

2009 Schedule U-NOL Instructions

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.

Under Massachusetts law a corporation taxable under M.G.L. c. 63, § 39 and an S corporation taxable under M.G.L. c. 63, § 32D may carry forward and deduct an NOL for up to five taxable years. However, a financial institution or a utility corporation as determined pursuant to chapter 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 corporation may have NOL carry forwards that derive from losses incurred in one or more taxable years that are to be carried forward and deducted on either a post-apportionment or pre-apportionment basis or both. Schedule U-NOL tracks the carry forward and use of each type of NOL carry forward.

In general, NOL carry forwards that are carried forward on a post-apportionment basis are carry forwards that derive from losses incurred in connection with the unitary business activities of a combined group (or general business activities where the combined group is subject to an affiliated group election) for taxable years beginning on or after January 1, 2009. Such NOL carry forwards can be deducted from the member's apportioned share of the combined group's taxable income and the member's other separately-determined apportionable or allocable income, if any (i.e., in the instance in which the combined group has not made an affiliated group election) on a post apportionment basis.

Further, although such NOL carry forwards remain the attribute of the member that originally incurred the loss, they 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 carried forward on a pre-apportionment basis are carry forwards that 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. Because the combined reporting filing requirement did not apply to tax years beginning prior to January 1, 2009, all NOL carry forwards that derive from tax years beginning prior to January 1, 2009 are with respect to losses incurred in a corporation's separate business activities such that the NOL carry forwards were to be determined and carried forward on a pre-apportionment

basis. Also, a member may have NOL carry forwards for tax years beginning prior to its inclusion in a combined group for tax years beginning on or after January 1, 2009, and such losses are similarly losses incurred in separate business activities to be determined and carried forward on a pre-apportionment basis. Further, because a member that is included in a combined group for taxable years beginning on or after January 1, 2009, may continue to incur “separate” activity losses (i.e., in any case where the combined group is not subject to an affiliated group election), such losses are also to be determined and carried forward on a pre-apportionment basis.

In any instance in which a member has NOL carry forwards that were determined and carried forward on a pre-apportionment basis such carry forwards may be applied against the member’s separate income, if any, as reported on Schedule U-MTI on a pre-apportionment basis. Further, such NOL carry forwards may be converted to post apportionment NOLs that may be applied against the member’s apportioned share of the combined group’s taxable income on a post apportionment basis.

In addition to tracking a member’s own use of its post-apportionment and pre-apportionment NOLs, Schedule U-NOL also tracks the use of the member’s post-apportionment NOLs that the member shares with one or more other members of the combined group. Further, Schedule U-NOL converts pre-apportionment NOLs to post-apportionment NOLs such that pre-apportionment NOLs may be deducted against the income of a member as derived from the activities of a 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) § 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 divided into two columns. Column (a) reports the member’s NOLs and the amounts relating to such NOLs that are “separate” or specific to the member (i.e., column (a) reports the pre-apportionment NOLs that the member may carry forward and use against its own income but that cannot be shared with other combined group members). Column (b) reports the member’s post-apportionment NOLs and amounts relating to such NOLs that derive from the unitary business activities of the combined group, or the group’s general business activities in any case where the group is subject to an affiliated group election (i.e., column (b) reports the NOLs that the member can carry forward and use against its own income and that the member can also share with other combined group members).

For tax years beginning prior to January 1, 2009 NOLs were determined, carried forward and deducted on a pre-apportionment basis. Because these NOL carry forwards were not derived from the activities of a combined group they are to be reported in column (a) and cannot be shared. In any case in which a member seeks to deduct these “pre-combination” NOL carry forwards against its own apportioned share of the combined group’s taxable income, the NOL carry forward must be converted via Schedule U-NOL to a post-apportionment amount. Similar treatment is accorded to all NOL carry forwards that derive from a member’s prior activities when such activities were “separate” activities that were not included in the computation of a combined group’s taxable income.

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 22.

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.

Line 3. Net operating losses 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. If the corporation incurred a “separate” NOL (i.e., a NOL that cannot be shared) in the 5th prior tax year and some or all of that NOL remains to be carry forward to the current tax year, enter the amount of such pre-apportionment NOL carried forward to the current tax year on line 3(a) as a “separate” loss. Make no entry on line 3(b).

If the corporation does not have a pre-apportionment NOL from its 5th prior tax year, but does have a post-apportionment NOL from that year, enter “0” on line 3(a) and proceed to line 9 (b). If the corporation does not have either a pre-apportionment NOL or a post-apportionment NOL from its 5th prior tax year, proceed to line 14.

Line 4. If any of the loss entered in line 3 was deducted on a pre-apportionment basis on Schedule U-MTI, line 23, enter the amount used in column (a).

Line 6. Enter, on line 6(a), 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 in Massachusetts in the 5th prior tax year, enter 0.

Line 8. If the member has a pre-combination loss available as referenced on line 7(a), enter the amount of the limitation on line 2 here.

Line 9. For column (a), enter the lesser of the amount on line 8(a) and the amount on line 7(a). For column (b), if the member has a post-apportionment NOL carry forward that derives from the activities of the combined group during the fifth prior tax year, enter the amount of such NOL carry forward. If the corporation was not a member of a combined group filing a combined report during the 5th prior tax year (e.g., because such tax year was a tax year that began prior to January 1, 2009 when the combined reporting law did not apply), enter "0" on line 9(b).

Line 10. Enter the amount of the NOL carry forward deduction taken in the current tax year in the applicable column. The amount taken as stated in either column must not exceed the amount referenced as available in the corresponding column in line 9.

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, as to a member's NOL carry forwards that derive from the same tax year, the member's "separate" NOL carry forwards 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 § 382 must separately determine and apply its Massachusetts § 382 limitation under 830 CMR 63.30.2 (11) (b).

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).

Line 11. For column (a), subtract the amount on line 10(a) from the amount on line 7(a). For column (b), subtract the amount on line 10(b) from the amount on line 9(b).

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 shared with (i.e., used by) another member on line 12(b). Make no entry on line 12(a), as "separate" NOL carry forwards cannot be shared.

Line 13. For column (a), divide the amount referenced on line 11(a) by the apportionment percentage referenced on line 6(a) to convert the corporation's "separate" NOL carry forward back to a pre-apportionment amount. For column (b), subtract the amount on line 12(b) from the amount on line 11(b).

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(a) is the amount on line 2 less the amount on line 10(a).

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(a) is the amount on line 2 less the total of the amounts used on line 10(a) and line 21(a).

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(a) is the amount on line 2 less the total of the amounts used on line 10(a), line 21(a) and line 32(a).

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(a) is the amount on line 2 less the total of the amounts used on line 10(a), line 21(a), line 32(a) and line 43(a).

Line 58. Enter on line 58(a) the total of the amounts referenced on lines 4(a), 15(a), 26(a), 37(a) and 48(a).

Line 59. Total the amounts on lines 10 (a), 21 (a), 32 (a), 43 (a) and 54 (a) and enter this total on line 59(a). Total the amounts on lines 10 (b), 21 (b), 32 (b), 43 (b) and 54 (b) and enter this total on line 59(b). The total deduction referenced as the member's NOL on line 23 of Schedule U-ST must match the total of line 59(a) and line 59(b).

Line 60. Total the amounts on lines 12(b), 23(b), 34(b), 45(b) and 56(b) and enter this total on line 60(b).

Line 61. Total the amounts on lines 24(a), 35(a), 46(a) and 57(a) and enter this total on line 61(a). Total the amounts on lines 24(b), 35(b), 46(b) and 57(b) and enter this total on line 61(b).