Major 2023 Tax Law Changes

Federal Conformity

In recent years there have been a few federal acts that have had significant impact on the Massachusetts corporate and financial institution excise. Massachusetts generally follows the Internal Revenue Code (IRC) as currently in effect for Massachusetts corporate and financial institution excise purposes. For more up-to-date and detailed information on tax changes and federal conformity please see the dedicated 2023 Tax Changes page on our website at mass.gov/dor.

Massachusetts Schedule FCI (Foreign Corporation Income)

Certain eligible businesses and individuals will be required to complete and file a Massachusetts Schedule FCI, Foreign Corporation Income, with their tax return to reflect their pro rata share of foreign corporation income that is reported federally under the Tax Cuts and Jobs Act (TCJA). Specific instructions for completing Schedule FCI are available on DOR's website. See Schedule FCI and instructions.

Note: in addition to completing and submitting Schedule FCI a taxpayer must also refer to the specific tax return instructions herein to ensure amounts reflected on Schedule FCI are correctly reported on the tax return.

The TCJA made changes to the treatment and reporting of net operating losses for federal tax purposes. However, Massachusetts does not adopt these federal changes. Taxpayers should therefore continue to treat and report net operating losses in the same manner unaffected by the TCJA.

Net Operating Loss Carry forward

A corporation taxable under Massachusetts General Laws (MGL) ch 63, § 39 or an S corporation taxable under MGL ch 63, § 32D may carry forward and deduct an net operating loss (NOL). The number of years for which such a loss may be carried forward is 20 taxable years. NOLs cannot be carried back, and capital losses cannot be carried forward or back.

A corporation claiming a net operating loss files Schedule NOL with its return to report the amounts available and deducted. A corporation's oldest NOL carry forwards (as determined by the tax year to which such carry forwards relate) must be used first. In addition to the NOL ordering rules, a taxpayer that is subject to a limitation under Internal Revenue Code (IRC) § 382 must separately determine and apply its Massachusetts § 382 limitation under 830 CMR 63.30.2(11)(b).

A corporation claiming an NOL carryover from prior taxable years must file this schedule even if no deduction is taken in the current year. A corporation that has no Massachusetts NOL carryover from any prior year does not file this schedule.

Header information

Note: Beginning on or after January 1, 2010, losses incurred can be carried forward for 20 years and cannot be carried back.

Enter the name of the corporation and its Federal Taxpayer identification number. If the corporation has undergone an ownership change as described in IRC § 382(g) enter the date of the most recent change on the schedule; if there has been no such change, enter the corporation's date of incorporation or organization.

Line 1

Enter corporation's total net income or (loss) allocated or apportioned to Massachusetts for the current year. This will be the amount on Form 355 or Form 355S Schedule E, line 25 or Form 355U, Schedule U-ST, line 24.

Line 2

Indicate if the amount of any NOL carryover as reported in line 4 for any prior taxable year differs from the ending amount shown as remaining available for carryover by the corporation on the prior year return. Briefly explain the reasons for the change, and the date of any amended filings. Note that, in the case of a merger of two or more corporations, any NOL of a corporation absorbed in the merger is lost (see 830 CMR 63.30.2(11)).

Line 3

Fill in the oval if the taxpayer is subject to a limitation under IRC § 382. If filled in, the taxpayer must separately determine and apply its IRC § 382 limitation for Massachusetts pursuant to section 830 CMR 63.30.2(9)(b) of the Massachusetts combined reporting regulation.

Line 4

Beginning with the oldest tax year for which an NOL is carried forward to the current year, enter the period end date and the amount of Massachusetts post-apportionment NOL available, NOL used (deducted) in the current year, NOL shared with other combined group members in the current year and the amount of NOL remaining at the end of the current year.

The **Period end date** should be the period end date as shown on the return for the taxable year in which the loss was incurred. Taxpayers should enter each subsequent prior year in order.

The **Massachusetts post-apportionment NOL available** reported should be the amount as reduced by deductions claimed in prior taxable years. If the corporation did not have a loss in the taxable year referenced, or if it has previously deducted all of the available loss, enter 0.

Corporations that filed Form 355U, Schedule U-ST in the most recent prior year should refer to the amount from 2021 Schedule U-ST, line 24 (if a loss) or to 2022 Schedule NOL line 3.

Corporations that filed Form 355 or Form 355S in the most recent year should refer to the amount from 2021 Schedule E, line 23 (if a loss) or to 2022 Schedule NOL, line 3 less any portion of those losses deducted in that immediate prior year.

Corporations that did not file a Massachusetts return in 2021 see special instructions below for calculating the amount of an NOL available from a prior year in which a Massachusetts return was filed.

The amount deducted is the amount of each NOL actually deducted in the current year. Taxpayers filing a combined report (Form 355U) may be eligible to share certain 2009 and later NOLs with other members of the combined group (see 830 CMR 63.32B.2 (8)). A corporation filing as part of a combined group in a combined report that is allowing other members of that group to use any portion of its available NOL should add the amount shared with affiliates to the amount they are deducting from their own income and enter the total here.

The **Remaining NOL** for each year is the **Massachusetts post-apportionment NOL available** less the total amount of **NOL used** and **NOL shared with other member(s)** for that year. Except where a limitation applies, all of the oldest taxable year's NOL will be used before any of a subsequent NOL is deducted.

Line 5

Enter the total of the Massachusetts post-apportionment NOL available. This will be the total of the carryover amounts shown in line 4 plus any current year loss amount to be carried over if included in line 1. Taxpayers claiming deductions under MGL ch 63 § 38H (Schedule E, line 24, - certified Massachusetts solar or wind power deduction) must adjust line 1 amount by adding back any portion of the loss attributable to that deduction.

Line 6

Enter the total of the line 4 "NOL used" amount as reported above.

Line 7

Enter the total of the line 4 "NOL shared with other member(s)" amounts as shown above. For corporations filing Form 355 or Form 355S or corporations filing Form 355U, Schedule U-ST but not actually sharing any of their NOL carryover, this will not be more than the amount on line 1.

Line 8

Subtract the amount on lines 6 and 7 from the amount on line 5. This should equal the total of the remaining NOL amounts as shown above plus any current year net operating loss from line 1.

Line 9

A net operating loss for a taxable year beginning on or after January 1, 2010 may be carried forward for up to 20 taxable years and could not be carried back. Prior to 2010, a net operating loss could be carried forward for not more than 5 years and could not be carried back. A short taxable year is treated as a full taxable year for this purpose. If the oldest loss shown above is expiring at the end of the current year, enter the amount of the expiring loss here.

Line 10

Subtract line 9 from line 8. This may not be less than 0. Corporations filing from Forms 355 or 355S enter this amount on Schedule E, line 28.

Loss sharing — taxpayers filing a combined report only

A corporation which filed a combined report in 2009 or a subsequent year may have carried forward an NOL from its apportioned share of the loss generated by the combined group. In general, the amount of the loss that potentially can be shared will be calculated in a manner similar to the calculations shown on Schedule U-NOLS lines 3 through 7 for years after 2009. For corporations in combined groups that file a single Schedule U-E with no income other than that shown on Schedule U-MSI, this NOL will be the amount shown on Schedule U-ST line 24.

Losses may only be shared with group members that were also group members in the year in which the loss was incurred, and any deductions must be consistent with the requirements and limitations as referenced in 830 CMR 63.32B.2(8). NOLs that are not derived from a prior year combined report or which derive from losses incurred in connection with a corporation's "separate" non-unitary 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.

Precombination losses — taxpayers filing a combined report only

A corporation filing a combined report and deducting a loss incurred in a year in which a combined report was not filed is subject to the limitation calculated under 830 CMR 63.32B.2(8)(f). The limitation is based on the amount of income that would be apportioned to the taxpayer in the current year using the apportionment numerators applicable in the year in which the loss was incurred (with adjustments for states no longer eligible for throwback and, optionally, for growth). If the taxpayer has losses from 2 or more pre-combination years, the prior year numerators are averaged. This limitation does not apply to losses incurred in a combined reporting year. See Directive 10-5 for additional information.

Example

Corporation X files Form 355 for calendar year 2023 and has apportioned taxable net income of $12,000 on Schedule E, line 25. Corporation X had net operating losses in the taxable years ending March 31, 2020 and March 31, 2021, changed to a December year end for subsequent periods and also incurred an NOL in 2022. The corporation used part of its available losses as deductions against its apportioned net income in the 03/31/2020 and 03/31/2021 tax periods and the amounts of those losses remaining available are $15,000 for the year ending March 2019, $3,000 for the year ending March 2022 and $7,000 for the year ending December 2022.

Schedule NOL — Line 4

Period end date	Massachusetts post apportionment NOL available	NOL used	NOL shared with other members	Remaining NOL
03/31/2020	15,000	5,000	5,000	5,000
03/31/2021	3,000	1,000	1,000	1,000
12/31/2021	0	0	0	0
12/31/2022	7,000	0	0	7,000
12/31/2023	0	0	0	0

5.	Total Massachusetts post-apportionment NOL available	25,000
6.	Total NOL used this year	6,000
7.	Total NOL shared with other members this year	6,000
8.	Total NOL not used	13,000
9.	Total NOL expired (if applicable)	0
10.	Total NOL available for carryover to future years	13,000