

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: De Leon Analyst: Gail Hall Bill Number: AB 1936
Related Bills: See Legislative History Telephone: 845-6111 Introduced Date: February 17, 2010
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Remove Net Operating Loss Carryback Provisions

SUMMARY

The bill would disallow the use of net operating loss (NOL) carrybacks by individual and corporate taxpayers.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately and would be operative for taxable years beginning on or after January 1, 2010.

POSITION

Pending.

ANALYSIS

FEDERAL LAW

When a taxpayer has a net operating loss for a taxable year, the operating loss that may be deducted in subsequent years is called a NOL. An operating loss occurs when a taxpayer's allowed deductions exceed their gross income for that year. Federal law provides, in general, that an NOL can be carried back 2 years and forward 20 years and deducted. Special rules are provided for the carryback of NOLs relating to issues such as specified liability losses, casualty or theft losses, disaster losses of a small business, and farming losses. For NOLs arising in tax years ending after December 31, 2007, an eligible small business can elect to increase the NOL carryback period for an applicable 2008 or 2009 NOL from 2 years to 3, 4, or 5 years.

STATE LAW

In general, a California taxpayer calculates its NOL in accordance with federal rules. For NOLs attributable to taxable years beginning before January 1, 2008, California limits the carryforward period to 10 years in circumstances where federal law allows 20 years. For NOLs attributable to taxable years beginning before January 1, 2011, NOL carrybacks are disallowed.

Board Position:	Department Director	Date
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_____ X PENDING	Selvi Stanislaus	04/06/10

NOLs attributable to taxable years beginning on or after January 1, 2008, may be carried forward 20 years. California conforms to the federal NOL carryback rules for NOLs attributable to taxable years beginning on or after January 1, 2011, with the following modifications:

1. An NOL may be carried back only 2 years. (Federal law has special rules that in some cases allow an NOL to be carried back for a longer period).
2. The amount of NOL carryback attributable to taxable year 2011 is limited to 50 percent of the NOL.
3. The amount of NOL carryback attributable to taxable year 2012 is limited to 75 percent of the NOL.

Current state law conforms to the federal carryback period for a Real Estate Investment Trust and a corporate equity reduction interest loss, which is zero.

THIS BILL

This bill would remove the NOL carryback provisions under current state law.

LEGISLATIVE HISTORY

SB 76 (Senate Committee on Budget, 2009/2010) would repeal the NOL carryback provisions and end the assignment of tax credits between members of a group. SB 76 was placed on inactive file on request of Assembly Member Torrico.

AB 1452 (Assembly Budget Committee), Stats. 2008, Ch. 763) enacted the 2-year carryback and assignment of tax credit provisions along with provisions that authorized the Franchise Tax Board to conduct a tax amnesty (this piece was later repealed), allow an NOL carryover period of 20 years, suspend NOL deductions for two years, limit the amount of tax credits that may reduce tax for two years, and require Limited Liability Corporations (LLCs) to estimate and pay LLC fee by a specific date of the taxable year.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Impact of AB 1936 Enactment Assumed After June 30, 2010 Effective Dates: 1/1/2011 (\$ in millions)			
	2010-11	2011-12	2012-13
Revenue Impact	\$ 25	\$250	\$145

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