HB 450-FN - AS AMENDED BY THE HOUSE

4Jan2024... 2272h

2023 SESSION

23-0412
02/05

HOUSE BILL ***450-FN***

AN ACT relative to removing the net operating loss deduction limit on taxable income under the business profits tax.

SPONSORS: Rep. Schamberg, Merr. 6

COMMITTEE: Ways and Means

ANALYSIS

This bill decouples the net operating loss deduction taxable income limitations from that of the Internal Revenue Code.

- -

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 450-FN - AS AMENDED BY THE HOUSE

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to removing the net operating loss deduction limit on taxable income under the business profits tax.

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

1 Taxation; Business Profits Tax; Additions and Deductions. 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 apportioned in the year incurred according to RSA 77-A:3***, except in determining the amount of the net operating loss deduction, a business organization shall not be subject to any taxable income limitation under section 172 of the United States Internal Revenue Code as provided in RSA 77-A:1, XX***. A net operating loss shall only be apportioned in the year incurred 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 if the business organization were a subchapter C corporation and as limited ***and adjusted*** 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.

2 Applicability. RSA 77-A:4, XIII as amended by section 1 of this act shall apply to all taxable periods ending on or after December 31, 2024.

3 Effective Date. This act shall take effect July 1, 2024.

LBA
23-0412
Revised 4/2/24
Amended 1/12/24

HB 450-FN- FISCAL NOTE

AS AMENDED BY THE HOUSE (AMENDMENT #2023-2272h)

AN ACT relative to removing the net operating loss deduction limit on taxable income under the business profits tax.

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

Estimated State Impact - Increase / (Decrease)				
	FY 2024	**FY 2025**	**FY 2026**	**FY 2027**
Revenue	$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Revenue Fund(s)	General Fund and Education Trust Fund			
Expenditures	$0	$0	$0	$0
Funding Source(s)	None			
Appropriations	$0	$0	$0	$0
Funding Source(s)	None			

- Does this bill provide sufficient funding to cover estimated expenditures? [X] N/A
- Does this bill authorize new positions to implement this bill? [X] N/A

METHODOLOGY:

This bill removes the taxable income limitation imposed on the calculation of net operating loss deduction (NOLD) under section 172 of the Internal Revenue Code. For Business Profits Tax (BPT) taxpayers, NOLD is currently limited to 80% of the taxable income which is eliminated by this bill.

The Department of Revenue Administration states the fiscal impact is indeterminable, however using the following information/assumptions the Department is able to provide a potential fiscal impact:

- the changes contained in the bill will be applicable to taxable periods ending on or after December 31, 2024.
- uses tax year 2021 data filtered for tax returns claiming a NOLD. To this subset the new requirement that NOLD be apportioned only in the year of the loss for taxable periods ending on or after December 31, 2023 was applied. This calculation resulted in a BPT

tax base of $1.2 billion with an estimated tax liability of $92.6 million when the BPT rate of 7.5% is applied.

- uses tax year 2021 data and applies the 80% taxable income limitation of the NOLD to obtain potential fiscal impact with no change in law. This resulted in a tax base of $1.3 billion with an estimated tax liability of $98.3 million when the BPT rate of 7.5% is applied.
- based on a tax year revenue analysis of prior fiscal years, it was determined fiscal year tax revenue is comprised of 15 percent from the tax year 2 years ago, 63 percent is from the tax year 1 year ago and 22 percent from the current tax year (See table 1 below)

The first table below provides the tax year percentages that make up the revenue for a fiscal year. The second table provides an estimated fiscal impact on General Fund and Education Trust Fund revenue.

Table 1. Proposed Legislation Rates and Splits
(Shaded Cells are Tax Years Impacted by this Bill)

Fiscal Year	Tax Year	% Applicable to Tax Year
Fiscal Year 2025	Tax Year 2023	15%
	Tax Year 2024	63%
	Tax Year 2025	22%
Fiscal Year 2026 and forward	Tax Year 2024 and forward	100%

Table 2. Business Profits Tax - Static Analysis Using TY 2021 Revenues

Fiscal Year	Current Law Base with NOL Limitation of 80%	Estimated BPT Revenue with Proposed Legislation	Fiscal Impact (Proposed Legislation Compared to Current Law)
Fiscal Year 2025	$83,500,000	$78,700,000	($4,800,000)
Fiscal Year 2026 and after	$98,300,000	$92,600,000	($5,700,000)

The fiscal impact of the proposed change as depicted in the above table may be overstated or understated for future years depending on whether actual revenue is more or less than the revenue used in the static analysis.

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

AGENCIES CONTACTED:

Department of Revenue Administration