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 SB 435 would eliminate this outdated reference and as a result, the taxpayer would use the same IRC as is used for the rest of the BPT statute (the IRC in effect on December 31, 2018).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.