LEGISLATIVE COMMITTEE MINUTES

SB435

Bill as Introduced

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 435-FN - AS INTRODUCED

22-2990
10/05

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. RSA 77-A:4, XIII is repealed and reenacted to read as follows:

XIII. A deduction for the amount of the net operating loss carryover determined under the section 172 of the United State Internal Revenue Code apportioned in the year incurred according to RSA 77-A:3. A net operating loss shall only be apportioned in the year incurred and not in the subsequent years it adjusts gross business profits.

3 Applicability. This act shall take 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
Redraft 12/28/21

SB 435-FN- FISCAL NOTE
AS INTRODUCED

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 [X] Education [ ] Highway [ ] 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%. Lastly, the bill removes the $10 million dollar carry forward cap as well as the 10 year carry forward provision. This bill is effective July 1, 2022 and is applicable to tax years ending on or after December 1, 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 tax year 2020, 63% attributable to tax year 2021, and 22% attributable to tax year 2022. The same split breakdown is used for FY 2023 through FY 2025. TY 2020 and 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)
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2023	$57,892,358	$61,756,676	$3,864,318
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Repealing the 10 Year Limitation & $10 Million Per Year Cap on NOLD Carryforward

Under current law, NOLDs can only be carried forward for 10 years and the amount that can be carried forward each year is capped at $10 million per year. Under the proposed legislation, a NOLD could be carried forward indefinitely and there would be no limit to the amount of NOLD that could be carried forward each year. The fiscal impact of uncapping the NOLD carryforward and allowing an indefinite carryforward is largely dependent on the future tax liability of each taxpayer. Said another way, the proposed changes would only have a fiscal impact if the taxpayers impacted have additional liability to offset in future years. The DRA believes that uncapping the NOLD carryforward and allowing an indefinite NOLD carryforward would result in an indeterminable decrease in revenue. However, the Department is unable to estimate the extent of that decrease due to the highly speculative nature of predicting taxpayers' future tax liability a decade or more into the future.

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

SB 435-FN - AS AMENDED BY THE SENATE

02/16/2022 0311s

2022 SESSION

22-2990
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SENATE BILL *435-FN*

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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%
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	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)
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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.

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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			
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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

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

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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)**
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AGENCIES CONTACTED:

Department of Revenue Administration

CHAPTER 241
SB 435-FN - FINAL VERSION

02/16/2022 0311s

2022 SESSION

22-2990
10/05

SENATE BILL ***435-FN***

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02/16/2022 0311s

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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***.

241:2 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.

241:3 Applicability. This act shall apply to business organizations' tax years ending on or after December 31, 2022.

241:4 Effective Date. This act shall take effect July 1, 2022.

Approved: June 17, 2022
Effective Date: July 01, 2022

Amendments

Sen. Giuda, Dist 2
January 3, 2022
2022-0016s
10/05

Amendment to SB 435-FN

Amend the bill by replacing all after the enacting clause with the following:

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:

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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.

Senate Ways and Means
January 26, 2022
2022-0311s
10/05

Amendment to SB 435-FN

Amend the bill by replacing all after the enacting clause with the following:

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.

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(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.

Committee Minutes

SENATE CALENDAR NOTICE
Ways and Means

Sen Bob Giuda, Chair
Sen Lou D'Allesandro, Vice Chair
Sen Gary Daniels, Member
Sen Erin Hennessey, Member
Sen Cindy Rosenwald, Member

Date: January 6, 2022

HEARINGS

Wednesday	01/26/2022
(Day)	(Date)

Ways and Means	State House 100	9:00 a.m.
(Name of Committee)	(Place)	(Time)

9:00 a.m.	**SB 437-LOCAL**	relative to the additional municipal fee for transportation improvements.
9:15 a.m.	**SB 441-FN-LOCAL**	relative to the municipal share of fines for motor vehicle speeding offenses.
9:30 a.m.	**SB 343**	establishing a committee to study the formula for distribution of room occupancy tax revenues.
9:45 a.m.	**SB 435-FN**	relative to the net operating loss carryover under the business profits tax.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 437-LOCAL
Sen. Perkins Kwoka, Sen. D'Allesandro, Sen. Ward

SB 441-FN-LOCAL
Sen. Perkins Kwoka, Rep. Vann

SB 343
Sen. Hennessey, Rep. Tucker

SB 435-FN
Sen. Giuda, Sen. Bradley, Sen. Hennessey, Sen. Avard
Sen. Gannon, Rep. Edwards, Rep. Lang

Sonja Caldwell 271-2117

Bob J. Giuda
Chairman

Senate Ways and Means Committee

Sonja Caldwell 271-2117

SB 435-FN, relative to the net operating loss carryover under the business profits tax.

Hearing Date: January 26, 2022

Members of the Committee Present: Senators Giuda, D'Allesandro, Daniels, Hennessey and Rosenwald

Members of the Committee Absent : None

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

Sponsors:

Sen. Giuda	Sen. Bradley	Sen. Hennessey
Sen. Avard	Sen. Gannon	Rep. Edwards
Rep. Lang		

Who supports the bill: Greg Moore (AFP-NH), Sen. Giuda, David Juvet and Steve Lawlor (BIA), Bruce Berke (NextEra Energy), Rep. Jess Edward, Sen. Hennessey, Sen. Gannon, Sen. Avard, Sen. Bradley

Who opposes the bill: No one

Who is neutral on the bill: No one

Summary of testimony presented:

Sen. Giuda

- Currently our business profits tax (BPT), under apportionment, double apportions, meaning businesses get hit twice.
- We are the only state that does that.
- This bill would remove the double apportionment hit.
- Sen. Giuda presented amendment 0016s because the bill in its original form went far beyond what was intended.
- The original bill removed the cap and the timeframe restrictions on net operating loss (NOL) carryover.
- The DRA suggested this amendment be brought forward because the impact would have been too great in the original form.

Carollynn Lear, Assistant Commissioner and **Devin Rodrique,** Senior Financial Analyst

- The Real intent is to eliminate NH's double apportioning of net operating losses.

- Currently a generated NOL is apportioned in the year you incur loss and again in the year you use the loss to offset income. That is unique to NH. She was unsure if that was even an intentional component of the BPT statute.
- The fiscal note quick guide from the DRA discusses and analyzes the change proposed in the amendment. Fixing this results in a loss of revenue over three fiscal years noted in the guide.
- An additional component of the amendment would synchronize calculation of NOL to the internal revenue code (IRC) of 2018. On lines 11-16 of the amendment, language directing the taxpayer to use the IRC as it existed in 1996 to calculate NOL is stricken. For all other issues, they use the code of 2018. Many practitioners don't own a copy of the 1996 code. As a result, they are already using the 2018 code. The DRA has to assume they are following the law though, so if they make that assumption, it results in a small increase in revenue as the 2018 code limits use of NOL to 80% of a taxpayer's taxable income.
- Under current law, NOL is limited to a generation of $10 million and can only be carried forward 10 years. Eliminating those provisions would have a significant revenue impact that would be difficult to predict.

Sen. Rosenwald asked for clarification on what the impact would be.
Ms. Lear said it would be roughly a loss of $12 million. The $18 million loss is offset by a gain of $4.5 million if the committee adopts the amendment.

Sen. D'Allesandro said he thought we already passed a bill to put us in conformity with the 2018 IRC.
Ms. Lear said we did but it didn't change the specific reference to NOL. The federal government has done a lot of things related to the calculation of NOL since 1996 so that may have been purposeful at first but then it was forgotten about.

Greg Moore Americans for Prosperity

- Support
- Important for overall state competitiveness, particularly for multi-state businesses choosing where to invest.
- This will be a positive step for businesses that had a bad 2020.

Dave Juvet BIA and **Steve Lawlor** CPA and tax expert

- Support
- Was unaware of the double apportionment.
- If you are a multi-state business and have nexus in NH, you apportion your BPT in NH and all other states you do business in. If you have a bad year and you suffer a loss, you also apportion that NOL deduction; that is the first apportionment and that is how virtually every state does it.
- What is different in NH is that in subsequent tax years when you use that NOL deduction, it is apportioned again. In discussions with the DRA, they couldn't understand why that was taking place. That lead to this bill.
- This will correct what they think is a misinterpretation of the statute.
- They provided OLS with the language, but they didn't request the provisions in the original bill. In taking out the double apportionment they removed other things including the $10 million cap and the number of years you can carry forward.
- They recognize that would have a dramatic effect on state revenues.

- They support the amendment, which focuses on removing the NOL double apportionment issue and also brings NH into conformity with the 2018 IRC.
- This will make things simpler for businesses in NH.

Sen. Rosenwald asked if there is any differential impact from making this change on national businesses with a presence in NH versus businesses only based here in NH.
Mr. Juvet said one is apportioned and one is not.
Mr. Lawlor said if it's a NH business they would get 100% of their NOL in the subsequent year, if they don't apportion. If it's a multi-state business, they get hurt because they are paying more NH tax because of the double apportionment.
Sen. Rosenwald asked for clarification that doing this would not hurt a business that only does business in NH.
Mr. Lawlor confirmed that it would not.
Sen. D'Allesandro asked them to comment on the fiscal impact.
Mr. Juvet said this is a small universe of companies. This only deals with multi-state companies that apportion their taxes in NH and sustain a loss that results in a NOL. If we take away the second apportionment there will be a revenue impact.
Mr. Lawlor said of course there will be a revenue impact, but the law is currently not fair to NH businesses that do work in two states. Businesses should be able to cross state lines and grow.
Sen. Giuda asked what the cumulative fiscal impact is.
Ms. Lear said in 2022 we would only lose $4 million; in 2023 we would lose $15 million; in 2024 we would lose $18 million and then $18 million in each year thereafter. The maximum yearly impact is $18 million.
Sen. Hennessey thought the amendment changed these numbers.
Ms. Lear said it does not change these numbers.
Sen. Hennessey asked why we would see a revenue gain.
Ms. Lear said it is attributable to revenue code conformity. Under the 2018 code, a taxpayer can only use a NOL up to 80% of their taxable income. There are some NH taxpayers currently using 100%.
Sen. Rosenwald asked what the impact of this loss would be on the Education Trust Fund.
Ms. Lear said they would have to do an analysis. There is a proportional impact, but they calculated it as a total.

sc
Date Hearing Report completed: January 28, 2022

Speakers

SENATE WAYS & MEANS COMMITTEE

Date 01/26/22 Time 9:45 a.m. Public Hearing on SB435-FN

(relative to the net operating loss carryover under the business profits tax)

Please check box(es) that apply.

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☒	☒	☐	GREG MOORE	AFP-NH
☒	☒	☐	Senator Bob Giuda	SD2
☒	☒	☐	David Juvet + Steve Lawlor	BIA
☐	☒	☐	Bruce Berke	NextEra Energy - written support
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SENATE WAYS & MEANS COMMITTEE

Date 01/26/22 Time 9:45 a.m. Public Hearing on **SB435-FN**

(relative to the net operating loss carryover under the business profits tax)

Please check box(es) that apply.

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☐	☒	☐	REP JESS EDWARDS	ROCKINGHAM DIST 4
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Senate Remote Testify

Ways and Means Committee Testify List for Bill SB435 on 2022-01-26

Support: 6 Oppose: 0

Name	Title	Representing	Position
Hennessey, Sen. Erin	An Elected Official	Myself	Support
Gannon, Senator Bill	An Elected Official	SD 23	Support
Avard, Senator Kevin	An Elected Official	SD 12	Support
Bradley, Senator Jeb	An Elected Official	SD3	Support
Moore, Greg	A Lobbyist	Americans for Prosperity-New Hampshire	Support
Hennessey, Erin	An Elected Official	Myself	Support

Testimony

NEXTera ENERGY RESOURCES

January 26, 2022

The Honorable Bob Giuda, Chair
The Honorable Lou D'Allesandro, Vice-Chair
Senate Ways and Means Committee

Re: NextEra Energy Resources Supports Eliminating the Double Apportionment of Net Operating Losses, S.B. 435

Dear Chair Giuda; Vice-Chair D'Allesandro; and Members of the Committee:

On behalf of NextEra Energy Resources, LLC (NEER), I am writing in support of S.B. 435 and eliminating the "double apportionment" of net operating losses (NOLs) for purposes of the Business Profits Tax.

NEER is a clean energy leader and is one of the largest wholesale generators of electric power in the U.S., with approximately 23,900 megawatts of net generating capacity, including approximately 23,370 megawatts of net generating capacity across 38 states and 520 megawatts of net generating capacity in four Canadian provinces. NEER, together with its affiliated entities, is the world's largest generator of renewable energy from the wind and sun and a world leader in battery storage. The business operates clean, emissions-free nuclear power generation facilities in New Hampshire and Wisconsin as part of the NextEra Energy nuclear fleet, which is one of the largest in the United States.

New Hampshire statutes require the apportionment of NOLs in the year the NOL is generated (RSA 77-A:4. XIII.) and again in the year that it is utilized (RSA 77-A:1. IV), resulting in double apportionment. This double apportionment requirement artificially reduces the value of the NOL. NEER supports replacing it with a process that apportions an NOL only once - in the year the NOL is generated - as provided by S.B. 435.

NOLs, like income, should be apportioned in order to determine the amount attributable to New Hampshire. Adding a second apportionment requirement artificially reduces the amount of the NOL that can be used, undermining the purpose of NOL deductions, which is to smooth taxable income variations caused by business cycles, economic downturns and other events, often beyond a taxpayer's control. New Hampshire is the only state in the country that apportions its NOLs in this manner.

We strongly support the Committee's favorable consideration of this bill eliminating the double apportionment of NOLs. Thank you for your consideration and we are happy to provide any additional information to the Committee as needed.

Michele T. Wheeler

Michele T. Wheeler

VP Regulatory and Political Affairs
NextEra Energy Resources

COST
COUNCIL ON STATE TAXATION

Stephanie T. Do
Senior Tax Counsel
(202) 484-5228
sdo@cost.org

January 26, 2022

The Honorable Bob Giuda, Chair
The Honorable Lou D'Allesandro, Vice-Chair
Senate Ways and Means Committee

Re: COST's Support of Eliminating the Double Apportionment of Net Operating Losses, S.B. 435

Dear Chair Giuda; Vice-Chair D'Allesandro; and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing in support of eliminating the "double apportionment" of net operating loss deductions (NOLDs) for purposes of the Business Profits Tax. In the year the NOLD is utilized, New Hampshire requires the NOLD to be apportioned twice (*i.e.*, in the year the NOLD was incurred and again in the year the NOLD adjusts gross business profits). This double apportionment requirement artificially reduces the NOLD and raises serious constitutional concerns. COST supports replacing it with a process that apportions an NOLD only once—in the year the NOLD is generated—as provided by S.B. 435.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of over 500 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. Many COST members have operations in New Hampshire.

Eliminating the Discriminatory Treatment of Out-of-State Businesses

NOLDs, like income, should be apportioned in order to determine the amount attributable to New Hampshire. Adding a second apportionment requirement artificially reduces the amount of the NOLD that can be used. Accordingly, the constitutionality of New Hampshire's double apportionment of NOLDs is in serious doubt because it discriminates against interstate taxpayers. The U.S. Supreme Court held in *Complete Auto Transit v. Brady*, 430 U.S. 274 (1977) that a state tax is impermissibly discriminatory and thereby violates the Commerce Clause, if the state tax treats out-of-state taxpayers differently than in-state taxpayers. Here, in-state businesses are certainly favored over multijurisdictional businesses because in-state businesses are not required to apportion their NOLDs twice, unlike their multijurisdictional counterparts. In-state businesses can fully utilize their NOLDs, while out-of-state businesses may not.

We strongly support the Committee's favorable consideration of this bill eliminating the double apportionment of NOLDs.

Respectfully,

Stephanie T. Do

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director

Voting Sheets

Senate Ways & Means Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # SB435-FN

Hearing date: 1-26-22

Executive Session date: ____________

Motion of: OTP/A **Vote:** 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Giuda, Chair	☐	☐	☐	☑	☐
Sen. D'Allesandro,VC	☐	☐	☐	☑	☐
Sen. Daniels	☐	☑	☐	☑	☐
Sen. Hennessey	☐	☐	☐	☑	☐
Sen. Rosenwald	☐	☐	☐	☑	☐

Motion of: 0016 **Vote:** 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Giuda, Chair	☐	☐	☐	☑	☐
Sen. D'Allesandro VC	☐	☑	☐	☑	☐
Sen. Daniels	☐	☐	☐	☑	☐
Sen. Hennessey	☐	☐	☑	☑	☐
Sen. Rosenwald	☐	☐	☐	☑	☐

Motion of: ____________ **Vote:** ____________

Committee Member	Present	Made by	Second	Yes	No
Sen. Giuda, Chair	☐	☐	☐	☐	☐
Sen. D'Allesandro, VC	☐	☐	☐	☐	☐
Sen. Daniels	☐	☐	☐	☐	☐
Sen. Hennessey	☐	☐	☐	☐	☐
Sen. Rosenwald	☐	☐	☐	☐	☐

Reported out by: Giuda

Notes: ____________

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Wednesday, January 26, 2022

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, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 0311s

Senator Bob Giuda
For the Committee

Sonja Caldwell 271-2117

WAYS AND MEANS

SB 435-FN, relative to the net operating loss carryover under the business profits tax.
Ought to Pass with Amendment, Vote 5-0.
Senator Bob Giuda for the committee.

General Court of New Hampshire - Bill Status System

Docket of SB435

Docket Abbreviations

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

Official Docket of **SB435.**:

Date	Body	Description
12/30/2021	S	To Be **Introduced** 01/05/2022 and Referred to Ways and Means; **SJ 1**
1/6/2022	S	**Hearing:** 01/26/2022, Room 100, SH, 09:45 am; **SC 2**
1/26/2022	S	Committee Report: Ought to Pass with Amendment **#2022-0311s,** 02/03/2022; **SC 5**
2/3/2022	S	Special Order to the Next Session, Without Objection, MA; 02/03/2022; **SJ 2**
2/7/2022	S	Committee Report: Ought to Pass with Amendment **#2022-0311s,** 02/16/2022; **SC 7**
2/16/2022	S	Special Order to after the Committee on Education, Without Objection, MA; 02/16/2022; **SJ 3**
2/16/2022	S	Committee Amendment **#2022-0311s,** AA, VV; 02/16/2022; **SJ 3**
2/16/2022	S	**Ought to Pass with Amendment** 2022-0311s, MA, VV; OT3rdg; 02/16/2022; **SJ 3**
3/23/2022	H	Introduced 03/17/2022 and referred to Ways and Means
3/29/2022	H	Public Hearing: 04/05/2022 11:30 am LOB 202-204
4/6/2022	H	Full Committee Work Session: 04/12/2022 10:00 am LOB 202-204
4/6/2022	H	Full Committee Work Session: 04/14/2022 10:00 am LOB 202-204
4/26/2022	H	Executive Session: 04/14/2022 10:00 am LOB 202-204
4/27/2022	H	Majority Committee Report: Ought to Pass (Vote 21-1; RC)
4/27/2022	H	Minority Committee Report: Inexpedient to Legislate
5/5/2022	H	**Ought to Pass**: MA VV 05/05/2022 **HJ 12**
6/7/2022	H	Enrolled (in recess of) 05/26/2022 **HJ 14**
6/6/2022	S	Enrolled Adopted, VV, (In recess 05/26/2022); **SJ 13**
6/22/2022	S	Signed by the Governor on 06/17/2022; Chapter 0241; Effective 07/01/2022

NH House NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB435-FN **Senate Committee:** Ways & Means

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

✓ Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

✓ Bill version as it came to the committee

✓ All Calendar Notices

✓ Hearing Sign-up sheet(s)

✓ Prepared testimony, presentations, & other submissions handed in at the public hearing

✓ Hearing Report

✓ Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

✓ - amendment # 0016s ____ - amendment # ____

✓ - amendment # 0311s ____ - amendment # ____

✓ Executive Session Sheet

✓ Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

____ - amendment # ____ ____ - amendment # ____

____ - amendment # ____ ____ - amendment # ____

Post Floor Action: (if applicable) {Clerk's Office}

____ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

____ Enrolled Bill Amendment(s)

____ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

X as amended by the senate ____ as amended by the house

X final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

SC — Committee Aide

6-3-22 — Date

Senate Clerk's Office: AK

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

22-2990

SB 435-FN, *relative to the net operating loss carryover under the business profits tax.*

Senate Ways & Means

SB 435 modifies how Business Profits Tax (BPT) taxpayers calculate their taxable business profits under RSA 77-A:1, IV. Under current NH law, the Net Operating Loss Deduction (NOLD) is subject to apportionment twice ("double apportionment"), once in the tax year that the NOLD is generated and again when the NOLD is ultimately utilized. SB 435 would amend the BPT statute to direct the taxpayer to apportion an NOLD once, only in the year the NOLD is generated.

Additionally, under current law, the taxpayer is directed to utilize the Internal Revenue Code (IRC) in effect on December 31, 1996 to determine their NOLD. SB 435 would eliminate this outdated reference and as a result, the taxpayer would use the same IRC as is used for the rest of the BPT statute (the IRC in effect on December 31, 2018). The IRC in effect on December 31, 2018 caps the utilization of NOLDs to 80% of taxable income and as a result, this 80% of taxable income cap would apply for the BPT as well.

Section 2 of SB 435 repeals and reenacts RSA 77-A:4, XIII and thereby makes two additional changes to the BPT NOLD calculation:

- Under current law, the amount of NOLD that can be carried forward in any tax year may not exceed $10 million. SB 435 would uncap the NOLD carry-forward.
- Under current law, a NOLD can be carried forward for only 10 years following the loss. SB 435 would allow an NOLD to be carried forward indefinitely.

The proposed legislation is effective July 1, 2022 and is applicable to tax years ending on or after December 31, 2022.

The proposed legislation would not result in any additional administrative costs that could not be absorbed in the DRA operating budget.

The estimated fiscal impact of this proposed legislation is an indeterminable decrease to the General and Education Trust Fund starting in FY 2022. The DRA has estimated the fiscal impact had this legislation been in place during TY 2019 as follows:

Eliminating BPT NOLD Double Apportionment

To calculate FY 2022 thru FY 2024 revenues under current law, the DRA queried all TY 2019 taxpayers that utilized an 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 an 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 SB 435, the DRA then manipulated the above taxpayer returns to eliminate the application of the taxpayer's apportionment in the year the NOLD was used. 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 SB 435.

The result was a ($18,225,522) estimated reduction in BPT revenue to the General and Education Trust Funds based on Section 1 of SB 435. Based on TY 2019, this would have effected 1,487 taxpayers.

The estimated reductions per tax year resulting from SB 435 are then applied according to the timing of revenue in the chart below to calculate an estimated yearly impact, as shown in the fourth column of the chart below. The DRA did an analysis based on prior years to break out the split of tax year revenue to fiscal year revenue. The split breakdown used for FY 2022 and forward revenue was 15% attributable to tax year 2020, 63% attributable to tax year 2021, and 22% attributable to tax year 2022. SB 435 would apply to revenue attributable to tax year 2022 and forward.

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)

Limiting the NOL to 80% of Taxable Income

To calculate FY 2022 thru FY 2024 revenues under current law, the DRA queried all TY 2019 taxpayers that utilized an 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, in order to calculate an accurate base year to complete this analysis, the DRA multiplied the Adjusted Gross Business Profits of $896,166,525 for all taxpayers that utilized an NOLD by 7.6%, arriving at a current law base of $68,108,656

In order to calculate the impact of SB 435, the DRA 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 SB 435.

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 timing of revenue chart above to calculate an estimated yearly impact, as shown in the fourth column of the 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	$3,864,319
2024	$68,108,656	$72,654,913	$4,546,257

Repealing the 10 Year Limitation & $10 Million Per Year Cap on NOLD Carryforward

Under current law, NOLDs can only be carried for 10 years and the amount that can be carried forward each year is capped at $10 million per year. Under SB 435, NOLD could be carried forward indefinitely and there would be no limit to the amount of NOLD that could be carried forward each year. The fiscal impact of uncapping the NOLD carryforward and allowing an indefinite carryforward is largely dependent on the future tax liability of each taxpayer. Said another way, the proposed changes would only have a fiscal impact if the taxpayers impacted have additional liability to offset in future years. The DRA believes that uncapping the NOLD carryforward and allowing an indefinite NOLD carryforward would result in an indeterminable decrease in revenue. However, the DRA is unable to estimate the extent of that decrease due to the highly speculative nature of predicting taxpayers' future tax liability a decade or more into the future.