General Information on the Net Operating Loss Regime for Tax Years Ending on and After July 31, 2019

TB-94(R) – Revised October 11, 2023
Tax: Corporation Business Tax

P.L. 2018, c. 48 and P.L. 2018, c. 131 collectively changed the net operating loss and net operating loss carryover regime from pre-allocation to post allocation for privilege periods ending on and after July 31, 2019 (beginning on and after August 1, 2018 if a full 12-month privilege period begins August 1, 2018 and ends July 31, 2019). P.L. 2023, c. 96, changed to the New Jersey Corporation Business Tax rules related to the dividend exclusion and the historic ordering of the net operating loss deduction, dividend exclusion, and international banking facility deduction. This Technical Bulletin explains various aspects of the net operating loss regime in general. Information for members of combined groups filing New Jersey combined returns see TB-95(R), *Net Operating Losses and Combined Groups*

For New Jersey purposes, the income starting point is Line 28 of federal Form 1120 (or the corresponding line of any other federal corporate return filed), which is taxable income before net operating loss deductions and special deductions (N.J.S.A. 54:10A-4(k)). New Jersey has its own statutorily created net operating loss calculations. See N.J.S.A. 54:10A-4(k)(6), N.J.S.A. 54:10A-4(u), and N.J.S.A. 54:10A-4(v). In order to claim New Jersey net operating losses and net operating loss carryovers (deductions), the taxpayer must have filed a New Jersey Corporation Business Tax return in the applicable privilege periods.

Prior Net Operating Loss Conversion Carryovers (PNOL) are governed by N.J.S.A. 54:10A-4(u), as amended by P.L. 2023, c. 96 (effective for privilege periods ending on and after July 31, 2023), which states:

> 'Prior net operating loss conversion carryover' means a net operating loss incurred in a privilege period ending prior to July 31, 2019 and converted from a pre-allocation net operating loss to a post-allocation net operating loss as follows:
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> (1) As used in this subsection:
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> 'Base year' means the last privilege period ending prior to July 31, 2019.
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> 'Base year BAF' means the taxpayer's business allocation factor as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) for purposes of calculating entire net income for the base year, as such section was in effect for the last privilege period ending prior to July 31, 2019.
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> 'UNOL' means the unabsorbed portion of net operating loss as calculated under paragraph (6) of subsection (k) of this section as such paragraph was in effect for the last privilege period ending prior to July 31, 2019, that was not deductible in previous privilege periods and was eligible for carryover on the last day of the base year **subject to the limitations for deduction under such subsection, including any net operating loss sustained by the taxpayer during the base year**.
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> (2) The prior net operating loss conversion carryover shall be calculated as follows:
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> (A) The taxpayer shall first calculate the tax value of its UNOL for the base year and for each preceding privilege period for which there is an UNOL. The value of the UNOL for each privilege period is equal to the product of (I) the amount of the taxpayer's UNOL for a privilege period, and (II) the taxpayer's base year BAF. This result shall equal the taxpayer's prior net operating loss conversion carryover.
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> (B) The taxpayer shall continue to carry over its prior net operating loss conversion carryover to offset its allocated entire net income as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on and after July 31, 2019. Such carryover periods shall not exceed the twenty privilege periods following the privilege period of the initial loss. The entire amount of the prior net operating loss conversion carryover for any

privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the prior net operating loss conversion carryover which is carried to each of the other privilege periods shall be the excess, if any, of the amount of the prior net operating loss conversion carryover over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of subsection (k) of this section allocated to this State. **For privilege periods ending on and after July 31, 2023, for the purposes of computing taxable net income for a current privilege period, the amount of the prior net operating loss conversion carryover shall be subtracted from entire net income allocated to this State, after the application of paragraphs (4) and (5) of subsection (k) of this section against current privilege period income when the entire net income allocated to this State for the privilege period is greater than zero.**

(C) The prior net operating loss conversion carryover computed under this subsection shall be applied against the entire net income allocated to this State before the net operating loss carryover computed under subsection (v) of this section. *[emphasis added]*

The limitations governing the UNOLs that are converted to PNOLs from the period where the UNOLs were sustained by the taxpayer can be found in N.J.S.A. 54:10A-4(k)(6), which states in part:

(B) Net operating loss carryover. A net operating loss for any privilege period ending after June 30, 1984 shall be a net operating loss carryover to each of the seven privilege periods following the period of the loss and a net operating loss for any privilege period ending after June 30, 2009 shall be a net operating loss carryover to each of the twenty privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period (the "loss period") shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of this subsection or the net operating loss deduction provided by subparagraph (A) of this paragraph, for each of the prior privilege periods to which the loss may be carried.

…

(D) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover.

…

(F) **Reduction for discharge of indebtedness.** A net operating loss for any privilege period ending after June 30, 2014, and any net operating loss carryover to such privilege period, shall be reduced by the amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of section 108 of the federal Internal Revenue Code (26 U.S.C. s.108), for the privilege period of the discharge of indebtedness. *[emphasis added]*

Post Allocation Net Operating Losses and Post Allocation Net Operating Loss Carryovers for Tax Years Ending on and After July 31, 2019, are governed by N.J.S.A. 54:10A-4(v), as amended by P.L. 2023, c. 96 (effective for privilege periods ending on and after July 31, 2023), which states:

'Net operating loss deduction' means the amount allowed as a deduction for the net operating loss carryover to the privilege period, calculated as follows:

(1) Net operating loss carryover. A net operating loss for any privilege period ending on or after July 31, 2019, shall be a net operating loss carryover to each of the twenty privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried. For privilege periods ending

before July 31, 2023, the portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of subsection (k) of this section allocated to this State. **For privilege periods ending on and after July 31, 2023, the portion of the loss that shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, after the application of paragraphs (4) and (5) of subsection (k) of this section allocated to this State; provided, however, for the purpose of computing taxable net income for the privilege period, the net operating loss carryover shall only be subtracted from entire net income allocated to this State when the entire net income allocated to this State is greater than zero.**

(2) Net operating loss. For purposes of this paragraph the term "net operating loss" means the excess of the deductions over the gross income used in computing entire net income, without regard to any net operating loss carryover, and for privilege periods ending before July 31, 2023, computed without the exclusions in paragraphs (4) and of subsection (k) of this section, and **for privilege periods ending on and after July 31, 2023, computed after the application of paragraphs (4) and (5) of subsection (k) of this section, allocated to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10)**.

(3) **Reduction for discharge of indebtedness.** A net operating loss for any privilege period ending on or after July 31, 2019, and any net operating loss carryover to such privilege period, shall be reduced by the amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108, for the privilege period of the discharge of indebtedness.

(4) A net operating loss carryover shall not include any net operating loss incurred during any privilege period ending prior to July 31, 2019.

(5) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock, and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition, where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover; provided, however, this paragraph shall not apply between members of a combined group reported on a New Jersey combined return. *[emphasis added]*

Taxable Net Income is defined in N.J.S.A. 54:10A-4(w), as amended by P.L. 2023, c. 96 (effective for privilege periods ending on and after July 31, 2023), which states: "'Taxable net income' means entire net income allocated to this State as calculated pursuant to sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54 :10A-8) as modified by subtracting any prior net operating loss conversion carryforward calculated pursuant to subsection (u) of this section, and any net operating loss calculated pursuant to subsection (v) of this section; provided, however, for privilege periods ending on and after July 31, 2023, when subtracting any net operating losses calculated pursuant to subsection (v) of this section or the combined group net operating losses calculated pursuant to subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6), the limitation set forth in paragraph (2) of subsection (a) of Internal Revenue Code Section 172 (26 U.S.C. s.172(a)(2)) shall apply, except that August 1, 2023 is substituted for the reference to January 1, 2018 in subparagraph (A) of paragraph (2) of subsection a. of Internal Revenue Code Section 172 (26 U.S.C. s.172), and July 31, 2023 is substituted for the reference to December 31, 2017 in subparagraph (B) of paragraph (2) of subsection (a) of Internal Revenue Code Section 172 (26 U.S.C. s.172). For privilege periods ending on and after July 31, 2023, for a combined group, before subtracting the prior net operating loss conversion carryforwards and subtracting the net operating losses of the combined group when computing the total taxable net income, the combined group shall first add together the allocated entire net income from the unitary business of the combined group and the portion of allocated entire net income of members with activities independent of the group, and then subtract the prior net operating loss conversion carryforwards and then the net operating losses."

Prior Net Operating Loss Conversion Carryovers (PNOL)

For tax years ending prior to July 31, 2019, net operating losses were calculated on a pre-allocation basis pursuant to N.J.S.A. 54:10A-4(k)(6). The unused and unexpired net operating loss carryovers that were calculated pursuant to N.J.S.A. 54:10A-4(k)(6) are required to be converted from a pre-allocation net operating loss carryover to an allocated prior net operating loss conversion carryover (PNOL). PNOLs are then used to reduce the allocated entire net income of the taxpayer. In order to have New Jersey net operating losses and net operating loss carryovers that can be converted to PNOLs, the taxpayer must have filed New Jersey Corporation Business Tax return in the applicable privilege periods.

To calculate a PNOL conversion carryover, a taxpayer must first calculate its pre-allocated net operating losses for each preceding privilege period, then multiply those amounts by the corporation's allocation factor from the last privilege period ending prior to July 31, 2019. A Prior Net Operating Loss Conversion Worksheet is included in the Corporation Business Tax Return to assist taxpayers with the conversion.

PNOLs expire 20 privilege periods after the loss was originally generated. For the most part, N.J.S.A. 54:10A-4(u) changed the ordering of where PNOLs are subtracted but did not change the expiration period. There is an exception for taxpayers with losses that met the qualifications of N.J.S.A. 54:10A-4.3.a, which provided emerging technology or biotechnology companies a 15-year net operating loss carryover from privilege periods ending on or before June 30, 2009. Taxpayers that met the qualifications of N.J.S.A. 54:10A-4.3 and that have unused and unexpired net operating loss carryovers as a result must convert those net operating loss carryovers to PNOLs. However, when converting those net operating loss carryovers, N.J.S.A. 54:10A-4(u)(2)(B) extends the carryover period of these PNOLs by 5 tax years. For example: A taxpayer has an unused and unexpired net operating loss carryover that met the qualifications of N.J.S.A. 54:10A-4.3 for a privilege period that ended on December 31 2008. The carryover would have expired on December 31, 2023. As a result of the unused and unexpired net operating loss carryover being converted to a PNOL, the net operating loss carryover that would have expired on December 31, 2023, is extended to December 31, 2028.

PNOLs are subtracted from allocated entire net income unless the taxpayer is in a loss position in that tax year. PNOLs cannot be used to create an allocated net operating loss for the current year that is carried over into future tax years. Furthermore, a PNOL is still subject to the limitations in N.J.S.A. 54:10A-4(k)(6)(D) and N.J.S.A. 54:10A-4(k)(6)(F).

Note: In a situation where an inactive corporation, which has been filing New Jersey corporation business tax returns and paying the minimum tax, has UNOLs from prior periods, the allocation factor from the last privilege period that a New Jersey corporation business tax return was filed under the active status may be used for purposes of calculating their PNOLs.

For privilege periods ending on and after July 31, 2023, PNOLs are subtracted after deducting the current year dividend exclusions and international banking facility deduction, but only if allocated entire net income is greater than zero. This change to the historic ordering is prospective only. Taxpayers are not permitted adjust NOLs and PNOLs from privilege periods ending before July 31, 2023, using the law change from P.L. 2023, c.96.

Current Year Post Allocation Net Operating Losses and Post Allocation Net Operating Loss Carryovers

For tax years ending on and after July 31, 2019, net operating loss deductions and net operating loss carryovers are calculated on a post allocation basis. This means that if the taxpayer's allocated entire net income is a loss, then such loss will equal the amount of taxpayer's post allocation net operating loss for the tax year. A post allocation net operating loss carryover can be carried forward for 20 tax years. If the taxpayer has a post allocation net operating loss for the year, the taxpayer cannot subtract its prior net operating loss conversion carryover (PNOL). The post allocation net operating loss carryover is subtracted from allocated entire net income after the taxpayer uses all of its PNOLs if the taxpayer still has allocated entire net income after the PNOL subtraction.

For privilege periods beginning on and after January 1, 2020, the provisions of the Internal Revenue Code, the Federal rules, limitations, and restrictions, governing Federal net operating losses and Federal net operating loss carryovers for mergers, acquisitions, reorganizations, spin-offs, split-offs, dissolution, bankruptcy, or any form of cessation of a business, or any other provision that limits or reduces Federal net operating losses and Federal net operating loss carryovers, apply to New Jersey net operating loss carryovers pursuant to N.J.S.A. 54:10A-4(v) and the New Jersey net operating loss carryover provisions of N.J.S.A. 54:10A-4.6(h). The Federal rules and regulations governing Federal consolidated return net operating losses and net operating loss carryovers apply to New Jersey net operating loss carryover provisions at N.J.S.A. 54:10A-4.6.h, as though the combined group filed a Federal consolidated return, regardless of how the members of the combined group filed for Federal purposes to the extent consistent with the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.).

For information on PNOLs and NOLs with certain mergers or acquisitions, see TB-102(R), Net Operating Losses (NOLs) and Post Allocation Net Operating Losses (PNOLs) with Certain Mergers & Acquisitions.

For privilege periods ending on and after July 31, 2023, the dividend exclusion and international banking facility deduction are subtractions that occur *before* determining if a taxpayer has a net operating loss that can be carried over for use in a future privilege period. Net operating loss carryover deductions are subtracted after deducting the current year dividend exclusions and international banking facility deduction but only if allocated entire net income is greater than zero. There is an 80% deduction limitation in I.R.C. s. 172(a)(2) that applies prospectively for New Jersey purposes. When a taxpayer uses NOLs generated in privilege periods beginning after July 31, 2023, these NOLs can only be deducted up to 80% of the remaining allocated entire net income after first deducting the PNOLs and pre-August 1, 2023 NOLs. The Form 500 has been revised to take this into account, starting with the 2023 CBT returns. The 80% deduction limitation does not apply to PNOLs or certain NOLs (generated in periods beginning before August 1, 2023). A combined group with allocated entire net income can deduct up to 100% of the PNOLs (to reduce the allocated entire net income) but cannot exceed the entire net income. If there is still allocated entire net income after deducting the PNOLs, the taxpayer can subtract up to 100% of the Pre-August 1, 2023 NOL carryovers (to reduce the allocated entire net income) but cannot exceed allocated entire net income. NOLs and PNOLs cannot be used to create or increase a current year loss. See TB-111, *Changes to the Dividend Exclusion and the Historic Ordering of Net Operating Losses, the Dividend Exclusion, and the International Banking Facility Deduction.*

Discharge of Indebtedness Income and Net Operating Losses

The Internal Revenue Code excludes certain categories of debt cancellation from income (such as discharges in bankruptcy). IRC Section 108(b) calls for a reduction of certain tax attributes, including net operating losses. Therefore, if the taxpayer has a discharge of indebtedness amount that is excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of IRC section 108, it must be reflected on the tax return as explained below.

In a tax year that the taxpayer has a current year post allocation net operating loss and a discharge of indebtedness, the taxpayer must reduce its post allocation net operating loss by the allocated discharge of indebtedness income, using the current year allocation factor to calculate the allocated discharge of indebtedness income, pursuant to N.J.S.A. 54:10A-4(v)(3) and N.J.S.A. 54:10A-4(w). Additionally, if the taxpayer has PNOLs, the taxpayer must reduce the PNOLs by its allocated discharge of indebtedness income, if the allocated discharge of indebtedness income exceeds the current year post allocation net operating loss. If the taxpayer does not have any PNOLs, the taxpayer must reduce its post allocation net operating loss carryovers by its allocated discharge of indebtedness income if the allocated discharge of indebtedness income exceeds the current year post allocation net operating loss.

In a tax year that the taxpayer has allocated entire net income and has discharge of indebtedness, the taxpayer must reduce any PNOLs that are being utilized by its allocated discharge of indebtedness income pursuant to N.J.S.A. 54:10A-4(k)(6)(F), N.J.S.A. 54:10A-4(u)(1), and N.J.S.A. 54:10A-4(w). In order to calculate how much the taxpayer's PNOLs are being reduced, the taxpayer must multiply the discharge of indebtedness income amount by its current year allocation factor to arrive at an allocated discharge of indebtedness income amount. If the allocated discharge of indebtedness amount exceeds all of the taxpayer's PNOLs and the taxpayer has post allocation net operating loss carryovers, the taxpayer must also reduce its post allocation net operating loss carryovers by the remaining balance of the allocated discharge of indebtedness income, and then the taxpayer will reduce its allocated entire net income by the remaining post allocation net operating loss carryover pursuant to N.J.S.A. 54:10A-4(v)(3). If the taxpayer does not have any PNOLs, the taxpayer must reduce its post allocation net operating loss carryovers by its allocated discharge of indebtedness income.

Non-U.S. Corporation Losses and Expenditures

Separate Return Filer That is a Non-U.S. Corporation. A non-U.S. corporation that is incorporated or formed in a foreign nation with a **comprehensive tax treaty** with the United States that is a separate return filer for New Jersey purposes does not include in entire net income any item of income or loss excluded or exempted from federal taxable income under the terms of the treaty and no other deduction, exclusion, or elimination is permitted for such income and loss items. This also means that the receipts attributable to such excluded items are excluded from the allocation factor. Thus, the corporation's net operating loss/loss carryover does not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(A).

A non-U.S. corporation that **filed a federal return** only includes the effectively connected income or loss reported for federal purposes, as modified by the provisions of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), in entire net income. The corporation must take into account only items of expense and allocation factor receipts attributable to such income, and not the items attributable to income that are excluded from entire net income. This means that income that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income and the receipts are excluded from the allocation factor. Thus, the corporation's net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(B).

A non-U.S. corporation that **did not file a federal return** but has nexus with New Jersey, must include its non-treaty protected U.S. source income or loss of what otherwise would be effectively connected income or loss if the corporation had been conducting a business effectively connected to the United States, as modified by the provisions of the Corporation Business Tax Act. The corporation will also take into account only items of expense and allocation factor receipts attributable to such income and not the items attributable to income that are excluded from entire net income. This means that the income that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income and the receipts are excluded from the allocation factor. Thus, the corporation's net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(B).

Affiliated Group Combined Group Post-Allocation Net Operating Losses/Loss Carryovers and Members that are Non-U.S. Corporations. A non-U.S. corporation that is incorporated or formed in a foreign nation with a **comprehensive tax treaty** with the United States that is a member of an New Jersey affiliated group combined return does not include in entire net income any item of income or loss excluded or exempted from federal taxable income under the terms of the treaty and no other deduction, exclusion, or elimination is permitted for such income and loss items. This also means that the receipts attributable to such excluded items are excluded from the allocation factor. Thus, the affiliated group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(A) and N.J.S.A. 54:10A-4.6.b.

A non-U.S. corporation that **filed a federal return** that is a member of a New Jersey affiliated group combined return generally only includes in entire net income the member's effectively connected income or loss reported for federal purposes, as modified by the provisions of the Corporation Business Tax Act. The member and the combined group will also take into account only items of expense and allocation factor receipts attributable to such income, and not the items attributable to income that are excluded from entire net income. This means that income that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income, and the receipts are excluded from the allocation factor. Thus, the affiliated group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(B) and N.J.S.A. 54:10A-4.6.b.

Water's Edge Combined Group Post-Allocation Net Operating Losses/Loss Carryovers and Members That are Non-U.S. Corporations. A non-U.S. corporation that is incorporated or formed in a foreign nation with a **comprehensive tax treaty** with the United States that is a member of a New Jersey water's-edge group combined return does not include in entire net income any item of income or loss excluded or exempted from federal taxable income under the terms of the treaty, and no other deduction, exclusion, or elimination will be permitted for such income and loss items. This also means that the receipts attributable to such excluded items are excluded from the allocation factor. Thus, the water's-edge group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(A) and N.J.S.A. 54:10A-4.6.b.

A non-U.S. corporation **that filed a federal return** and that is a member of a New Jersey water's-edge group combined return generally only includes in entire net income the member's effectively connected income or loss reported for federal purposes, as modified by the provisions of the Corporation Business Tax Act. The member and the combined group will also take into account only items of expense and allocation factor receipts attributable to such income, and not the items attributable to income that are excluded from entire net income. This means that income that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income and the receipts are excluded from the allocation factor. Thus, the water's-edge group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(B) and N.J.S.A. 54:10A-4.6.b.

A non-U.S. corporation that **did not file a federal return** and that is a member of a New Jersey water's-edge group combined return generally only includes in entire net income its non-treaty protected U.S. source income or loss of what otherwise would be effectively connected income or loss if the member had been conducting a business effectively connected to the United States, as modified by the provisions of the Corporation Business Tax Act. The member and the combined group will also take into account only items of expense and allocation factor receipts attributable to such income, and not the items attributable to income that are excluded from entire net income. This means that income that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income and the receipts are excluded from the allocation factor. Thus, the water's-edge group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(B) and N.J.S.A. 54:10A-4.6.b.

World-wide Combined Group Post-Allocation Net Operating Losses/Loss Carryovers and Members that are Non-U.S. Corporations. When making a world-wide group election, the combined group must include all members and all of the income, attributes, and allocation factors of all of the worldwide business entities that are members of the unitary combined group, regardless of whether such members filed a federal tax return or whether such members filed a federal consolidated return(s). The combined group includes all of the income and attributes of such members without regard to any exemption or exclusion from federal taxable income under the terms of a tax treaty. The members that are non-U.S. corporations are treated the same as U.S. corporations and allowed any federal deductions that are allowed under the Corporation Business Tax Act. Thus, world-wide losses and expenses are includable even if they were not included for federal purposes or they had been protected by treaty. Therefore the combined group net operating loss/loss carryover would be based on world-wide losses. See N.J.S.A. 54:10A-4(kk) and N.J.S.A. 54:10A-4.11.

Net Operating Loss Adjustments

P.L. 2023, c.96 clarified the Director's ability to make adjustments to net operating losses for closed years beginning with net operating losses generated in privilege periods ending on or after July 31, 2022, but limited the ability to make adjustments to 10 years after the return was filed.

More Information

For more information see N.J.A.C. 18:7-5.14; N.J.A.C. 18:7-5.21; N.J.A.C. 18:7-21.10; N.J.A.C. 18:7-21.11; and N.J.A.C. 18:7-21.27.

For more information on the changes to the ordering rules for net operating losses and dividends, see TB-111, *Changes to the Dividend Exclusion and the Historic Ordering of Net Operating Losses, the Dividend Exclusion, and the International Banking Facility Deduction.*

Information on net operating losses for combined groups can be found in TB-95, *Net Operating Losses and Combined Groups.*

The Division of Taxation is in the process of updating the regulations addressing the topics covered by this Technical Bulletin.

Note: A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

Revision Information: This Technical Bulletin was revised on October 11, 2023, to include the changes affecting net operating loss deductions as a result of the enactment of P.L. 2023, c.96.