

Ruling 93-02

Vermont Department of Taxes

Date: January 4, 1993

Written By: Gloria Hobson, Director, Business Taxes Division

Approved By: Joyce H. Errecart, Commissioner of Taxes

You have requested a ruling on the carry forward and carryback provisions for Vermont corporate income tax in 32 VSA Section 5888(4)(B). This ruling relies on the factual representations of your client's situation as contained in your letter of August 14, 1992.

Your client wishes to carry forward an operating loss for Vermont corporate income tax while the federal corporate income tax will use a carryback of the operating loss.

Your client amended its 1991 corporate income tax return which resulted in a net operating loss. The amended return was filed after the due date (including extension) of the 1991 return. According to your letter, your client could not elect a carry forward of the amended loss for federal corporate income tax purposes because of Section 172(b)(3) of the Internal Revenue Code and is required to take the loss as a carryback on the federal return.

32 VSA Section 5888(4)(B) reads: "The amount of any net operating loss, or net operating loss carryback or carry forward, which is available to a taxpayer under the laws of the United States, shall be available to a taxpayer in the determination of his Vermont tax,..."

It is clear from your letter that the only net operating loss option available to your client under applicable Federal law is for carryback of the 1991 tax year loss.

A corporate taxpayer may not claim a carry forward for Vermont corporate income tax purposes if the corporation has a loss carryback for federal purposes. Whether the carry forward or carryback was mandated by the Internal Revenue Code or a voluntary election of the corporate taxpayer is irrelevant under 32 VSA Section 5888(4)(B) as the statutory language makes no distinction.

This ruling is issued solely to your firm and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statutes or regulations.