New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

23-0412.1

HB 450, *relative to removing the net operating loss deduction limit on taxable income under the business profits tax.*

House Ways and Means

The proposed legislation removes the taxable income limitation imposed on the calculation of net operating loss deduction (“NOLD”) under section 172 of the Internal Revenue Code (“IRC”) currently in effect for Business Profits Tax (“BPT”) purposes.

Under current law, to determine their net operating loss deduction (“NOLD”) for taxable years ending on or after December 31, 2022, BPT taxpayers shall utilize the IRC in effect on December 31, 2018, which caps NOLD to 80% of the taxable income. The proposed legislation would eliminate this limitation.

The proposed legislation is effective July 1, 2023. The DRA assumes that this proposed legislation is applicable to taxable periods ending on or after December 31, 2023.

This proposed legislation would result in an indeterminable decrease in State revenues to the General Fund and Education Trust Fund.

The DRA first used the data from TY 2020 as the static year data, then filtered for tax returns that claimed a NH NOLD. To calculate FY 2023 through FY 2026 revenues under current law, the NOLDs were recalculated going forward to account for the effects of Chapter 241, Laws of 2022 (SB 435), which requires that NOLD be apportioned only in the year of the loss for taxable periods ending on or after December 31, 2022. The calculation resulted in a tax base of $861,392,415, which was then multiplied by the applicable BPT rate of 7.5% for taxable periods ending on or after December 31, 2023 to arrive at an estimated tax liability of $64,604,431.

The DRA then used the TY 2020 data and subjected that to the 80% taxable income limitation of the NOLD. This resulted in a tax base of $942,674,115 and an estimated tax liability of $70,700,559.

Comparing the two data sets showed an estimated decrease of $6,096,128 in BPT revenue to the General and Education Trust Funds.

The estimated reductions per tax year resulting from this proposed legislation are then applied according to the timing of revenue in the chart below to calculate an estimated yearly impact. Historically, the split breaks down to 15% attributable to two prior years, 63% attributable to the prior year, and 22% attributable to the current year. This proposed legislation would apply to revenue attributable to tax year 2023 and forward.

Fiscal Year	Tax Year	% Applicable to Tax Year
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 and forward	Tax Year 2023 and forward	100%

Business Profits Tax - Static Analysis using TY2020 Revenues			
Fiscal Year	**Current Law Base with NOL limitation of 80%**	**BPT Revenues with Proposed Legislation**	**Fiscal Impact (Proposed Legislation Compared to Current Law)**
2023	$15,554,123	$14,212,975	($1,341,148)
2024	$60,095,475	$54,913,767	($5,181,708)
2025 and forward	$70,700,559	$64,604,431	($6,096,128)

The proposed legislation states an effective date of July 1, 2023. However, there is no applicability date corresponding to a particular taxable period. As a result, the proposed legislation would initially apply to only a portion of a taxpayer's tax year. If the proposed legislation was intended to apply uniformly starting with a particular taxable period, the DRA would recommend the addition of an applicable taxable period end date of "taxable periods ending on or after December 31, 2023."

The proposed legislation did not apply the exception to the taxable income limitation to business organizations not qualifying for treatment as subchapter C corporation, in RSA 77-A:4, XIII. This would result in business organizations other than C-corporations having to comply with the 80% cap.