

Combined Reporting Instructions

Schedule U-NOL

Member's Net Operating Loss Carryover

Schedule U-NOL is to be completed by every taxable member of a combined group that has a net operating loss (NOL) that it is carrying forward from a previous tax year, even if the member incurred the loss prior to its inclusion within the combined group.

A corporation taxable under M.G.L. Ch. 63, sec. 39 or an S corporation taxable under M.G.L. Ch. 63, sec. 32D may carry forward and deduct an NOL. However, a financial institution or a utility corporation as determined pursuant to Ch. 63 is not entitled to carry forward and deduct an NOL, and therefore cannot submit Schedule U-NOL. Further, NOLs cannot be carried back, and capital losses cannot be carried forward or back.

A change in Massachusetts law effective for tax years beginning on or after January 1, 2010 provides that all NOL deductions are to be carried forward and deducted on a post-apportionment basis. If a corporation has an unused loss from a year beginning before January 1, 2010 that was originally determined on a pre-apportionment basis, it must convert the unused portion of that loss to a post-apportionment amount using the apportionment percentage applicable to the year in which the loss occurred. No deduction is allowed for a loss incurred in a year in which the corporation was not taxable on its income in Massachusetts.

A corporation which filed a combined report in 2009 may have carried forward a NOL from its apportioned share of the loss of generated by the combined group. In general, if the corporation filed a combined report in 2009 and the amount shown on the 2009 Schedule U-ST, line 22 is a loss, then the corporation's post-apportionment NOL in that year equals that amount. Further, although such NOL carry forwards remain the attribute of the member that originally incurred the loss, to the extent the NOL derives from the unitary business, it can be shared with other group members to be deducted against income derived from the unitary business (or the business of the group in general where the group is subject to an affiliated group election) if such other group members were members of the combined group in the tax year in which the loss was incurred. The use of an NOL carry forward by the member itself and by the other members of the combined group must be consistent with the requirements and limitations as referenced in 830 CMR 63.32B.2(8).

In contrast, NOLs that are not derived from a prior year combined report or which derive from losses incurred in connection with a corporation's "separate" business activities, i.e., business activities that are not accounted for as part of a combined group's taxable income and reported on a prior year Schedule U-MTI, may never be shared.

Under Massachusetts law, the sequence for taking the NOL carry forward is as follows.

A member's oldest NOL carry forwards (as determined by the tax year to which such carry forwards relate) must be used first. Further, with respect to losses incurred in years in which the member filed a combined report, the member's "separate" NOL carry

forwards (derived from activities reported on Schedule U-MTI, if filed) must first be applied against the member's "separate" income and the member's NOL carry forwards that derive from the activities of a combined group must first be applied against the member's apportioned share of the combined group's taxable income. See 830 CMR 63.32B.2 (8) (g).

In addition to the ordering rules stated, a taxpayer that is subject to a limitation under IRC sec. 382 must separately determine and apply its Massachusetts sec. 382 limitation under 830 CMR 63.30.2(11)(b). Further, a separate limitation applies where the member has losses from years prior to its filing a combined report (see 830 CMR 63.32B.2 (8) (f)).

A member cannot take an NOL carry forward deduction that exceeds its net income allocated or apportioned to Massachusetts (i.e., as referenced on line 1).

Schedule U-NOL tracks the carry forward and deduction of NOLs by eligible corporations, including the conversion of pre-apportionment NOL to a post-apportionment amount. Schedule U-NOL also tracks the sharing of the member's NOLs from a prior year combined report by one or more other members of the combined group.

Schedule U-NOL Header

Enter the name of the taxable member filing the U-NOL (using the name referenced on Schedule U-ST) and the member's Federal Taxpayer number. Also, enter the date of the member's most recent ownership change as described in Internal Revenue Code (IRC) sec. 382(g) even if such ownership change was prior to the time that the member was included in the combined group (if there has been no such change, enter the corporation's date of incorporation or organization). Further, enter the name of the principal reporting corporation, the Federal Identification number of the principal reporting corporation and the ending date of the combined group's taxable year.

Line Instructions

The schedule is further divided into separate sub-parts that address NOLs that are being carried forward by the member from one or more prior taxable years, dating back five taxable years (i.e., starting with the immediately preceding taxable year).

Line 1. Report the corporation's total income allocated or apportioned to Massachusetts from Schedule U-ST, line 26.

Line 2. A taxable member that has an NOL carry forward that derives from a loss incurred in a tax year prior to the member's inclusion in the combined group is subject to a limitation on the amount of such carry forward that may be deducted from its apportioned share of the combined groups' taxable income. The limitation to be applied is the amount of the combined groups' taxable income for the current tax year that would be apportioned to the member as re-determined by using (a) the dollar amounts of the member's Massachusetts apportionment factor numerators from the year in which the loss was incurred (determined, in the case of the sales factor by excluding all 'throwback

sales' other than destination sales 'thrown back' from jurisdictions in which no member of the combined group was subject to tax) and (b) the current year group denominators. If the taxable member has such "pre-combination" NOL carry forwards available from multiple tax years, a single limitation is calculated by using a weighted average of the numerators from the various loss years. See 830 CMR 63.32B.2 (8) (f). Enter the amount of the limitation, but not more than the amount stated on line 1.

5th Prior year (2005)

Net operating losses incurred in years beginning prior to January 1, 2010 may be carried forward for up to five tax years. A tax year of less than 12 months is considered a full tax year for purposes of applying this limitation. Indicate the type of Massachusetts corporate excise return filed by the taxpayer in the 5th prior year. If the corporation does not have a NOL to carry forward from this year, did not file a Massachusetts corporate excise tax return during that year, or if it was organized more recently and does not have five prior taxable years, leave this blank and leave all other lines in this section blank.

Line 3. Enter the amount of the corporation's pre-apportionment NOL incurred in the 5th prior tax year.

Line 4. If any of the loss entered in line 3 was deducted on a pre-apportionment basis in prior years, enter the amount used in column.

Line 5. Subtract the amount on line 4 from line 3.

Line 6. Enter the Massachusetts income apportionment percentage that was applicable to the member in the 5th prior tax year (note that the percentage should be referenced on the corporation's Massachusetts Schedule F filed for that 5th prior tax year and should be entered as a decimal (e.g. 0.25 = 25%). If the corporation was not taxable in any other state in the 5th prior tax year, enter 1.000000. If the corporation was not taxable on its income in Massachusetts in the 5th prior tax year, enter "0".

Line 7. Multiply the amount on line 5 by the percentage on line 6. If the corporation filed a combined report in the 5th prior year, enter the total post-apportionment NOL (as shown on 2009 Schedule U-ST).

Line 8. Enter the amount of any NOL deducted on a post-apportionment basis on a prior year combined report.

Line 9. Subtract the amount on line 8 from line 7. This is the amount of NOL carried forward to the current year on a post-apportionment basis.

Line 10. Enter the amount of the NOL taken by the corporation in the current tax year. The amount taken must not exceed the lesser of the current year net income as referenced on line 1 or the amount referenced as available on line 9. If the loss relates to a pre-combination year, this amount may not exceed the amount referenced on line 2.

Line 11. Subtract the amount on line 10 from the amount on line 9.

Line 12. If after applying its own NOL carry forwards, the member has a NOL carry forward remaining that derives from a loss incurred by the combined group (i.e., as reported on a combined report filed for a tax year beginning on or after January 1, 2009),

the member may allow another group member that was also a member of the group in the tax year in which the loss was incurred to use the NOL carry forward against its apportioned share of the combined group's taxable income as determined for the current tax year. However, the member possessing the NOL carry forward may not share such carry forward with a financial institution or a utility corporation. The requirements for the sharing of NOL carry forwards are referenced in 830 CMR 63.32B.2 (8) (b).

In any instance in which the member shares an NOL carry forward with another member of the combined group, the member using the shared NOL carry forward must file Schedule U-NOLS, referencing the total amount of all other members' NOL carry forwards deducted by that member. Enter the amount of the NOL carry forward of this corporation shared with (i.e., used by) another member on line 12.

Line 13. Subtract the amount on line 12 from the amount on line 11.

4th Prior year (2006)

Indicate the type of Massachusetts corporate excise return filed by the taxpayer in the 4th prior year. If the corporation does not have a NOL to carry forward from this year, did not file a Massachusetts corporate excise tax return during that year, or if it was organized more recently and does not have four prior taxable years, leave this blank and leave all other lines in this section blank.

Lines 14 through 24. Follow the instructions for lines 3 through 13, entering the amounts as they relate to the member's 4th prior tax year. The limitation to be applied to the use of the "pre-combination" NOL referenced on line 19 is the amount on line 2 less the amount on line 10.

3rd Prior year (2007)

Indicate the type of Massachusetts corporate excise return filed by the taxpayer in the 3rd prior year. If the corporation does not have a NOL to carry forward from this year, did not file a Massachusetts corporate excise tax return during that year, or if it was organized more recently and does not have three prior taxable years, leave this blank and leave all other lines in this section blank.

Lines 25 through 35. Follow the instructions for lines 3 through 13, entering the amounts as they relate to the member's 3rd prior tax year. The limitation to be applied to the use of the "pre-combination" NOL referenced on line 30 is the amount on line 2 less the total of the amounts used on line 10 and line 21.

2nd Prior year (2008)

Indicate the type of Massachusetts corporate excise return filed by the taxpayer in the 2nd prior year. If the corporation does not have a NOL to carry forward from this year, did not file a Massachusetts corporate excise tax return during that year, or if it was organized more recently and does not have two prior taxable years, leave this blank and leave all other lines in this section blank.

Lines 36 through 46. Follow the instructions for lines 3 through 13, entering the amounts as they relate to the member's 2nd prior tax year. The limitation to be applied to the use of the "pre-combination" NOL referenced on line 41 is the amount on line 2 less the total of the amounts used on line 10, line 21 and line 32.

1st Prior year (2009)

Indicate the type of Massachusetts corporate excise return filed by the taxpayer in the 3rd prior year. If the corporation does not have a NOL to carry forward from this year or if it did not file a Massachusetts corporate excise tax return during that year, leave this blank and leave all other lines in this section blank.

Lines 47 through 57. Follow the instructions for lines 3 through 13, entering the amounts as they relate to the member's 1st prior tax year. The limitation to be applied to the use of the "pre-combination" NOL referenced on line 52 is the amount on line 2 less the total of the amounts used on line 10, line 21, line 32 and line 43.

Summary

Line 58. Enter the total of the amounts referenced on lines 10, 21, 32, 43 and 54. Enter this amount on Schedule U-ST, line 27.

Line 59. Enter the total of the amounts referenced on lines 12, 23, 34, 45 and 56.

Line 60. Enter the total of the amounts referenced on lines 24, 35, 46 and 57.