

Nebraska Individual Income Tax Net Operating Losses

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The purpose of this information guide is to explain how to calculate for individual income tax purposes a Nebraska net operating loss and how to deduct the loss in other tax years.

Introduction

An individual income tax net operating loss (NOL) is generally the excess of deductible business expenses over business income. An NOL may also result from casualty and theft losses, moving expenses, deductible job expenses such as travel expenses, work clothes, and union dues, or a share of an operating loss from a partnership, S corporation, or limited liability company.

A taxpayer with Nebraska tax table income of less than zero may have a Nebraska NOL for the year. The determination of whether there is a Nebraska NOL is made by completing Nebraska Form NOL for the year of the loss.

After a Nebraska NOL has been computed, it may be taken as a deduction from Nebraska income in earlier years (carryback) or in later years (carryforward).

This publication will provide information on how to calculate a Nebraska NOL and how to use it. The first section will cover Nebraska NOLs for resident taxpayers. The second section will deal with nonresidents, partial-year residents, and taxpayers who have changed their resident status.

I. RESIDENTS

NOL Steps

A resident taxpayer will use the following steps:

- Step 1.** Complete your federal and state income tax returns for the year. You may have a Nebraska NOL if Nebraska tax table income is less than zero or you entered zero on the Nebraska tax table line of your Nebraska return. If your Nebraska tax table income is more than zero, you do not have a Nebraska NOL.
- Step 2.** Determine whether you have an NOL by completing the Nebraska Net Operating Loss Worksheet, Form NOL. See **How to Calculate Your Nebraska NOL** below. If you do not have a Nebraska NOL, stop here. If you do have a Nebraska NOL, a Nebraska return must be filed for the loss year.
- Step 3.** Determine if you will carry your Nebraska NOL back to past years or will carry it forward to future years. This will depend on whether you had a federal NOL in the same year. See **When to Use a Nebraska NOL** on page 2.
- Step 4.** Deduct the Nebraska NOL in the carryback or carryforward year. See **How to Claim an NOL Deduction** on page 2. If your NOL deduction is equal to or less than your Nebraska tax table income in the carryback or carryforward year, you can stop here. You have used all of your Nebraska NOL.
- Step 5.** Determine the amount of your unused NOL, if applicable. See **How to Calculate an NOL Carryover** on page 2. Carry over the unused Nebraska NOL to the next carryback or carryforward year and begin again at Step 4.

How to Calculate Your Nebraska NOL

Nebraska Form NOL is used to determine if you have a Nebraska NOL and to figure the amount of the loss. The NOL form is similar to Schedule A of Federal Form 1045; however, there are some important differences between these forms. You must complete Nebraska Form NOL even if Schedule A of Federal Form 1045 has been completed.

The Nebraska Form NOL requires you to make adjustments increasing or decreasing federal adjusted gross income (AGI). In addition, differences can arise because Nebraska non-business itemized deductions do not include state or local income taxes. The instructions for Form NOL are on the back of the form.

When to Use a Nebraska NOL

Individual taxpayers have the same NOL carryback and carryforward periods as are permitted for Federal NOLs. For NOLs occurring after 1997, generally the federal carryback period is two years while the carryforward period is twenty years. For NOLs arising in tax years ending in 2001 or 2002, federal law has extended the general two-year carryback period to five years. For NOLs occurring before 1998, the federal carryback period is three years and the carryforward period is 15 years. Since 1998, a farming loss may be carried back five years. (Code Sec. 172) The three-year carryback period is retained for the portion of the NOL that relates to casualty and theft losses of individual taxpayers and to NOLs that are attributable to presidentially declared disasters in the case of a small business or a farming business that elects to forego the five-year carryback period for a farming loss (Code Sec. 172(b)(1)(F)). See Federal Publication 536 for the exceptions to these periods. Any NOL which is unused after the last carryforward period cannot be deducted.

The Nebraska NOL must be applied in the same manner as the federal NOL. **If the federal loss is carried back to past years, the Nebraska loss must also be carried back.** If an election has been made to forego the entire carryback period for a federal NOL, this election must be followed for Nebraska purposes. A copy of the federal election must be attached to the Nebraska return filed for the loss year.

If the Nebraska NOL occurs in a year when there is no federal NOL, the taxpayer will normally carry the loss back to the earliest carryback year. The taxpayer, however, may make an election to forego the carryback period if a federal election would be permitted under similar circumstances.

The election is made by attaching a statement to the Nebraska return filed in the loss year. Such return must be timely filed (including any extensions). If such an election is not made with the return or the return is not timely filed, the NOL must be carried back. Once made, an election cannot be changed.

How to Claim an NOL Deduction

Deducting a Carryback. A Nebraska NOL is carried back to a prior year by filing an amended Nebraska income tax return for the prior year. The Form NOL for the year of the loss must be attached to the amended return when filed. Also attach a copy of Schedule A (Federal Form 1045), and a copy of the Federal Form 1040X or 1045 filed for the carryback year.

An amended Nebraska individual income tax return for a loss carryback must be filed within three years after the due date, with extensions, for filing the return for the NOL year.

An NOL deduction is entered on an amended return in the following manner: Any federal NOL which has been deducted in determining federal AGI is entered as an adjustment increasing federal AGI (line 12 of Forms 1040XN-2005, 1040XN-2004, 1040XN-2003, 1040XN-2002, 1040XN-2001, 1040XN-5 or 1040XN-4, or line 14 of Forms 1040XN-3 or 1040XN-2). The Nebraska NOL is entered as an adjustment decreasing federal AGI

(line 13 of Forms 1040XN-2005, 1040XN-2004, 1040XN-2003, 1040XN-2002, 1040XN-2001, 1040XN-5 or 1040XN-4, or line 15 of Forms 1040XN-3 or 1040XN-2).

Deducting a Carryforward. If a Nebraska resident takes a Nebraska NOL deduction in a year following the year of loss, he or she will report the loss deduction on Schedule I of Form 1040N. The Nebraska NOL deduction will be entered as an adjustment decreasing federal AGI on Part B of Schedule I. Any federal NOL which has been deducted on the federal return must be entered as an adjustment increasing federal AGI on Part A of Schedule I.

The taxpayer must attach a copy of the Nebraska Form NOL for the year of the loss to the Nebraska return. An additional schedule or statement should be attached if necessary to explain the deduction. If more than one Nebraska NOL deduction is taken in the same year, attach a copy of the Form NOL for each loss year.

Change in Marital Filing Status. If marital status changes because of marriage, divorce, or death, or if married taxpayers change their filing status (joint return or separate return), the special rules used by the Internal Revenue Service must also be used to compute a Nebraska NOL carryforward or carryback. See Federal Publication 536 for the applicable rules.

Change in Resident Status. Special rules apply when the residence status is different in the year of the NOL and the year the NOL is deducted. See "Change in Resident Status" on page 4.

How to Calculate an NOL Carryover

If your Nebraska NOL is more than the taxable income in the year you are deducting the NOL, you can then carry a portion of the NOL to another year. This is called an NOL carryover. To compute the amount of the NOL carryover it is necessary to calculate the Nebraska modified taxable income for the year of deduction. This amount is then deducted from the Nebraska NOL to determine the amount of Nebraska NOL carryover which is available.

Nebraska Modified Taxable Income. Nebraska modified taxable income is computed in the same manner as federal modified taxable income except for certain adjustments. See Federal Publication 536 for a description of federal modified taxable income. If **Nebraska modified taxable income** is computed for a carryback year, Schedule B of Federal Form 1045 is used. If the current year return includes an NOL deduction from a prior year which reduces Nebraska taxable income to zero, the worksheet for individuals provided in Federal Publication 536 for the current year is used to determine the carryover to the subsequent year. It is necessary to modify the entries on Schedule B and on the worksheet to compute the Nebraska NOL carryover.

Computing Nebraska NOL Carryover for Carryback Years. To compute the Nebraska NOL carryover where the Nebraska NOL has been deducted in a carryback year, complete Schedule B of Federal Form 1045. However, the form must be modified for Nebraska purposes based on the instructions listed below. It may also be necessary to complete the Itemized Deductions Limitation Worksheet which is contained in the instructions for Form 1045. For years 1993 and later, this worksheet must also be modified for Nebraska purposes.

Nebraska Modifications to Schedule B (Federal Form 1045)

Line 1. Column (1) will be the amount of the Nebraska NOL as computed on Nebraska Form NOL.

- Line 2. Substitute Nebraska Tax Table Income.
- Line 3. Add the amount by which the Nebraska capital loss deduction exceeds the federal capital loss deduction due to the Nebraska special capital gains exclusion.
- Line 5. Reduce the amount of the federal adjustments by any amount relating to excludible U.S. savings bond interest.
- Line 6. This line will vary from your entry on line 6 of your Federal Schedule B. It is necessary to first complete lines 9 through 34 to arrive at the proper entry. If you have to complete the Itemized Deductions Limitation Worksheet on page 8 of the Federal Form 1045 instructions, this worksheet must be modified by the Nebraska Adjustments to Itemized Deductions Limitation Worksheet below.
- Line 7. The entry is zero for tax year 1993 and thereafter. For tax years 1988 through 1992, enter the amount from line 6 of Form 1040N.
- Line 10. Enter the amount of federal AGI as modified by any adjustments made on Schedule I of Form 1040N.
- Line 34. If required to complete the Itemized Deduction Limitations Worksheet in the instructions for Form 1045, complete the worksheet with the Nebraska adjustments listed below and enter the recalculated result on line 6 of the recalculated Schedule B.

Nebraska Adjustments to Itemized Deductions Limitation Worksheet. (Tax Years 1993 and 1994)

- Line 1. Subtract any state or local income tax from the line 1 total. Also, use the recalculated charitable contributions deduction amount when computing line 8 below.
- Line 8. Make the following calculations (use 4 decimal places):
 - a. Enter the recalculated charitable contributions used in line 1 above\$ _____
 - b. Divide line 8a by recomputed line 3. _____
 - c. 1.0000 minus line 8b ratio _____
 - d. Multiply line 8b by .03 _____
 - e. Multiply line 8c by .10 _____
 - f. Add lines 8d and 8e _____
 - g. Multiply line 7 by line 8f\$ _____
- Line 9. Enter smaller of line 4 or line 8g.
- Line 11. Enter total itemized deductions from line 9, Form 1040N, Nebraska itemized deductions.
- Line 12. Enter recalculated difference here and on line 5 of the recalculated Schedule B, Form 1045.

Nebraska Adjustments to Itemized Deductions Limitation Worksheet. (Tax Years 1995 and after)

- Line 2. Add line 18, charitable contributions.
- Line 8. Multiply line 7 by 10% (.10).
- Line 11. Enter total itemized deductions from line 9, Form 1040N, Nebraska Itemized Deductions.
- Line 12. Enter recalculated difference here and on "adjustment to itemized deductions" line (line 5 or line 6, as appropriate for the particular year involved) of the recalculated Schedule B, Form 1045.

Computing Nebraska NOL Carryover From 2005 to 2006.
To compute the Nebraska NOL carryover from 2005 to 2006

where the Nebraska NOL came from an earlier year, complete Worksheet for NOL Carryover From 2005 to 2006 provided in Federal Publication 536. The following modifications will need to be made to this worksheet:

- Line 1. Enter the amount of the Nebraska NOL.
- Line 2. Recompute the Nebraska Tax Table Income without any federal NOL deduction or Nebraska NOL deduction.
- Line 3. Add any Nebraska capital loss deduction as a result of a Nebraska special capital gains deduction which was not deducted on line 13 of Form 1040.
- Line 5. Reduce any adjustments by the amount relating to any Tier I or other railroad retirement benefit paid by the Railroad Retirement Board included in federal AGI, and excludible U.S. savings bond interest.
- Line 6. If you deducted itemized deductions on Form 1040N, use lines 10 through 31 to determine the entry for this line. If your 2005 itemized deductions were limited and you completed lines 32 through 41 of the federal worksheet, make the adjustments for lines 32 through 41 listed below.
- Line 7. Enter zero (-0-).
- Line 32. Enter total itemized deductions from line 9, Form 1040N.
- Line 33. Subtract any state and local income tax included in the total.
- Line 34. Add any refigured charitable contributions from line 19 on the worksheet.
- Line 38. Multiply line 37 by 10% (.10).
- Line 40. Enter the result (but not less than your standard deduction determined on the Nebraska Standard Deduction Worksheet in the Nebraska Individual Income Tax Booklet).
- Line 41. Enter difference here and on line 6 of the recalculated Worksheet for NOL Carryover from 2005 to 2006.

Change in Resident Status. See "Change in Resident Status" on page 5 for instructions on computing a carryover when residency status in the loss year is different from the residency status in the year of deduction.

II. NONRESIDENTS, PARTIAL-YEAR RESIDENTS, AND TAXPAYERS WITH CHANGES IN RESIDENT STATUS

NOL Steps

A nonresident or partial-year resident will use the following steps:

- Step 1.** Complete your federal and state income tax returns for the year. You may have a Nebraska NOL if Nebraska tax table income is less than zero, or you entered zero on the Nebraska tax table line of your Nebraska return and you had losses from Nebraska sources. **You will not have a Nebraska NOL if tax table income is more than zero, even if income derived from Nebraska sources is a net loss.**
- Step 2.** Determine whether you have an NOL by completing the Nebraska Net Operating Loss Worksheet, Form NOL.

See **How to Calculate your Nebraska NOL** below. If you do not have a Nebraska NOL, stop here.

- Step 3.** Determine if you will carry your Nebraska NOL back to past years or will carry it forward to future years. This will depend on whether you had a federal NOL in the same year. See **When to Use a Nebraska NOL** below.
- Step 4.** Deduct the Nebraska NOL in the carryback or carryforward year. See **How to Claim an NOL Deduction** below.
- Step 5.** Determine the amount of your unused NOL. See **How to Calculate an NOL Carryover** on page 5. Carry over the unused Nebraska NOL to the next carryback or carryforward year and begin again at Step 4.

How to Calculate Your Nebraska NOL

Nebraska Form NOL is used to determine if you have a Nebraska NOL and to figure the amount of the loss. The NOL form is similar to Schedule A of Federal Form 1045; however, there are some important differences between these forms. The Nebraska Form NOL requires you to make adjustments increasing or decreasing federal AGI. In addition, differences can arise because Nebraska non-business itemized deductions do not include state or local income taxes.

A nonresident or partial-year resident must also complete Schedule I on the back of the Form NOL. The loss for the year is the smaller of the federal loss with Nebraska adjustments or the loss derived from Nebraska sources. It is possible to have a loss from Nebraska sources but not a Nebraska NOL.

When to Use a Nebraska NOL

Individual taxpayers have the same NOL carryback and carryforward periods as are permitted for Federal NOLs. For NOLs occurring after 1997, generally the federal carryback period is two years while the carryforward period is twenty years. A farming loss may be carried back five years. (P.L. 105-277) See Federal Publication 536 for the exceptions to these periods. Any NOL which is unused after the last carryforward period cannot be deducted. For NOL's occurring before 1998, the normal federal carryback period is three years and the carryforward period is 15 years.

The Nebraska NOL must be applied in the same manner as the federal NOL. If the federal loss is carried back to past years, the Nebraska loss must also be carried back. If an election has been made to forego the entire carryback period for a federal NOL, this election will be followed for Nebraska purposes. A copy of the federal election must be attached to the Nebraska return filed in the loss year.

How to Claim an NOL Deduction

Deducting a Carryback. A Nebraska NOL is carried back to a prior year by filing an amended Nebraska income tax return. The Nebraska Form NOL for the year of the loss must be attached to the amended return when filed. Also attach a copy of Schedule A (Federal Form 1045) and a copy of the Federal Form 1040X or 1045 filed for the carryback year.

An amended Nebraska individual income tax return for a loss carryback must be filed within three years after the due date, including extensions, for filing the return for the NOL year.

When a nonresident or partial-year resident files an amended income tax return in order to deduct a Nebraska NOL, there

are three adjustments which must be made. The amount of the Nebraska NOL from line 35 of Schedule I, Form NOL, is entered as an adjustment decreasing federal AGI (line 13 of Forms 1040XN-2005, 1040XN-2004, 1040XN-2003, 1040XN-2002, 1040XN-2001, 1040XN-5 or 1040XN-4, or line 15 of Forms 1040XN-3 or 1040XN-2). If a federal NOL has also been deducted when calculating federal AGI for the carryback year (line 5 of Forms 1040XN-2005, 1040XN-2004, 1040XN-2003, 1040XN-2002, 1040XN-2001, 1040XN-5, 1040XN-4, 1040XN-3 or 1040XN-2), this amount is entered as an adjustment increasing federal AGI (line 12 of Forms 1040XN-2005, 1040XN-2004, 1040XN-2003, 1040XN-2002, 1040XN-2001, 1040XN-5 or 1040XN-4, or line 14 of Forms 1040XN-3 or 1040XN-2).

The third adjustment is made to Schedule III of the amended return. The amount of the Nebraska NOL from line 35 of Schedule I, Form NOL, is entered as a net change decreasing income derived from Nebraska sources (line 60, Form 1040XN-2005; line 59, Forms 1040XN-2004, 1040XN-2003, and 1040XN-2002; line 57, Form 1040XN-2001; line 53, Form 1040XN-5; line 50, Form 1040XN-4; line 56, Form 1040XN-3; or line 53, Form 1040XN-2).

Deducting a Carryforward. A nonresident or partial-year resident makes three adjustments to properly deduct a Nebraska NOL in a carryforward year. An adjustment to federal AGI is made as an "other adjustment" on Part B of Schedule I of Form 1040N in the amount of the Nebraska NOL available as computed on line 35 of Schedule I, Form NOL.

A federal NOL which has been deducted in computing federal AGI must be entered on Form 1040N, Schedule I, Part A as an adjustment increasing federal AGI.

The third adjustment is made to Schedule III. The amount of the Nebraska NOL is deducted from income derived from Nebraska sources.

The taxpayer must attach a copy of the Form NOL for the year of the loss to the Nebraska return if there is a carryforward of a Nebraska NOL. An additional schedule or statement must be attached if necessary to explain the deduction. If more than one Nebraska NOL deduction is taken in the same year, attach copies of the Forms NOL for each tax year.

Change in Marital Filing Status. If marital status changes because of divorce or death, or if married taxpayers change their filing status, the special rules used by the Internal Revenue Service must also be used to compute a Nebraska NOL carryforward or carryback. See Federal Publication 536 for the applicable rules.

Change in Resident Status. When the resident filing status of a taxpayer differs between the year of the loss and the year the Nebraska NOL is deducted, special rules apply.

A nonresident's or partial-year resident's Nebraska NOL is limited to the amount of the loss that is derived from or connected with Nebraska sources. If the nonresident or partial-year resident has both a federal NOL and a Nebraska NOL and carries the Nebraska NOL back to a year in which the taxpayer was a full-year resident, only the Nebraska loss (as computed on line 35 of Schedule I, Form NOL) can be deducted. Although the federal NOL will be reflected on the amended return as a net change to federal adjusted gross income (line 5 of Forms 1040XN-2005, 1040XN-2004, 1040XN-2003, 1040XN-2002, 1040XN-2001, 1040XN-5, 1040XN-4, 1040XN-3, or 1040XN-2), an adjustment

increasing federal AGI (line 12, Forms 1040XN-2005, 1040XN-2004, 1040XN-2003, 1040XN-2002, 1040XN-2001, 1040XN-5, 1040XN-4, or line 14, Forms 1040XN-3 or 1040XN-2) must be made for the amount of the federal NOL.

A Nebraska NOL incurred while a nonresident or partial-year resident and carried forward to a year in which a resident return is filed, will require an adjustment on Schedule I of Form 1040N. Only the Nebraska NOL as computed on line 35 of Schedule I, Form NOL will be entered on Part B of Schedule I as an adjustment decreasing federal AGI. The amount of any federal NOL will be entered on Part A of Schedule I as an adjustment increasing federal AGI.

If a full-year resident has a Nebraska NOL which is to be deducted in a year in which a nonresident or partial-year resident return was properly filed, such NOL will require three adjustments on the return filed. The NOL will be calculated in the same manner as calculated for other Nebraska resident taxpayers.

In the year the loss will be deducted, the Nebraska NOL will be entered as an adjustment decreasing federal AGI. Any federal NOL deduction taken in such year will be entered as an adjustment increasing federal AGI. In addition, the Nebraska NOL will be deducted from other income derived from Nebraska sources on Schedule III of Form 1040N.

How to Calculate an NOL Carryover

If your Nebraska NOL is more than your Nebraska tax table income or Nebraska source income in the year you are deducting the NOL,

you can carry a portion of the NOL forward to another year. A nonresident or partial-year resident can use either of two methods in computing the amount of NOL carryover which is available. The amount of carryover can be determined by subtracting the Nebraska source income in the initial carryback or carryforward year from the Nebraska NOL. The amount of Nebraska NOL which remains can be carried over to a subsequent year.

The nonresident or partial-year resident can also compute Nebraska modified taxable income for the year of carryback or carryforward and subtract this amount from the Nebraska NOL. (To determine the Nebraska modified taxable income, see **How to Calculate an NOL Carryover** on page 2.) The amount of Nebraska NOL which remains can be carried over to a subsequent year. This carryover is used in the subsequent year as an adjustment decreasing federal AGI as well as a deduction from Nebraska source income.

Change in Resident Status. Where a resident's Nebraska NOL is carried back or carried forward to a year in which the taxpayer is a nonresident or partial-year resident, the amount of the carryover is determined in the same manner as for Nebraska nonresidents or partial-year residents.

Where a nonresident or partial-year resident carries back or carries forward a Nebraska NOL to a year in which a resident return was filed, the amount of carryover will be determined in the same manner as for Nebraska residents.

FOR NEBRASKA TAX ASSISTANCE

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A copy of the Taxpayer Bill of Rights is available by calling any of our regional offices or visiting our Web site.

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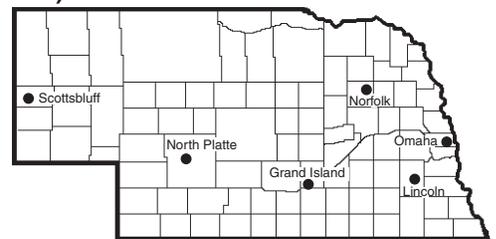
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