REGULAR CALENDAR

April 14, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on Ways and Means to which was referred SB 435-FN,

AN ACT relative to the net operating loss carryover under the business profits tax. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Timothy Lang

FOR THE MAJORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MAJORITY
COMMITTEE REPORT

Committee:	**Ways and Means**
Bill Number:	**SB 435-FN**
Title:	**relative to the net operating loss carryover under the business profits tax.**
Date:	**April 14, 2022**
Consent Calendar:	**REGULAR**
Recommendation:	**OUGHT TO PASS**

STATEMENT OF INTENT

This bill modifies the net operating loss deduction (NOLD) under the business profits tax (BPT). It changes the NOLD from being apportioned twice (double apportionment) to a single apportionment in the year the NOLD is generated. The bill eliminates the outdated reference to the Internal Revenue Code (IRC) in effect on December 31, 1996 so the IRC aligns with the BPT statute (the BPT statute contains the IRC in effect on December 31, 2018). The change in removing the IRC date would cap the utilization of NOLDs to 80% of taxable income as a result; it would also cap the BPT taxable income to 80%. This bill cleans up the state tax code changing a reference from a 1996 tax code reference to a 2018 updated tax code reference and fixes an issue called double apportionment where businesses are being disadvantaged for being multi-state entities. The Business and Industry Association supports this position.

Vote 21-1.

Rep. Timothy Lang
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Ways and Means

SB 435-FN, relative to the net operating loss carryover under the business profits tax. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Timothy Lang for the **Majority** of Ways and Means. This bill modifies the net operating loss deduction (NOLD) under the business profits tax (BPT). It changes the NOLD from being apportioned twice (double apportionment) to a single apportionment in the year the NOLD is generated. The bill eliminates the outdated reference to the Internal Revenue Code (IRC) in effect on December 31, 1996 so the IRC aligns with the BPT statute (the BPT statute contains the IRC in effect on December 31, 2018). The change in removing the IRC date would cap the utilization of NOLDs to 80% of taxable income as a result; it would also cap the BPT taxable income to 80%. This bill cleans up the state tax code changing a reference from a 1996 tax code reference to a 2018 updated tax code reference and fixes an issue called double apportionment where businesses are being disadvantaged for being multi-state entities. The Business and Industry Association supports this position. **Vote 21-1.**

Original: House Clerk

Cc: Committee Bill File

REGULAR CALENDAR

April 14, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Ways and Means to which was referred SB 435-FN,

AN ACT relative to the net operating loss carryover under the business profits tax. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Thomas Schamberg

FOR THE MINORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MINORITY
COMMITTEE REPORT

Committee:	**Ways and Means**
Bill Number:	**SB 435-FN**
Title:	**relative to the net operating loss carryover under the business profits tax.**
Date:	**April 14, 2022**
Consent Calendar:	**REGULAR**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

The minority believes that the effect and potential impact of passage of this bill upon New Hampshire's approximately 70,000 small businesses and their owners that employ over 300,000 employees, creates a financial disadvantage that can further affect small business survival in New Hampshire communities. All NH tax policy should be fair and on a level playing field. The net operating loss deduction (NOLD), that exists at 100% under the current law, is good for the small business owner who can fully recover their losses, especially from the past two years of COVID-19 restrictions, before reporting any taxable income. This bill would cap the usage of this NOLD annually at 80% of taxable income and cause a negative effect on small businesses' thin margin of profitability. While this bill has a part that fixes the double apportionment problem which the minority can accept as a fix for big businesses, the small businesses that do not apportion income gain receive no benefit from the apportionment fix section. The minority stressed to the Ways and Means Committee that without data from the state's change to market based sourcing and the new single sales factor that begins for year 2022, NH should not be enacting tax changes in a vacuum. The minority proposed that a temporary solution to protect New Hampshire's small businesses would be to decouple from the federal 80% cap of the NOLD or adopt both the 80% cap plus an indefinite carry forward period to protect NH small businesses until data can be analyzed and compared by the DRA in years 2025 thru 2026.

Rep. Thomas Schamberg
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Ways and Means
SB 435-FN, relative to the net operating loss carryover under the business profits tax. **INEXPEDIENT TO LEGISLATE.**
Rep. Thomas Schamberg for the **Minority** of Ways and Means. The minority believes that the effect and potential impact of passage of this bill upon New Hampshire's approximately 70,000 small businesses and their owners that employ over 300,000 employees, creates a financial disadvantage that can further affect small business survival in New Hampshire communities. All NH tax policy should be fair and on a level playing field. The net operating loss deduction (NOLD), that exists at 100% under the current law, is good for the small business owner who can fully recover their losses, especially from the past two years of COVID-19 restrictions, before reporting any taxable income. This bill would cap the usage of this NOLD annually at 80% of taxable income and cause a negative effect on small businesses' thin margin of profitability. While this bill has a part that fixes the double apportionment problem which the minority can accept as a fix for big businesses, the small businesses that do not apportion income gain receive no benefit from the apportionment fix section. The minority stressed to the Ways and Means Committee that without data from the state's change to market based sourcing and the new single sales factor that begins for year 2022, NH should not be enacting tax changes in a vacuum. The minority proposed that a temporary solution to protect New Hampshire's small businesses would be to decouple from the federal 80% cap of the NOLD or adopt both the 80% cap plus an indefinite carry forward period to protect NH small businesses until data can be analyzed and compared by the DRA in years 2025 thru 2026.

Original: House Clerk
Cc: Committee Bill File

HOUSE COMMITTEE ON WAYS AND MEANS

EXECUTIVE SESSION on Bill # SB 435

BILL TITLE: relative to the net operating loss carryover under the business profits tax.

DATE: April 14, 2022

LOB ROOM 202-204

MOTION: (Please check one box)

☑ OTP ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment #

☐ Interim Study (2nd year)

Moved by Rep. Lang Seconded by Rep. Abrami Vote: 21 - 1

MOTION: (Please check one box)

☐ OTP ☐ OTP/A ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment

☐ Interim Study (2nd year)

Moved by Seconded by Vote:

MOTION: (Please check one box)

☐ OTP ☐ OTP/A ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment # *(if offered)*

☐ Interim Study (2nd year)

Moved by Rep. ____________________ Seconded by Rep. ____________________ Vote:

CONSENT CALENDAR: ☐ **YES** ☑ **NO**

Minority Report? ☑ Yes ☐ No If yes, author, Rep Schamberg Motion: ITL

Respectfully submitted: Alan Bershtein

Rep Alan Bershtein, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK
2022 Session - Ways and Means

Roll Call Committee Registers Report

Title:
relative to the net operating loss carryover under the business profits tax.

Bill #	SB 435
Motion	OTP
Amendment #	
Exec Session Date	4/14/22
Consent Calendar?	No

Member	Motion / Seconded	Yea	Nay	NV
Patrick Abrami [Vice Chair]	Second	x		
Doug Thomas [for Mary Griffen]		x		
Andy Renzullo [for Jordan Ulery]		x		
Fred Doucette		x		
Tim Lang	Motion	x		
Alan Bershtein [Clerk]		x		
John Janigian		x		
Hershel Nunez		x		
Walter Spilsbury		x		
Paul Tudor		x		
Judy Aron		x		
Almy, Susan		x		
Richard Ames(D)		x		
Thomas Southworth		x		
Dennis Malloy(D)		x		
Thomas Schamberg(D)	Minority Report (ITL)		x	
Edith Tucker(D)		x		
Jennie Gomarlo(D)		x		
Tom Loughman				x
Bill Hatch [for Amanda Gourgue]		x		
Mary Beth Walz [for Mary Hakken-Phillips]		x		
James Murphy(D)		x		
Norman Major [Chair]		x		
Total Vote		21	1	1

NH House Committee on Ways and Means
Public Hearing on: SB 435

Date:	April 5, 2022
LOB Room:	202-204
Time Public Hearing Called to Order:	11:30 AM
Time Public Hearing Adjourned:	12:55 PM

AN ACT relative to the net operating loss carryover under the business profits tax.

SPONSORS: Sen. Giuda, Dist 2; Sen. Bradley, Dist 3; Sen. Hennessey, Dist 1; Sen. Avard, Dist 12; Sen. Gannon, Dist 23; Rep. Edwards, Rock. 4; Rep. Lang, Belk. 4

Committee Members: Reps. Major, Abrami, Bershtein, M. Griffin, Ulery, Doucette, Aron, Janigian, Nunez, Lang, Spilsbury, Tudor, Almy, Ames, Southworth, Malloy, Schamberg, Tucker, Gomarlo, Loughman, Gourgue, Hakken-Phillips and Murphy.

TESTIMONY

Senator Bob Guida, bill sponsor

- Introduced the bill and supports the bill.
- NH is the only state that requires NOL apportioning twice - once in the year incurred, once in the year used (or applied). This is detrimental to the business environment. SB 435 remedies this by eliminating the double apportionment.
- SB 435 also updates the Internal Revenue Code (IRC) used to determine NOL from IRC of 1996 to IRC of 2018.
- Almy: Isn't NH the most dependent state for business taxes in the country?
    - Guida: NH is very dependent on business taxes which is why it makes a great deal of sense to be business friendly. Tax rate decreases have led to tax revenues increases. Anything we can do to better the business environment, which is already one of the best in the US, will continue to attract businesses and jobs to NH.

Jim Usseglio, Nashua Chamber of Commerce

- Supports portions of the bill, has suggested improvements for other portions.
- Mr. Usseglio served on a 2014 commission which studied NH business taxes and recommended elimination of double apportionment of NOLs. He supports that part of the bill.
- This bill helps large businesses that conduct business in multiple states by fixing the double apportionment issue.
- The apportionment fix has no impact on small businesses that only do business in NH.

NH House Committee on Ways and Means
Public Hearing on: SB 435

Date: April 5, 2022
LOB Room: 202-204
Time Public Hearing Called to Order: 11:30 AM
Time Public Hearing Adjourned: 12:55 PM

AN ACT relative to the net operating loss carryover under the business profits tax.

SPONSORS: Sen. Giuda, Dist 2; Sen. Bradley, Dist 3; Sen. Hennessey, Dist 1; Sen. Avard, Dist 12; Sen. Gannon, Dist 23; Rep. Edwards, Rock. 4; Rep. Lang, Belk. 4

Committee Members: Reps. Major, Abrami, Bershtein, M. Griffin, Ulery, Doucette, Aron, Janigian, Nunez, Lang, Spilsbury, Tudor, Almy, Ames, Southworth, Malloy, Schamberg, Tucker, Gomarlo, Loughman, Gourgue, Hakken-Phillips and Murphy.

- NH small businesses would be harmed by conforming to the 2018 IRC because of an 80% limitation on the use of NOL. (See PDF in follow up email for a clear example)
- The IRC of 2018 has an unlimited carryforward period. NH limits the carryforward to ten years, which is harmful to NH small business.
- Recommends decoupling from the 80% limit NOL deductions
- Major: Does this bill, as written, harm smaller businesses more than larger businesses. Usseglio: The apportionment fix is beneficial to larger businesses. However, the imposition of an 80% limit on NOL deductions could be harmful to smaller businesses.

Bruce Berke & Angela Pitale (Tax Professional), Next Era Energy Resources
- Supports the bill.
- NH is an outlier from every other state with regard to NOLs. In some cases, application of the double apportionment renders NOLs worthless. This subverts the policy goals of NOL deductions.
- NOLs are intended to even out the differences between business cycles, which vary in terms of years, with necessary, but arbitrarily created tax years.
- Janigian: If we adopt this bill and still have a ten year limit on carryforwards, would NH still be an outlier? Pitale: Yes. Most states conform to Federal law and have an unlimited carryforward period.
- Abrami: Is current Federal law 80% limit of NOL deduction and unlimited carryforward? Pitale: Correct. Note that the 80% limit refers to 80% of taxable income that can be offset by the NOL CF.

Greg Moore, Americans for Prosperity - NH
- Supports the bill

Date:	April 5, 2022
LOB Room:	202-204
Time Public Hearing Called to Order:	11:30 AM
Time Public Hearing Adjourned:	12:55 PM

AN ACT relative to the net operating loss carryover under the business profits tax.

SPONSORS: Sen. Giuda, Dist 2; Sen. Bradley, Dist 3; Sen. Hennessey, Dist 1; Sen. Avard, Dist 12; Sen. Gannon, Dist 23; Rep. Edwards, Rock. 4; Rep. Lang, Belk. 4

Committee Members: Reps. Major, Abrami, Bershtein, M. Griffin, Ulery, Doucette, Aron, Janigian, Nunez, Lang, Spilsbury, Tudor, Almy, Ames, Southworth, Malloy, Schamberg, Tucker, Gomarlo, Loughman, Gourgue, Hakken-Phillips and Murphy.

- The 80% cap of NOL utilization was an effort to smooth out the business cycle.

David Juvet, BIA & Steve Lawler, BIA
- In Support of the bill
- The double apportionment is a problem for NH businesses, and makes NH inconsistent with every other state.
- This bill would affect smaller businesses that sell to other states. It would not affect just multinational companies.

Carollyn Lear, NH DRA
- Neutral on bill
- Some states automatically conform with the Internal Revenue Code. NH does so on a periodic basis. Sometimes NH decouples from specific provisions.
- The 80% cap on NOL utilization would impact many taxpayers, both large and small.

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill #: SB 435-FN

Date: 4/5/22

Committee: Ways and Means

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
Jim Ussglio	Hollis, NH		Greater Nashua Chamber Commerce	✓	

SB 435 AS AMENDED BY THE SENATE

As requested by the House Ways and Means Committee with respect to my testimony on April 5, 2022, below are examples of how New Hampshire's Net Operating Loss Deduction (NOLD) operates under existing law (that is, determined under section 172 of the IRC in effect on December 31, 1996) and how it would operate if the IRC reference date is linked to the IRC in effect as of December 31, 2018. The Tax Cuts and Jobs Act of 2017 (TCJA) imposed a new cap on the usage of an NOLD to 80% of taxable income computed without regard to the NOLD. Previously there was no cap. Concurrently, TCJA changed the federal NOL carryover period from 20 years to indefinitely to help alleviate the possible loss of NOLs due to the new cap in place. As the bill stands, New Hampshire would not only be keeping its restrictive 10 year NOL carryforward period, it would now be capping the utilization of those NOLs to 80% of taxable income, making it more likely that some of those NOLs expire unused.

Note: while SB 435 "fixes" the double apportionment problem, it also introduces a cap on the utilization of NOLs and thus New Hampshire businesses that DO NOT APPORTION income gain no benefit from the apportionment fix and only receive the negative effect of the new NOL cap.

Example: Restaurant X based in Concord, NH does not apportion its income since it only does business in New Hampshire. The COVID-19 pandemic hit the hospitality industry particularly hard during 2020 and 2021. As a result, Restaurant X incurred an NOL of $150,000 in both 2020 and 2021. In 2022 Restaurant X fully recovers from the downturn and returns to normal profit of $100,000 annually for 2022-2025.

Example 1 under existing NH tax law (no cap on utilization of NOL carryover deduction)

Year	2020	2021	Total NOL Carryforward at the end of 2021	2022	2023	2024	2025
BPT Taxable Profit/(Loss) before NOLD	$ (150,000)	$ (150,000)	$ (300,000)	$ 100,000	$ 100,000	$ 100,000	$ 100,000
Less NOLD (no cap)	$ -	$ -	$ -	$ (100,000)	$ (100,000)	$ (100,000)	$ -
BPT Taxable Profit/(Loss) after NOLD	$ (150,000)	$ (150,000)	$ (300,000)	$ -	$ -	$ -	$ 100,000

Example 2 under SB 435 (80% of taxable income cap on utilization of NOL carryover deduction)

Year	2020	2021	Total NOL Carryforward at the end of 2021	2022	2023	2024	2025
BPT Taxable Profit/(Loss) before NOLD	$ (150,000)	$ (150,000)	$ (300,000)	$ 100,000	$ 100,000	$ 100,000	$ 100,000
Less NOLD (lesser of NOL carryover or 80% of taxable income before NOLD)	$ -	$ -	$ -	$ (80,000)	$ (80,000)	$ (80,000)	$ (60,000)
BPT Taxable Profit/(Loss) after NOLD	$ (150,000)	$ (150,000)	$ (300,000)	$ 20,000	$ 20,000	$ 20,000	$ 40,000

Question: How do we explain to restaurant owner that SB 435 is good for them where under existing law they can fully recover/utilize their NOLs before reporting any taxable income (example 1), whereas in example 2 utilization of their NOLs would be capped annually at 80% of taxable income and so we are now making them report taxable income and pay BPT in every year?

Preferred solution: Decouple from federal 80% cap. Alternative solution: Adopt both the federal 80% cap AND federal indefinite carryforward period.

ju@ghnh.com 603-209-6911 Prepared by Jim Usseglio, CPA 4/7/2022

TABLE 10.

State Corporate Income Tax and Business Tax Bases: Net Operating Losses (as of July 1, 2021)

	Carryback (Years)	Carryback Cap	Carryforward (Years)	Carryforward Cap
Alabama	0	$0	15	Unlimited
Alaska	Conforms to federal treatment			
Arizona	0	$0	20	Unlimited
Arkansas	0	$0	8	Unlimited
California	0	0	0	0
Colorado	Conforms to federal treatment			
Connecticut	0	$0	20	Unlimited
Delaware	Conforms to federal treatment			
Florida	Conforms to federal treatment			
Georgia	Conforms to federal treatment			
Hawaii	Conforms to federal treatment			
Idaho	2	$100,000	20	Unlimited
Illinois	0	$0	12	Unlimited
Indiana	0	$0	20	Unlimited
Iowa	0	$0	20	Unlimited
Kansas	5	$0	10	Unlimited
Kentucky	Conforms to federal treatment			
Louisiana	0	$0	20	Unlimited
Maine	Conforms to federal treatment			
Maryland	Conforms to federal treatment			
Massachusetts	0	$0	20	Unlimited
Michigan	0	$0	10	Unlimited
Minnesota	0	$0	15	Unlimited
Mississippi	2	Unlimited	20	Unlimited
Missouri	Conforms to federal treatment			
Montana	3	$500,000	10	Unlimited
Nebraska	0	$0	20	Unlimited
Nevada	n.a.	n.a.	n.a.	n.a.
New Hampshire	0	$0	10	$10,000,000
New Jersey	0	$0	20	Unlimited
New Mexico	0	$0	20	Unlimited
New York	3	Unlimited	20	Unlimited
North Carolina	0	$0	15	Unlimited
North Dakota	0	$0	20	Unlimited
Ohio	n.a.	n.a.	n.a.	n.a.
Oklahoma	Conforms to federal treatment			
Oregon	0	$0	15	Unlimited
Pennsylvania	0	$0	20	40% of Liability (a)
Rhode Island	0	$0	5	Unlimited
South Carolina	Conforms to federal treatment			
South Dakota	Conforms to federal treatment			
Tennessee	0	$0	15	Unlimited
Texas	n.a.	n.a.	n.a.	n.a.
Utah	Conforms to federal treatment			
Vermont	0	$0	10	Unlimited
Virginia	Conforms to federal treatment			
Washington	n.a.	n.a.	n.a.	n.a.
West Virginia	Conforms to federal treatment			
Wisconsin	0	$0	20	Unlimited
Wyoming	n.a.	n.a.	n.a.	n.a.
District of Columbia	Conforms to federal treatment			

(a) Pennsylvania allows unlimited carryforwards but caps claims at 40 percent of tax liability in any given year.
Source: Tax Foundation; Bloomberg Tax; state statutes.

The New Hampshire

House of Representatives

HOUSE OF REPRESENTATIVES - ONLINE TESTIMONY SUBMISSIONS

House Ways and Means

SB435

Support: 4 | Oppose: 0 | Neutral: 0

Name	Town	State	Position	Attachment	Typed
Curtis Howland	Manchester	NH	Support		
Erin Hennessey	Senate District 1	NH	Support		
Jeb Bradley	SD3	NH	Support		
Jesse Medeiros	Plainfield	NH	Support		

Karen's Copy
SB 435

Example of Claiming Net Operating Loss Deduction in TY 2021

Scenario A

Calculation of Net Operating Loss Deduction Used in TY 2021
Loss occurred in TY2020

Net operating loss in TY2020	5,000
Apportionment in TY2020	0.7
Apportionment limitation	3,500
Statutory limitation	1,000,000
NOL available for carryforward	3,500

Scenario B

Calculation of Net Operating Loss Deduction Used in TY 2021
Loss occurred in TY2020

Net operating loss in TY2020	5,000
Apportionment in TY2020	0.7
Apportionment limitation	3,500
Statutory limitation	1,000,000
NOL available for carryforward	3,500

Note: The statutory limitation for tax periods July 1, 2005 to December 31, 2012 is $1,000,000. The statutory limitation for tax periods ending on of after January 1, 2013 forward will be $10,000,000.

Calculating BPT for TY 2021
Current Law: Double Apportionment

	$
Federal taxable income	10,000
Additions and deductions (RSA 77-A:4)	
Net Operating Loss Deduction used this period	3,500
Adjusted Gross Business Profits	6,500
NH Apportionment	0.85
NH Taxable Business Profits	5,525
BPT at 7.7%	425

Calculating BPT for TY 2021
Proposed Bill: Single Apportionment

	$
Federal taxable income	10,000
Additions and deductions (RSA 77-A:4)	-
Adjusted Gross Business Profits	10,000
NH Apportionment	0.85
	8,500
Net Operating Loss Deduction used this period	3,500
NH Taxable Business Profits	5,000
BPT at 7.7%	385

Prepared by DRA
4/12/2022

SB 435-FN - AS AMENDED BY THE SENATE

02/16/2022 0311s

2022 SESSION

22-2990
10/05

SENATE BILL ***435-FN***

AN ACT relative to the net operating loss carryover under the business profits tax.

SPONSORS: Sen. Giuda, Dist 2; Sen. Bradley, Dist 3; Sen. Hennessey, Dist 1; Sen. Avard, Dist 12; Sen. Gannon, Dist 23; Rep. Edwards, Rock. 4; Rep. Lang, Belk. 4

COMMITTEE: Ways and Means

ANALYSIS

This bill modifies the calculation of net operating loss carryover for determining taxable business profits under the business profits tax.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the net operating loss carryover under the business profits tax.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Business Profits Tax; Definition of Taxable Business Profits; Net Operating Loss Carryovers. Amend RSA 77-A:1, IV to read as follows:

IV. "Taxable business profits" means gross business profits adjusted by the additions and deductions provided in RSA 77-A:4 ***except net operating loss carryover as defined in RSA 77-A:4, XIII,*** and then adjusted by the method of apportionment provided in RSA 77-A:3***, and then further adjusted by net operating loss carryover as defined in RSA 77-A:4, XIII***.

2 Business Profits Tax; Additions and Deductions; Net Operating Loss Carryover. Amend RSA 77-A:4, XIII to read as follows:

XIII. A deduction for the amount of the net operating loss carryover determined under section 172 of the United States Internal Revenue Code [~~in effect on December 31, 1996~~] ***apportioned in the year incurred according to RSA 77-A:3***. A net operating loss shall ***only*** be apportioned in the year incurred [~~according to RSA 77-A:3~~] ***and not in the subsequent years it adjusts gross business profits***. Net operating losses may only be carried forward for the 10 years following the loss year. For taxable periods ending:

(a) On or before June 30, 2003, the amount of net operating loss generated in a tax year that may be carried forward may not exceed $250,000.

(b) On or after July 1, 2003 and on or before June 30, 2004, the amount of net operating loss generated in a tax year that may be carried forward may not exceed $500,000.

(c) On or after July 1, 2004 and on or before June 30, 2005, the amount of net operating loss generated in a tax year that may be carried forward may not exceed $750,000.

(d) On or after July 1, 2005, the amount of net operating loss generated in a tax year that may be carried forward may not exceed $1,000,000.

(e) On or after January 1, 2013, the amount of net operating loss generated in a tax year that may be carried forward may not exceed $10,000,000.

In the case of a business organization not qualifying for treatment as a subchapter C corporation under the United States Internal Revenue Code, such deduction shall be the amount that would be determined under section 172 of the United States Internal Revenue Code [~~in effect on December 31, 1996~~] if the business organization were a subchapter C corporation and as limited by this section. A deduction for the amount of the net operating loss carryover shall be limited to losses incurred on or after July 1, 1997.

3 Applicability. This act shall apply to business organizations' tax years ending on or after December 31, 2022.

4 Effective Date. This act shall take effect July 1, 2022.

LBA
22-2990
Amended 2/23/22

SB 435-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2022-0311s)

AN ACT relative to the net operating loss carryover under the business profits tax.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**
Appropriation	$0	$0	$0	$0
Revenue	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	$0	$0	$0	$0
Funding Source:	[X] General	[ ] Education	[ ] Highway	[X] Other

METHODOLOGY:

This bill modifies the Net Operating Loss Deduction (NOLD) under the Business Profits Tax (BPT). It changes the NOLD from being apportioned twice ("double apportionment") to a single apportionment in the year the NOLD is generated. The bill eliminates the outdated reference of the Internal Revenue Code (IRC in effect on December 31, 1996) so the IRC aligns with the BPT statute (the BPT statute contains the IRC in effect on December 31, 2018). The change in removing the IRC date would cap the utilization of NOLDs to 80% of taxable income and as a result, it would also cap the BPT taxable income to 80%. This bill is effective July 1, 2022 and is applicable to tax years ending on or after December 31, 2022.

The Department of Revenue Administration states this bill would decrease General and Education Trust Fund revenue by an indeterminable amount starting in FY 2022. Although the fiscal impact is indeterminable, the Department was able to provide the fiscal impact for the various parts of this bill had the legislation been in place during tax year (TY) 2019.

Eliminating BPT Net Operating Loss Deduction Double Apportionment

To determine the impact of eliminating the double apportionment, the Department had to determine the revenue base using current law tax rates. To calculate FY 2022 thru FY 2024 revenues under current law, the DRA queried all TY 2019 taxpayers that utilized a NOLD and were required to apportion their income. The BPT rate for TY 2019 was 7.7%. However, the BPT rate is reduced from 7.7% to 7.6% for taxable periods ending on or after December 31, 2022. Therefore, in order to calculate an accurate base year to complete this analysis, the DRA multiplied the Adjusted Gross Business Profits of $634,174,018 for all taxpayers that utilized a

NOLD and were required to apportion their income by 7.6%, arriving at a current law base of $48,197,225.

In order to calculate the impact of the proposed legislation, the DRA then manipulated the above taxpayer returns to eliminate the application of the taxpayer's apportionment in the year the NOLD was used in accordance with the proposed legislation. To do so, the DRA added each taxpayers NOLD back into Adjusted Gross Business Profits, applied the taxpayer's apportionment percentage, and then subtracted the taxpayer's NOLD after apportioning. This resulted in a tax base of $394,364,513, which was multiplied by 7.6% to arrive at a new total tax liability of $29,971,703 under the proposed legislation.

The Department completed an analysis to determine the split of tax year revenue to fiscal year revenue to determine the impact of this bill. The split breakdown used for FY 2022 revenue was 15% attributable to TY 2020, 63% attributable to TY 2021, and 22% attributable to TY 2022. The same split breakdown is used for FY 2023 through FY 2025. TY 2020 and TY 2021 are not impacted by this bill. See table below.

Proposed Legislation Impact Timing

Fiscal Year	Tax Year	% Applicable to Tax Year
Fiscal Year 2022	Tax Year 2020	15%
	Tax Year 2021	63%
	Tax Year 2022	22%
Fiscal Year 2023	Tax Year 2021	15%
	Tax Year 2022	63%
	Tax Year 2023	22%
Fiscal Year 2024	Tax Year 2022	15%
	Tax Year 2023	63%
	Tax Year 2024	22%
Fiscal Year 2025	Tax Year 2023	15%
	Tax Year 2024	63%
	Tax Year 2025	22%

Estimated Fiscal Impact of Eliminating BPT NOLD Double Apportionment

Business Profits Tax - Static Analysis using TY2019 Revenues			
Fiscal Year	Current Law Base with Double Apportionment	BPT Revenues with Proposed Legislation	Cumulative Fiscal Impact (Proposed Legislation Compared to Current Law)
2022	$10,603,390	$6,593,775	($4,009,615)
2023	$40,967,642	$25,475,948	($15,491,694)
2024	$48,197,225	$29,971,703	($18,225,522)

Based on this analysis and assumptions it is estimated BPT revenue will decrease by $4,009,615 in FY 2022, decrease by $15,491,694 in FY 2023 and decrease by $18,225,522 in FY 2024 and each year thereafter. If this legislation had been in effect for TY 2019, 1,487 taxpayers would have been effected.

Limiting the Net Operating Loss to 80% of Taxable Income

To determine the impact of limiting the Net Operating Loss Deduction (NOLD) to 80% of taxable income, the Department had to determine the revenue base using current law tax rates. To calculate FY 2022 thru FY 2024 revenues under current law, the Department queried all TY 2019 taxpayers that utilized a NOLD. The BPT rate for TY 2019 was 7.7%; however, the BPT rate is reduced from 7.7% to 7.6% for taxable periods ending on or after December 31, 2022. Therefore, to calculate an accurate base year to complete this analysis, the Department multiplied the Adjusted Gross Business Profits of $896,166,525 for all taxpayers that utilized a NOLD by 7.6%, arriving at a current law base of $68,108,656.

The Department then manipulated the above taxpayer returns to cap the taxpayers claimed NOLD at 80% of their federal taxable income. This resulted in a new tax base of $955,985,700, which was multiplied by 7.6% to arrive at a new total tax liability of $72,654,913 under the proposed legislation.

The result was a $4,546,257 estimated increase in BPT revenue to the General and Education Trust Funds. Based on TY 2019, this would have effected 3,092 taxpayers. Some portion of this limitation on how much NOLD could have been used in TY 2019 could be carried forward into future years. The utilization of this NOLD in future tax years is indeterminable. The estimated reductions per tax year resulting from this proposed legislation are then applied according to the tax year split breakdown chart above to calculate an estimated yearly impact. Based on this analysis BPT revenue would have increased by $1,000,177 in FY 2022, $3,864,318 in FY 2023 and $4,546,257 in FY 2024 and each year thereafter. (see table below)

Estimated Fiscal Impact of Limiting the NOL to 80% of Taxable Income

Business Profits Tax - Static Analysis using TY2019 Revenues			
Fiscal Year	Current Law Base without NOL limitation of 80%	BPT Revenues with Proposed Legislation	Cumulative Fiscal impact (Proposed Legislation Compared to Current Law)
2022	$14,983,904	$15,984,081	$1,000,177
2023	$57,892,358	$61,756,676	$3,864,318
2024	$68,108,656	$72,654,913	$4,546,257

The Department would need to update all necessary tax return forms and electronic management systems related to the changes contained in this bill; however, the Department anticipates this will not result in any additional administrative costs that cannot be absorbed in the Department's operating budget.

AGENCIES CONTACTED:

Department of Revenue Administration