

Vermont Department of Taxes
TECHNICAL BULLETIN

TAX: INCOME

TB-40

SUBJECT: Conversion of Net Operating Loss
To Separate Vermont Net Operating Loss

ISSUED: 1/07/2008
REVISED: 10/7/2008

STATUTORY REFERENCES: 32 V.S.A. §§ 5811(25), 5832 and 5888

Introduction

For tax years beginning on and after January 1, 2007, Vermont no longer “piggy-backs” to the federal NOL. Rather, a distinct **Vermont net operating loss (VNOL)** is created. The VNOL is defined as “any negative income after allocation and apportionment of Vermont net income,” and can be carried forward to offset Vermont income for up to 10 years, but cannot be carried back. *See Technical Bulletin 35 for a description of how the law changed.*

The purpose of this bulletin is to provide a method to convert pre-2007 federal NOLs to VNOLs so a similar calculation may be used for all NOLs.

Conversion Method

A federal NOL carryforward that, except for the law change, would have been available for deduction on a 2007 return can be converted to a Vermont NOL and used as provided below:

- The Vermont NOL is the remaining (unexpired and not previously used) federal NOL for each loss year multiplied by the corporation’s Vermont apportionment percentage for 2007 or the year in which the loss was generated. If the 2007 percentage is chosen, it must be used with respect to every loss carryover being converted. Similarly, if the loss year percentage is chosen, that method must be applied to every loss carryover being converted.
- “Federal NOL” for purposes of conversion means the actual federal NOL, not a pro-forma federal NOL calculated for state tax purposes. Separate company or pro-forma losses that 1) have been applied as a federal NOL deduction in the past, 2) have been applied as a separate company or pro-forma state NOL deduction in the past, or 3) never existed as a federal NOL because they were used to reduce or offset net group income in the year in which the loss was incurred (i.e., the pro-forma loss reduced the federal income reported) are not eligible for conversion to an initial VNOL.
- The Vermont NOL converted from loss years before 2007 may be carried forward for 10 years beginning with 2007 or for the period in which the loss was available for carryforward under federal law – whichever is shorter.

- Corporations wishing to use pre-2007 NOLs are required to file a completed schedule with their 2007 return¹ (VT CO 411).
- Vermont NOLs must be utilized on a First In-First Out basis.

Required Schedule

A company that files as a separate entity and not as part of a federal consolidated group or unitary group must provide a schedule with columns showing the following information for each loss year from 1987 to 2006:

1. The year in which the loss was generated;
2. The operating income or loss for that year - this will generally be line 28² of the Federal Form 1120 (or pro-forma) filed with the Vermont CO-411;
3. The federal NOL generated in that year, if any;
4. The portion of NOL in column 3 that has been utilized on a federal or VT pro-forma return, or never existed for federal purposes because it was used to reduce current year federal income (see second bullet under "Conversion Method" above);
5. The portion of NOL that remains (difference between Columns 3 and 4);
6. The Vermont apportionment percentage reported on VT Form CO-411 for 2007 or the year in which the loss was generated (see first bullet under "Conversion Method" above);
7. The result of applying the 2007 apportionment percentage to the remaining available NOL (the converted Vermont NOL). (Column 5 times Column 6)
8. The expiration year of the converted Vermont NOL (the lesser of ten years or the remaining federal carryover period).

Additional Instructions for Unitary Combined Reports and Federal Consolidated Returns

Because Regulation 1.5862(d) - 9 paragraph (a) (regarding treatment of NOLs under unitary combined reporting) was promulgated prior to the adoption of the NOL legislation, it does not fully explain the use of VNOLs by a unitary group. Combined group members should calculate and apply their VNOLs as follows:

- 1) Each member of a combined group (whether that member is a separate corporation or a consolidated group filing as a single member within a unitary-combined report) must calculate its VNOL in accordance with the guidelines above for separate entities.

¹ If your company files a fiscal year other than the calendar year, this is the tax return for the first period that begins on or after 1/1/2007.

² In some cases it will be line 28 less line 29b (but not 29a).

2) Each group member may apply its separately tracked VNOL to its separate income, in accordance with Act 35 (2005) and Technical Bulletin 35.

3) If, however, some or all members of the unitary group elect to file a federal consolidated return, but are filing as separate members within the Vermont unitary group, excess VNOLs of members that are part of the consolidated group may be used to offset the income of other unitary group members that are also part of the same federal consolidated group.

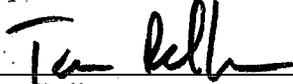
4) Use of NOLs following reorganizations follows the federal rules.



Molly Bachman, General Counsel

10/6/08
Date

Approved:



Tom Pelham
Commissioner

10/7/08
Date

