Mississippi State Tax Commission

Combined Income Tax Return – Net Operating Losses; Tax Credits – Applications	**Income Tax Technical Bulletin TB 80-501-08-1**

PURPOSE & SCOPE:

The purpose of this bulletin is to provide guidance in the application of the carryback and carryforward of a corporation's net operating losses and the use of tax credits in a combined corporate income tax filing. This Tax Bulletin is effective for tax years beginning on or after January 1, 2007.

REFERENCES:

Miss Code Ann. Sections 27-7-17, 27-7-37 & 27-7-49; Mississippi Administrative Code Title 35, Part III, Subpart 05, Chapter 06 (NOL); Mississippi Administrative Code Title 35, Part III, Subpart 08, Chapter 07 (Combined Returns)

OVERVIEW:

Generally, when a corporation's Mississippi sourced items of deduction exceed its Mississippi gross income, a NOL is generated. A NOL is to be carried by the corporation to each of the two (2) taxable years preceding the year of the NOL, starting with the earliest, and then to each of the twenty (20) tax years following the year of the NOL, until the NOL is exhausted or the carryforward period expires. An exception is when, on the original return filing, the corporation elects to forgo the carryback. In this case the NOL generated is carried forward for twenty (20) years.

The total available NOL deduction for a tax year is the sum of the unused NOL carryforwards and carrybacks to that year. In computing the NOL deduction, the earliest year NOL is applied first until taxable income is zero or all NOLs are exhausted. Also, the NOL must be reduced by taxable income for each year to which the NOL has already been carried and applied to determine the unused portion of NOL available for the tax year in question. NOL deductions affect both deductions and tax credits that are computed in reference to taxable income. The total NOL deduction may not exceed taxable income for the year in which the deduction is claimed.

Unlike some other states, the computation of Mississippi net income does not include an apportioned deduction of the federal NOL. For purposes of this state, NOLs are tracked separately and are generated when the Mississippi sourced items of deduction exceed the Mississippi gross income. Thus a corporation would not generate a Mississippi NOL in a year it was not doing business in this state as provided for in Miss. Code Ann. Section 27-7-23. A corporation can not claim a Mississippi NOL deduction if it has not made a valid Mississippi return filing for the year the loss was generated.

Tax credits are computed separately as well. The application against a corporation's tax liability, as well as the carryforward of an unused portion, varies by credit depending on the particular statutory requirements.

NET OPERATING LOSS – BASIC APPLICATION

As discussed in the overview, the total available NOL deduction for a tax year is the sum of a corporation's carryforwards (with the earliest being applied first) and its carrybacks. Also, the NOL carryforward must be reduced by taxable income for each year to which the NOL has already been carried and applied.

Example 1: X Inc., a calendar-year corporation began doing business in Mississippi in 2001. X generated a NOL of ($15,000) in 2001, taxable MS net income of $3,000 (prior to any NOL deduction) in 2002, $25,000 of taxable MS net income (prior to any NOL deduction) in 2003, zero ($0) taxable income in 2004, and a ($20,000) NOL in 2005.

Tax year	Taxable Inc./Loss prior to any NOL deduction
2001	$ (15,000)
2002	$ 3,000
2003	$ 25,000
2004	$ 0
2005	$ (20,000)

Since X was not doing business in Mississippi prior to 2001, its NOL for 2001 will effectively be carried forward to 2002. The NOL generated in 2005 will be carried back to the second preceding tax year (2003),next to the preceding tax year (2004), and then to 2006 and later years. The following table illustrates the application of each NOL.

2001 Net Operating Loss:	$ 15,000
Less: Taxable Inc. for 2002	$ (3,000)
2001 NOL Carryover to 2003:	$ 12,000
Less: Taxable Inc. for 2003:	$ (25,000)
The 2001 NOL was used up in 2003 & taxable inc. was reduced to $13,000	
2005 Net Operating Loss:	$ 20,000
Less: Taxable Inc. for 2003 after application of 2001 NOL	$ (13,000)
2005 NOL Carryback to 2004:	$ 7,000
Less: Taxable Inc. for 2004	$ 0
2005 NOL Carryforward to 2006:	$ 7,000

NET OPERATING LOSS – FILING ELECTIONS & STATUTE OF LIMITATIONS

When a taxpayer incurs a net operating loss, it must file a NOL worksheet with its return reflecting the loss. In addition if the taxpayer desires to carryforward the NOL, rather than carry it back, it must make an affirmative irrevocable election to do so on the NOL worksheet included with its original return. The original return must be filed no later than the required due date including extensions of time to file. If the taxpayer fails to timely file the form or files the form but fails to make the carryforward election, then the NOL generated must be carried back.

When a taxpayer carries back a loss to a prior year, the statute of limitations, solely for purposes of the NOL deduction and any refund generated from doing so, is determined by the tax year in which the NOL was incurred rather than the year the NOL is being deducted.

Example 2: C, Inc. a calendar year corporation filed a return for tax year 2005 on March 15, 2006 reflecting net taxable income and paid the corresponding tax liability. On March 10, 2009, C, Inc. amended its 2005 return to reflect a NOL and requested a refund of taxes previously paid. In addition, C, Inc. submitted an amended income tax filing for tax year 2003 reflecting a carryback of the 2005 NOL and requesting a refund of part of the 2003 taxes previously paid. Since 2005 was filed prior to March 15, 2009 a refund was generated. Also, since for purposes of the loss carryback the statute was open, the taxpayer is eligible to receive a refund for tax year 2003 as well as it relates to the NOL deduction.

Example 3: C, Inc. a calendar year corporation filed a 2007 return on September 15, 2008 reflecting a net operating loss. Intending to receive a refund resulting from the carryback of the 2007 NOL, C, Inc. filed an amended 2005 return on October 10, 2011. However, since Cs amended 2005 return was not filed by September 15, 2011, C is unable to receive a refund resulting from the reduction of 2005 taxable income due to the NOL carryback. Even though the refund was barred, the 2007 NOL is carried back to 2005 resulting in a reduction of the unused 2007 NOL which may be applied to 2006 and later years.

NET OPERATING LOSS - COMBINED RETURN FILINGS:

NOLs and carryback and carryforward amounts are computed separately for each corporation that is a member of an affiliated group of corporations filing a combined return under the provisions of Miss. Code Ann. Section 27-7-37(2)(a)(ii). NOLs, to the extent that they may be carried to other years and used under Mississippi law, are deductions taken by individual corporations in determining their net income. While a combined group doesn't have a NOL or carryback and carryforward, the available NOL of one corporation is used to offset the income of other members.

Example 4: X, Inc., a calendar year corporation, filed in a combined return with C, Inc. for 2007 and prior years. For 2007, C and X have separately computed Miss. net incomes of $40,000 and ($10,000) respectively. Neither C or X have any unused NOLs from other years. The combined return net income of C and X is $30,000. Since X's $10,000 NOL was used to offset the income of C, X does not have a NOL to be carried back or forward.

Example 5: X, Inc., a calendar year corporation, filed in a combined return with C, Inc. for 2006 and 2007. Neither corporation was doing business in Mississippi prior to 2006. Each corporation had separately computed Miss. net income/(loss) as shown below.

Tax Year	Taxable Inc./Loss of "C" corp.	Taxable Inc./Loss of "X" corp.	Combined Return Taxable Income
2006	$ 20,000	$ (65,000)	$ 0
2007	$ 40,000	$ (10,000)*	$ 0

Since X's 2006 NOL exceeded the income of C for 2006, X had an unused NOL of $45,000 for 2006. This loss is effectively carried forward since X had no Miss. income (not doing business in Mississippi) prior to 2006.

** X's NOL of $10,000 for 2007 was computed prior to any NOL deduction for the prior year.*

X's 2006 NOL carryforward of $45,000 from 2006 will completely offset the 2007 income of C resulting in a combined return taxable income of $0.00. X has an unused 2006 NOL carryforward of $5,000 to 2008. Also, X has a 2007 NOL of $10,000 which is effectively carried forward to 2008 as well.

While a corporation uses its Mississippi NOL generated in one year as a deduction against income in another year, certain restrictions exist when the deduction is to be applied to the income of another member in a combined return. A NOL deduction of one member can't offset the income of another unless both were members of the same affiliated group for the year the NOL was generated and both affiliated members were part of a combined return in the year the NOL deduction is being taken. Furthermore, if a corporation leaves a combined group, its unused NOL will follow the individual corporation and will not affect the group's calculation of combined net income in later years, even if the NOL is attributable to years in which the corporation belonged to the combined group.

Example 6: D, Inc. started doing business in Mississippi in 2005 and made a separate company return for 2005 reflecting a NOL of ($20,000). At the beginning of 2006, D, Inc. was acquired by the C affiliated group, but was NOT included in the groups combined return filing for 2006. In 2006, D again filed a separate company return reflecting a NOL of ($10,000.)

C, Inc. and X, Inc. started "doing business" in Mississippi in 2006 and filed in a combined return for the first year. In 2006 C and X had separately computed net incomes of $30,000 and ($40,000) respectively, therefore the group has no taxable income. Both X and D each had a 2006 NOL carryforward of ($10,000).

For 2007 C, X, and D were included in a combined return filing and their separately computed net incomes (prior to any NOL deductions) were $20,000, $5,000, and $10,000 respectively. The combined return taxable income for 2007 is $5,000.

Tax year	Taxable Inc./Loss of "C" prior to any NOL deduction	Taxable Inc./Loss of "X" prior to any NOL deduction	Taxable Inc./Loss of "D" prior to any NOL deduction
2005	-----------	----------	$ (20,000)
2006	$ 30,000	$ (40,000)	$ (10,000)
2007	$ 20,000	$ 5,000	$ 10,000

Computation of 2007 Combined Return taxable income

	C corp.	X corp	D corp	Total
Taxable Inc.– prior to NOL deduction	$ 20,000	$ 5,000	$ 10,000	
Less: Same Corp NOLCarryforward	$ 0	$ (10,000)	$ (30,000)	
Separate Corp. Net Taxable Income	$ 20,000	$ 0	$ 0	
Less: Unused NOL of X corp.	$ (5,000)			
Less: Unused NOL of D corp.	$ (10,000)**			
Combined Return Taxable Inc.	$ 5,000	$ 0	$ 0	$ 5,000

*** Only the 2006 NOL of D corporation can be used to offset the income of another affiliated member. The unused portion of D's 2005 NOL, $10,000, is carried forward separately.*

D corporation's NOL computations are as follows:

2005 Net Operating Loss:	$ 20,000
Less: Taxable Inc. for 2007	$ (10,000)
Separate Company 2005 NOL Carryforward to 2008:	$ 10,000
2006 NOL	$ 10,000
Less: 2007 Taxable Income of "C" corp affiliated member	$ (20,000)
2006 NOL carryforward to 2008	$ 0

A NOL of one member offsets the taxable net income of another member in the same proportion as that member's taxable net income bears to the total income of all members with positive taxable net income.

Example 7: A combined group consists of three corporations, A, Inc.; B, Inc.; and C, Inc. In 2007, the net taxable incomes (losses) of the members are: A, Inc. $40,000; B, Inc. $20,000; and C, Inc. ($15,000). The ($15,000) NOL of C offsets the incomes of A and B on a pro rata basis. Thus,

A's income offset is $40,000/$60,000 X $15,000 = $10,000

B's income offset is $20,000/$60,000 X $15,000 = $ 5,000

A is left with $30,000 of income after the offset, and B is left with $15,000. C has no NOL. The combined net income of the group is: $30,000 + $15,000 = $45,000.

Likewise, when the separately computed NOLs of a group exceed the separately computed taxable net incomes of the group, then each corporation's NOL is utilized in the same proportion as the NOL bears to the total for all loss members.

Example 8: A combined group consists of three corporations: A, Inc.; B, Inc.; and C, Inc. which have taxable net incomes of $15,000, ($30,000), and ($15,000) respectively.

A's income offsets $30,000/$45,000 X $15,000 = $10,000 of B's NOL, and

A's income offsets $15,000/$45,000 X $15,000 = $ 5,000 of C's NOL

A is left with zero taxable net income, and B and C are left with unused NOL carryforwards of ($20,000) and ($10,000) respectively.

TAX CREDITS:

Tax credits belong only to the corporation earning the credit and may not be used to offset the income tax liability of another corporation via a combined return filing or to create a refund. For purposes of determining a credit that is based on a corporation's taxable net income, computations are performed on a separate company basis. Since the corporation's net taxable income is computed on a separate company basis, it includes all NOL deductions carried over from other years for that corporation, but does not includes losses of other members in the combined group. Unused tax credits which are carried forward are limited to the income tax liability of the corporation generating the credits.

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Example 9: C, Inc. and X, Inc. started "doing business" in Mississippi in 2005 and filed in a combined return for the first year. In 2006 C and X had separately computed net incomes (prior to any NOL deduction) of $300,000 and $400,000 respectively.

X had an unused 2005 NOL carryforward of ($200,000) resulting in net taxable income of $200,000 for X and $500,000 for the group. In addition, X generated a jobs tax credit (year 2) in the amount of $30,000.

While the combined return reflects a total income tax liability of $24,850 (tax on $500,000), the jobs tax credit is $4,925 as it is computed on a separate company basis and is limited to 50% of X's separately computed hypothetical tax liability of $9,850 (tax on $200,000).

As indicated previously, a tax credit can not generate a refund for a corporation. Whenever one or more corporations in a combined filing has NOLs and application of those NOLs would result in a hypothetical refund (i.e. the allowable separate company tax credits exceed the combined group tax liability), such amount of losses as necessary are to be carried back/forward to achieve a zero ($0) combined filing tax liability.

Example 10: C, Inc. and X, Inc. started "doing business" in Mississippi in 2005 and filed in a combined return for the first year. In 2006 C and X had separately computed net income/loss (prior to any NOL deduction) of ($300,000) and $400,000 respectively.
X has an unused 2005 NOL carryforward of ($200,000) resulting in a separately computed net taxable income of $200,000 and a separately computed jobs tax credit of $4,925.

X corporation separate company net inc. prior to NOL deduction	$	400,000
Less: 2005 NOL carryforward deduction	$	(200,000)
X corp. separate company taxable Income:	$	200,000
X Company Tax Liab.(3% first $5,000, 4% next $5,000, 5% marginal rate)	$	9,850
Jobs Tax Credit limited to 50% of separate company tax liability:	$	4,925
X Company (separate entity) tax liability	$	4,925

In order for X to utilize the full amount of its credit, the combined return filing must not reflect a total income tax liability less than the amount of credits, $4925, allowed on a separate company basis. This corresponds to taxable income for the combined filing of $101,500. Since X's taxable income is $200,000, only ($98,500) of C's loss will be utilized in the current year combined filing.

X corp. separate company taxable Income:	$	200,000
Less: NOL of "C" company used in current year combined filing	$	(98,500)
Combined Filing Taxable Income	$	101,500
Combined Filing Tax Liab.(3% first $5,000, 4% next $5,000, 5% thereafter)	$	4,925
Less: X corporation eligible Job Tax Credit	$	(4,925)
Combined Filing Tax Liability (after credits):	$	0

For C, Inc. the remainder of its unused NOL, ($201,500), is carried back/forward to other years where the same rules are applied.

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