business or investment income or gains from a UBT partnership on its UBT returns must add back its allocable portion of supplemental federal interest taken by the partnership pursuant to IRC §163(j)(10) as follows:

1. NYC-204, Schedule B, Line 23: Deduct the taxpayer's distributive share of business or investment income or gains from the distributing UBT partnership on this line.
2. Add, to the amount deducted on Schedule B, Line 23 above, the taxpayer's allocable portion of supplemental federal interest deducted by the distributing partnership.
 - i. The amount of the taxpayer's allocable portion of supplemental federal interest must be indirectly attributed between business and investment capital in the same proportion as the UBT taxpayer's pro rata share of business and investment income from the lower-tier partnership in the current year.
3. NYC-204, Schedule A, line 3b: When computing the amount to be added back on this line, use the amount determined in paragraph 2 above instead of the amount deducted on Schedule B, line 23 of Form NYC-204.
4. NYC-204, Schedule A, line 7b: When computing the amount to be added back on this line, use the amount computed in paragraph 2 above instead of the amount deducted on Schedule B, line 23 of Form NYC-204.
5. Taxpayers must attach a statement to their UBT returns showing their computation of the amount of supplemental federal interest that is added back to their distributive income from the UBT partnership.

For taxable years beginning in 2020, a taxpayer that includes a distributive share of business or investment loss from a UBT partnership on its UBT returns must add back its allocable portion of supplemental federal interest taken by the partnership pursuant to IRC §163(j)(10) as follows:

1. Add back the taxpayer's distributive share of business or investment loss from the distributing partnership on Schedule B, line 15 of Form NYC-204.
2. Subtract, from the amount added back above, the taxpayer's allocable portion of supplemental federal interest deducted by the distributing partnership.
 - a. The amount of the taxpayer's allocable portion of supplemental federal interest must be indirectly attributed between business and investment capital in the same proportion as the UBT taxpayer's pro rata share of business and investment income from the lower-tier partnership in the current year.
3. When computing the amount to be subtracted on Schedule A, line 3b of Form NYC-204 use the amount computed in paragraph 2 above instead of the amount added back on Schedule B, line 15 of Form NYC-204.

³For taxable years beginning in 2019 and 2020, UBT taxpayers must add back to federal gross income the amount of any increase in the federal interest expense deduction allowed pursuant to IRC § 163(j)(10).

4. When computing the amount to be subtracted on Schedule A, line 7b of Form NYC-204 use the amount determined in paragraph 2 above instead of the amount added back on Schedule B, line 15 of Form NYC-204.
5. Taxpayers must attach a statement to their UBT returns showing their computation of the amount of supplemental federal interest that is added back to their distributive loss from the UBT partnership.

Reporting Instructions for Taxpayers Filing Form NYC-204EZ

Taxpayers who received an increase in their federal interest expense deduction pursuant to IRC § 163(j)(10) may not file Form NYC-204EZ.

Reporting Instructions for Taxpayers Filing Form NYC-2S, NYC-4S, NYC-4SEZ, or NYC-202S

Taxpayers who received an increase in their federal interest expense deduction pursuant to IRC § 163(j)(10) may not file Form NYC-2S, NYC-4S, NYC-4SEZ, or NYC-202S.

Net Operating Loss Limitations Under IRC § 172

Section 2303 of the CARES Act temporarily removes the 80% of taxable income limitation on the use of Net Operating Losses, allowing taxpayers to use NOLs to fully offset their taxable income for tax years beginning before January 1, 2021. Additionally, under the CARES Act, NOLs arising in tax years beginning after December 31, 2017 and before January 1, 2021 may be carried back to the five years immediately preceding the year of the loss. Section 2303 of the CARES Act also includes several technical corrections to the Net Operating Loss limitation rules provided under IRC § 172.

New York City's GCT, BTX and UBT are decoupled from all CARES Act changes to IRC § 172 for taxable years beginning before January 1, 2021.⁴ Instructions for computing NYC Net Operating Losses in light of the City's decoupling from CARES Act amendments to IRC § 172 are provided below.

Reporting Instructions for Taxpayers Filing Forms NYC-3A, NYC-3L, NYC-4S, NYC-4SEZ, NYC-NOLD-GCT, NYC-1, and NYC-1A

Amendments made to IRC § 172 by section 2303 of the CARES Act do not apply to NYC NOL computations for tax years beginning before January 1, 2021.⁵ Therefore, the deduction of losses incurred in taxable years beginning after December 31, 2017 continues to be limited to 80% of federal taxable income calculated as if the S corporation had not made the election pursuant to subchapter S of the Internal Revenue Code. Additionally, NOLs generated in tax years beginning after December 31, 2017 and before January 1, 2021 may not be carried back to any prior year.

Reporting Instructions for Taxpayers Filing Forms NYC-204, NYC-202, NYC-202EIN, NYC-NOLD-UBTI, and NYC-NOLD-UBTP

Amendments made to IRC § 172 by section 2303 of the CARES Act do not apply to NYC NOL computations for tax years beginning before January 1, 2021. Therefore, the deduction of losses incurred in taxable years beginning after December 31, 2017 continues to be limited to 80% of City taxable income. Additionally, NOLs generated in tax years beginning after December 31, 2017 and before January 1, 2021 may not be carried back to any prior year.

Limitation on Excess Business Losses of Noncorporate Taxpayers Under IRC § 461(l)

Under provisions enacted by the TCJA, business losses of non-corporate taxpayers were limited by IRC § 461(l) to the sum of a taxpayer's aggregate trade or business gross income or gain plus a threshold amount, \$500,000 annually for married taxpayers filing jointly and \$250,000 for all other taxpayers (adjusted for inflation). Section 2304 of the CARES Act repeals the excess business loss limitation under IRC § 461(l) for tax years beginning after December 31, 2017 and before January 1, 2021 and includes several technical corrections to IRC § 461(l).

New York City's UBT is decoupled from all CARES Act changes to IRC § 461(l) for taxable years beginning before January 1, 2021.⁶ Instructions for completing NYC UBT returns in light of the City's decoupling from CARES Act amendments to IRC § 461(l) are provided below.

⁴See Admin Code §§ 11-602(8)(f)(6), 11-641(k-2), and 11-507(2)(c).

⁵Note that CARES Act technical amendments to the effective date provisions under section 13302(e) of the TCJA (Public Law 115-97) apply to NOL computations for City tax purposes.

⁶See Admin Code § 11-506(b)(18).

Instructions for Taxpayers Filing Forms NYC-202, NYC-202EIN, and NYC-202S

For taxable years beginning before January 1, 2021 taxpayers are required to add the amount of any increase in the federal deduction allowed pursuant to CARES Act amendments to IRC § 461(l) to the federal gross income of the unincorporated business.

NYC-202, Schedule B, Part 2, Line 11: For tax years 2018, 2019, and 2020 include on this line the amount of any increase in the federal deduction allowed pursuant to CARES Act amendments to IRC § 461(l).

NYC-202EIN, Schedule B, Part 2, Line 11: For tax years 2018, 2019, and 2020 include on this line the amount of any increase in the federal deduction allowed pursuant to CARES Act amendments to IRC § 461(l).

NYC-202S: Taxpayers who received an increase in the federal deduction allowed pursuant to CARES Act amendments to IRC § 461(l) may not file Form NYC-202S.