

Combined Reporting Instructions

2012 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 24.

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 (2007)

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 period end date of the 5th prior tax year.

Line 4. Enter the amount of the post apportionment loss shown for the year referenced in line 3 as shown on the prior year's schedule U-NOL or schedule E-2 as applicable. If the current taxable year is a 12-month year, this will be the amount from 2011 schedule U-NOL, line 18 or the amount from 2011 schedule E-2, line 2e. The amount shown on this line should reflect a reduction in the amount of NOL for any portion of the NOL used on a pre-apportionment basis in years prior to 2010 (2009 for taxpayers filing a combined report in that year).

Line 5. Enter, as a positive amount, the total of any post-apportionment NOL originating in the taxable year referenced in line 3 that was used in taxable years beginning in 2009 (combined report filers only),

2010 or 2011. This figure must include losses shared with affiliates in prior years and may be adjusted to reflect known changes (e.g. prior audit results). Note that in the event of a merger, per 830 CMR 63.30.2 (11)(a), the surviving corporation in a merger may not deduct or carry over the net operating loss of a corporation it absorbs. All of the net operating loss of a corporation absorbed in the merger is lost.

Line 6. Subtract the amount on line 5 from line 4.

Line 7. 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 8. Subtract the amount on line 7 from the amount on line 6.

Line 9. 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 9.

Line 10. Subtract the amount on line 9 from the amount on line 8.

4th Prior Year (2008)

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 11 through 18. Follow the instructions for lines 3 through 10, 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 is the amount on line 2 less the amount on line 7.

3rd 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, 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 19 through 26. Follow the instructions for lines 3 through 10, 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 is the amount on line 2 less the total of the amounts used on line 7 and line 15. If the loss on line 20 is from a prior year combined report (Form 355U), the line 2 limitation does not apply to this loss.

2nd Prior Year (2010)

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 27 through 34. Follow the instructions for lines 3 through 10, 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 is the amount on line 2 less the total of the amounts used on line 7, line 15 and line 23. If the loss on line 28 is from a prior year combined report (Form 355U), the line 2 limitation does not apply to this loss.

1st Prior Year (2011)

Indicate the type of Massachusetts corporate excise return filed by the taxpayer in the 1st 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.

Line 35. Enter the period end date of the most recent prior tax year.

Line 36. Enter the amount of the post apportionment loss shown for the taxable year referenced in line 35 as a positive amount. The loss should be the amount from 2011 schedule U-ST, line 24 or the amount from 2011 schedule E line 23.

Line 37. Enter as a positive amount the total of any NOL deducted on a post-apportionment basis on a prior return (this will apply only to fiscalized members with income from sources other than the unitary business that must be reported on a separate return).

Line 38. Subtract the amount on line 37 from the amount on line 36.

Line 39. Enter the amount of the above NOL taken by the corporation in the current tax year, not more than the amount shown on line 38. The total NOL deduction, including all prior years, may not exceed the current year net income as referenced on line 1. The total NOL deduction from pre-combination years may not exceed the limitation shown on line 2 less any amounts from pre-combination years shown on lines 7, 15, 23 and 31. If the loss on line 36 is from a prior year form 355U, the line 2 limitation does apply to this loss.

Line 40. Subtract the amount on line 39 from the amount on line 38.

Line 41. Enter the amount of the NOL carry forward of this corporation shared with (i.e., used by) another member on line 41. The member taking the deduction must file Schedule U-NOLS. The requirements for the sharing of NOL carry forwards are referenced in 830 CMR 63.32B.2 (8) (b).

Line 42. Subtract the amount on line 41 from the amount on line 40.

Summary

Line 54. Enter the total of the amounts referenced on lines 7, 15, 23, 31 and 39. Enter this amount on Schedule U-ST, line 25.

Line 55. Enter the total of the amounts referenced on lines 9, 17, 25, 33 and 41.

Line 56. Enter the total of the amounts referenced on lines 18, 26, 34 and 42.