



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

TB-94(R) – Revised February 18, 2020 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). This Technical Bulletin explains various aspects of the new net operating losses and net operating loss carryovers **for taxpayers filing a separate return for New Jersey purposes**. Information for members of combined groups filing New Jersey combined returns will be published in a separate Technical Bulletin, which is forthcoming.

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), 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:

(1) As used in this subsection:

'Base year' means the last privilege period ending prior to July 31, 2019.

'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.

'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**.

(2) The prior net operating loss conversion carryover shall be calculated as follows:

(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.

(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.

- (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) 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. 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.
- (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 computed without the exclusions in 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), 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."

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 new law requires the unused and unexpired net operating loss carryovers that were calculated pursuant to N.J.S.A. 54:10A-4(k)(6) 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 current year net operating loss or current year net operating loss carryover 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.

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.

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.

The Division of Taxation is in the process of drafting 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 February 18, 2020, to clarify that inactive corporations may use the allocation factor from the last privilege period during which they filed as an active New Jersey corporation for purposes of converting pre allocated net operating losses.