

(g) If the taxpayer acquires products or services from another member of its affiliated or controlled group, which it resells or otherwise uses to generate revenue or expense, the taxpayer shall within 90 days of a request from the Director, disclose by computerized spread sheet or other form as specified by the Director the amount of revenue or expense generated from those products or services including, but not limited to, management fees, rents, and other services. A failure to file such disclosure constitutes the filing an incomplete tax return, subject to the penalties of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., including, without limitation, N.J.S.A. 54:49-4 and 54:52-8.

New Rule, R.1978 d.30, effective January 27, 1978.
 See: 10 N.J.R. 40(b), 10 N.J.R. 128(b).
 Repealed by R.1994 d.186, effective April 18, 1994.
 See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
 Section was "New jobs credit; salaries deduction".
 Special New Rule, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
 See: 35 N.J.R. 1573(a).
 Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.
 See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
 Provisions of R.2003 d.135 adopted without change.

18:7-5.12 Net operating loss deduction

A taxpayer may deduct a New Jersey net operating loss carryover as defined in N.J.A.C. 18:7-5.13 in computing its entire net income before exclusions and before the net operating loss deduction.

New Rule, R.1986 d.26, effective February 3, 1986.
 See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).
 Amended by R.1994 d.186, effective April 18, 1994.
 See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7-5.13 New Jersey net operating loss carryover

(a) A New Jersey net operating loss as defined in N.J.A.C. 18:7-5.15 for any taxable year ending after June 30,

1984 becomes a net operating loss carryover. The net operating loss carryover is carried to each of the succeeding taxable years and is reduced in each such succeeding year by the amount of entire net income before net operating loss deduction and before exclusions, and is further reduced to zero seven years following the year of the loss, taking into account the normal or extended due date for filing the return for the seventh year succeeding the year of the loss. The net operating loss carryover may not be carried back to any year preceding the year of the loss. For this purpose, taxable year shall mean the accounting period covered by the taxpayer's return. In no event may a net operating loss carryover be used for a net operating loss deduction on the eighth return succeeding the loss year.

(b) The net operating loss may only be carried over by the actual corporation that sustained the loss. The net operating loss may, however, be carried over by the corporation that sustained the loss and which is the surviving corporation of a statutory merger. The net operating loss may not be carried over by a taxpayer that changes its state of incorporation or is a part of a statutory consolidation. Section 4(k) of the Act defines entire net income in terms of a specific corporate franchise. See N.J.S.A. 54:10A-4.5.

(c) Corporations acquired under Internal Revenue Code Section 338 do not lose their net operating loss carryover because the corporate franchise remains unchanged to the extent it does not fall within the provisions of N.J.A.C. 18:7-5.14.

Example 1: A domestic corporation dissolves pursuant to laws of the State of New Jersey and incorporates in another state. This newly formed corporation of another state is a new legal entity for corporation business tax purposes and the net operating loss carryover of the domestic corporation is not available to the new entity.

Example 2: The example below illustrates the net operating loss carryover for the full term of seven years and demonstrates the application of net operating loss deductions in the proper sequence.

Amounts From Returns	1984	1985	1986	1987	1988	1989	1990	1991	1992
Return Year	31-Dec-84	31-Dec-85	31-Dec-86	31-Dec-87	31-Dec-88	31-Dec-89	31-Dec-90	31-Dec-91	31-Dec-92
Fiscal Year Ended									
Line 28	(\$100,000)	(6,000)	(8,000)	(10,000)	50,000	8,000	(5,000)	2,000	10,000
NJ Adjustments	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
ENI before NOL ded. or exclusions	(95,000)	(1,000)	(3,000)	(5,000)	55,000	13,000	0	7,000	15,000
NOL Deduction	NA	0	0	0	55,000	13,000	0	7,000	9,000
ENI before exclusions	0	0	0	0	0	0	0	0	6,000
Dividend exclusion & IBF exclusion	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
Entire Net Income	0	0	0	0	0	0	0	0	4,000
NOL Carryovers Applied									
1985	0								
1986	0	0							
1987	0	0	0						
1988	55,000	0	0	0					
1989	13,000	0	0	0	0				
1990	0	0	0	0	0	0			
1991	7,000	0	0	0	0	0	0		
1992		1,000	3,000	5,000	0	0	0	0	0
1993			0	0	0	0	0	0	0
1994				0	0	0	0	0	0
1995					0	0	0	0	0
1996						0	0	0	0
1997							0	0	0

1998								0	0
1999								0	0
Unused	20,000	0	0	0	0	0	0	0	0
Total	95,000	1,000	3,000	5,000	0	0	0	0	0

(d) The following explain and/or define the above table: Line 28 is the amount of the taxpayer's taxable income, before net operating loss deduction and special deductions which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its Federal income tax. NJ Adjustments are the statutory additions and deductions to line 28 that are peculiar to the New Jersey corporation business tax.

1. "ENI" means entire net income as defined in the Act and in these rules.

2. "NOL" means net operating loss.

i. Exclusions are the exclusions from entire net income for dividends received and the eligible net income of an international banking facility.

3. "IBF" means the eligible net income of an international banking facility.

New Rule, R.1986 d.26, effective February 3, 1986.

See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).

Administrative Correction to (c), removing Examples 1:B and 2:C from Code.

See: 23 N.J.R. 1024(a).

Amended by R.1994 d.186, effective April 18, 1994.

See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).

See: 35 N.J.R. 1573(a).

In (b), added the N.J.S.A. reference.

Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.

See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Provisions of R.2003 d.135 adopted without change.

Law Review and Journal Commentaries

Tax Law. Robert J. Alter, Jay A. Soled, 138 N.J.L.J. No. 1, S64 (1994).

Taxes. Steven P. Bann, 136 N.J.L.J. No. 8, 53 (1994).

Case Notes

Corporate Business Tax Act's (CBT's) regulation, under which net operating costs did not carryover when domestic corporation was dissolved and incorporated in another state such that new corporation could not take deduction, applied to surviving corporation that attempted to take merged corporation's net operating losses, despite claim that regulation contemplates disallowance of future net-operating-loss deductions when a domestic corporation dissolves pursuant to state law and incorporates in another state whereas surviving corporation was a foreign company before and after reorganization; statute did not expressly state that it only affected company's incorporated in state. A.H. Robins Co., Inc. v. Director, Div. of Taxation, 2002 WL 31932043 (2002).

Successor corporation; net operating losses of merged corporation. Richard's Auto City, Inc. v. Director, Div. of Taxation, 270 N.J.Super. 92, 636 A.2d 572 (A.D.1994), also published at 14 N.J.Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed 140 N.J. 523, 659 A.2d 1360.

Regulation governing net operating loss carryovers was not authorized. Richard's Auto City, Inc. v. Director, Div. of Taxation, 270 N.J.Super. 92, 636 A.2d 572 (A.D.1994), also published at 14 N.J.Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed 140 N.J. 523, 659 A.2d 1360.

Surviving corporation could not carryover loss of a merged corporation. Richard's Auto City, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 619 (1992), reversed, 14 N.J. Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed, reinstated 140 N.J. 523, 659 A.2d 1360.

Change in 50% or more of ownership of corporation may remove corporation's right to carryover net operating losses. Richard's Auto City, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 619 (1992), reversed, 14 N.J. Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed, reinstated 140 N.J. 523, 659 A.2d 1360.

18:7-5.14 Limitations to the right of a net operating loss carryover

(a) The net operating loss carryover automatically becomes zero when the cumulative effect of all its capital stock redemptions and sales after June 30, 1984 is a 50 percentage point change in the ownership of its voting stock and the corporation changes from the business giving rise to the loss. For this purpose the exchange of stock is a sale. Further, solely for this purpose and no other purpose in the Act, a business is defined in terms of the economic factors of production. The sequence in change of ownership and change in the business and the taxability of an exchange for Federal income tax purposes are irrelevant. The economic substance of the transaction is, however, paramount and may indicate forfeiture of a net operating loss carryover.

(b) The Director may disallow the carryover in those instances where the facts support the premise that a corporation was acquired for the primary purpose of the use of its net operating loss carryovers. In this context, to prevent the trafficking in loss corporations, the Director will consider the following facts:

1. Whether the physical location or other fixed assets of the loss corporation were used in a new business;
2. The extent of the termination of the existing work force of the loss corporation;
3. A price paid for the loss corporation in excess of the market value of the assets; and
4. Any other material deemed appropriate to the determination.

(c) No single factor shall be deemed on its own to be dispositive of the issue.