

2009 Schedule U-NOLS Instructions

Member's Shared Loss Carry Forwards

Schedule U-NOLS must be completed by every taxable member of a combined group that is using a net operating loss (NOL) carry forward of another member of the group (i.e., where the loss was incurred in a prior tax year by such other "contributing" member). If the member is sharing an NOL carry forward from more than one group member, a single Schedule U-NOLS may be used to report the NOL carry forwards that are being shared from all such contributing group members.

A financial institution or a utility corporation as determined pursuant to chapter 63 is not entitled deduct a NOL carry forward either itself or on shared basis and therefore cannot file Schedule U-NOLS.

If any member has an NOL carry forward that derives from a loss incurred in "separate" activities that were not accounted for as part of the determination of a combined group's taxable income included in a combined report, e.g., a NOL carry forward that derives from a loss that was incurred in a tax year beginning prior to January 1, 2009, such carry forward cannot be shared.

In general, 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. For taxable years beginning on or after January 1, 2009, where a taxable member of a combined group has an NOL carry forward that derives from the unitary business of such group, or the general business activities of such group in the instance where the group is subject to an affiliated group election, such NOL carry forward may be shared with another member of the group under certain circumstances. In particular, where the combined group was not subject to an affiliated group election in the tax year in which the loss was incurred, another member of the group may share (i.e., deduct) an NOL carry forward belonging to the member that incurred the loss if the loss was derived from activities of the unitary business and if such other member was engaged in the unitary business in the tax year that the loss was incurred. Further, in any case in which the combined group was subject to an affiliated group election for the tax year in which the loss was incurred, another member of the group may share (i.e., deduct) an NOL carry forward of the member that incurred the loss if it was a member of the combined group in the tax year that the loss was incurred, irrespective as to whether the members were engaged in a unitary business in such prior tax year.

A member of a combined group must first deduct its own NOL carry forwards before it may contribute its NOL carry forwards to another group member or, alternatively, share an NOL carry forward that belongs to another group member. Thus, for example, a member may contribute its NOL carry forwards to another member only if its taxable net income for the tax year in question has been reduced to zero. For the requirements and limitations that apply to the sharing of NOL carry forwards, see 830 CMR 63.32B.2 (8).

Schedule U-NOLS requires that a member must first determine the amount of its income against which a shared NOL carry forward may be deducted. If after deducting its own NOL carry forwards, the member has positive taxable income derived from the activities of the combined group, it must identify, for the NOL carry forward(s) that it seeks to share, the ending date of the tax year in which the underlying loss was incurred and the amount of the deduction claimed. Schedule U-NOLS permits the member to share NOL carry forwards from one or more other contributing members from any or all of the five preceding tax years, assuming that the requirements for sharing such NOL carry forwards are otherwise met. The deduction is only allowed to the extent that the member's taxable income derived from the activities of the combined group exceeds zero.

Header for Schedule U-NOLS

Enter the name of the taxable member filing the U-NOLS (using the name referenced on schedule U-ST), the member's Federal Identification number and the beginning and ending dates of the combined group's tax year.

Also enter the unitary business identifier to identify the unitary business from which income referenced on lines 1 through 10 derives. This is the income from which the taxable member seeks to deduct the NOL carry forward.

In the case of an affiliated group election, the unitary business identifier will be 1. If the NOL relates to a prior year in which an affiliated group election was also in place, the loss may not be shared unless both corporations were members of the same affiliated group in the year in which the loss was incurred. If the NOL relates to a year for which no affiliated group election was made, the loss may not be shared unless both corporations were members of a combined group engaged in the same unitary business in the year to which the loss carry forward relates.

Where no affiliated group election has been made, unless both the income and the NOL carry forward relate to the same unitary business, the sharing of the carry forward is not permitted. If the combined group is engaged in more than one unitary business and has not made an affiliated group election, losses from one unitary business may only be shared as between members engaged in the same unitary business. In such cases, where a member seeks to share NOL carry forwards that relate to more than one unitary business, a separate Schedule U-NOLS is required as to each such business.

In the case where no affiliated group election has been made for the current year and the NOL carry forward relates to a prior year in which both corporations were members of a combined group that was subject to an affiliated group election, the loss may be shared, but only to the extent of the member's apportioned share of income from the common unitary business in the current year.

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Line Instructions

Lines 1 through 9. These lines apply only in the instance in which the combined group is not subject to an affiliated group election. In any instance in which the combined group is subject to an affiliated group election, skip to line 10.

Line 1. Member's Massachusetts apportioned share of combined s. 1231 gain from this unitary business. Enter "0" if a loss. Any s. 1231 loss will be entered on line 6.

Enter the amount (but not less than 0) from line 30 of the member's Schedule U-MSI that relates to the unitary business with the unitary business identifier referenced in the above header. A mutual fund service corporation must total its separately determined income as derived from its mutual fund services business and its other business activities when such activities are components of a unitary business.

Line 2. Enter the amount from line 28 of the member's Schedule U-MSI that relates to the unitary business with the unitary business identifier referenced in the above header. A mutual fund services corporation must total its separately determined income as derived from its mutual fund services business and its other business activities when such activities are components of a unitary business.

Line 4. Enter the amount from line 17 of the member's Schedule U-ST.

Line 6. Member's Massachusetts apportioned share of combined s. 1231 loss from this unitary business. Enter "0" if a gain.

Enter, as a negative, the amount of any loss stated on line 30 of the member's Schedule U-MSI that relates to the unitary business with the unitary business identifier referenced in the above header. A mutual fund service corporation must total its separately determined income as derived from its mutual fund services business and its other business activities when such activities are components of a unitary business.

Line 7. Enter the amount from line 26 of the member's Schedule U-MSI that relates to the unitary business with the unitary business identifier referenced in the above header. A mutual fund services corporation must total its separately determined income as derived from its mutual fund services business and its other business activities when such activities are components of a unitary business.

Line 8. Combine lines 5 through 7. If less than "0", enter zero and stop here; the member has no taxable income from the unitary business.

Line 10. If the group is subject to an affiliated group election, enter the amount from line 24 of Schedule U-ST on line 10. Otherwise, enter the smaller of line 8 or line 9. A shared NOL may only be deducted against the net income as derived from the activities of the unitary business (or in the case where the combined group is subject to an affiliated group election, as derived from the business activities of the affiliated group), as referenced in the header above. All other taxpayers enter the smaller of lines 8 or 9.

Line 11. An NOL carry forward can only be shared when (i) both the member using the carry forward and the member contributing the carry forward were members of a combined group engaged in a unitary business, or members of a combined group subject to an affiliated group election, in the tax year in which the loss was incurred, and (ii) the loss derived from the activities of such business or affiliated group activities. Enter the ending date of the tax year in which the loss was incurred in the MM/DD/YYYY format. The use of the NOL carry forward must be consistent with the requirements and limitations referenced in 830 CMR 63.32B.1 (8).

Note that an NOL carry forward cannot be shared when the underlying loss was incurred in a tax year beginning prior to January 1, 2009.

Line 12. Enter the amount of the shared NOL from the tax year referenced on the prior line that is being used. If more than one other member is contributing an eligible NOL carry forward from the tax year that is being shared, enter the total amount from all contributing members being deducted by this member.

If more than one other member has an NOL carry forward that is eligible to be shared with the member that date back to the tax period referenced on the prior line, and the total amount available exceeds the amount that can be used by the member filing the Schedule U-NOLS, the NOL carry forward that is to be used is considered to be shared from each such contributing member on a pro-rata basis with respect to the amount available.

Each contributing member must reflect the amount of the NOL carry forward that it has contributed to the member sharing such carry forwards when it files its Schedule U-NOL, and must reduce the amount of its NOL carry forward that is available for carry forward to future years by the amount so shared. This reporting is to be made on the contributing member's own Schedule U-NOL, lines 12b, 23b, 34b, 45b and 56b.

Lines 14 through 25. Repeat the procedure used for lines 11 through 13 for each of up to 4 additional prior tax years.