



CONFORM NEW JERSEY'S "NET OPERATING LOSS" TAX POLICIES TO NATIONAL STANDARDS

DESCRIPTION

Amend New Jersey's Corporation Business Tax (CBT) net operating loss (NOL) policy to conform with national standards by: a) extending New Jersey's 7 year carryforward period to 20 years; b) allowing for the survival of net operating losses in the event of mergers and acquisitions; and c) eliminating the requirement that NOLs be reduced by the dividends-received deduction.

BACKGROUND

The goal of business tax policy is to fairly tax business profitability. Because the vast majority of businesses see profits generated over multi-year periods, annual calculations of profit/loss for tax purposes fail to accurately capture a business' true economic performance, which usually requires a multi-year perspective. This is especially true for start-ups and businesses sensitive to national and international competition.

Business tax policies compensate for this mismatch between tax and economic cycles by allowing businesses to carryforward net operating losses into more profitable years. Without this carryforward requirement, business profits would be taxed without recognition of legitimate, prior-year losses.

The federal government permits both a two-year carryback and 20-year carryforward of business net operating losses. Of the 46 states (including the District of Columbia) with corporate business taxes, 24 states utilize the federal 20-year carryforward standard.

New Jersey permits only a seven-year NOL carryforward. Only eight states utilize a carryforward period of seven years or less. In this region, the federal 20-year NOL standard is used by New York, Pennsylvania, Connecticut, Delaware, Maryland, DC, and Virginia.

Additionally, New Jersey's NOL policy, unlike federal policy, does not permit survival of NOLs in cases of mergers and acquisitions. This drastically reduces the attractiveness of New Jersey companies looking to be acquired and unfairly penalizes these businesses, which have generated legitimate losses. Finally, New Jersey is the only state in the nation that reduces NOLs by the value of the dividends received tax deduction.

NJBIA POSITION

NJBIA supports conforming our NOL policies to federal and our neighboring state standards as a way to ensure we can economically compete.

ARGUMENTS IN SUPPORT OF CONFORMING NOL USE TO NATIONAL/STATE STANDARDS

A goal of business tax policy is to conform, as best as possible, the annual tax cycle to the multi-year economic cycle faced by businesses. This is a particularly important policy to business start-ups and manufacturers.

The tool most often used by governments to accomplish this tax goal is “net operating loss” (NOL) distribution policy. Federal and State governments allow businesses to utilize NOLs from one tax year in other more profitable tax years to help smooth out overall business tax payments to better reflect overall business economic activity.

New Jersey’s current policy of allowing NOL carryforward for up to seven years is dramatically out-of-step with both the federal (two-year carryback/20-year carryforward) and typical state policy. Twenty-four states and the District of Columbia use the Federal 20-year carryforward standard. In addition New Jersey places unique limits on NOL use not found in other jurisdictions.

Many competitor states in our region utilize the 20-year carryforward standard, including New York, Pennsylvania, Connecticut, Delaware and Maryland.

Conforming New Jersey’s NOL carryforward policy to the 20-year standard will improve the states comparative business tax climate and more importantly allow small businesses, new ventures, high-tech businesses and manufacturers’ additional time for investment and employment growth, as these are the type of businesses most prone to generate net operating losses in early and subsequent years of operation.

COST

The revenue loss from extending NOL applicability to 20 years from seven years would be minimal. In the short-term, revenue loss would ensue from those businesses with NOLs which are bumping up against the current seven year use limit and would therefore lose their NOLs but for the extension to 20 years.

LEGISLATIVE HISTORY

The McGreevey corporate business tax increases of 2002 suspended NOL application for years 2002 and 2003. Legislation enacted in 2004 restored 50 percent of NOLs for application in 2004 and 2005. Beginning in 2006, full NOL use was restored.

CONTACT

Art Maurice, First Vice President, Economic Development & Taxation – amaurice@njbia.org or 609-393-7707, ext. 247.