



**Net Operating Loss Carryforwards
Disallowance and Allowance for Entity Changes Policy**

In the determination of taxable income, both Portland City Code (PCC) § 7.02.600 (I) and Multnomah County Code (MCC) § 12.600 (I) allow apportioned net operating losses incurred in the five consecutive prior tax years to be used as an additional deduction limited to 75% of apportioned net income. The Business License Tax Law, prior to taxable year 2008, allowed net operating losses to transfer from one taxpayer to another when an entity change did not change “the substance of the business” This language was eliminated from the PCC 7.02 in 2008. Currently, neither law provides for the transfer of net operating losses when the original taxpayer changes tax entities or merges into another entity. Absent such express allowance, the net operating loss may not be transferred to a surviving or transferred entity unless Oregon tax law and regulations support such a transfer.

Generally, if a corporation merges with a loss corporation, the surviving consolidated entity may take net operating loss deductions only to the lesser of 75% of apportioned net income or limitations imposed by “SRLY” rules (“Separate Return Limitation Year” – See IRS Regulations Section 1.1502-21(c)). No net operating losses may be carried back and all net operating losses are limited to a maximum of 5 year carryforward—even if the use of such losses have been limited by “SRLY” rules.

An S-Corporation that is merged into another corporation (as a “Q-Sub”) or a C-corporation that is merged into an S-Corporation as a subsidiary of the S-Corporation will not carry forward net operating losses for federal or state tax purposes. Prior tax attributes such as net operating loss remain trapped within the subsidiary. Therefore, in such cases, no net operating loss carryforward deduction may be taken without evidence that such net operating loss carryforward is directly available for federal and state tax purposes.

Generally, the “person” (individual, corporation, partnership, etc.) taking a net operating loss deduction must be the same “person” (i.e., the same tax entity) that generated the net operating loss originally. Changes of corporation name or minor restructuring will generally not result in disallowance of net operating loss carryforward. In such cases, if the tax entity retains the same federal identification number, the Revenue Bureau will allow deduction of prior net operating losses as though no changes have been made. If the federal identification number has changed, the burden will be upon the taxpayer to prove to the Revenue Bureau that such changes have not invalidated their use

of net operating loss carryforward for federal and state tax purposes. If the deduction is allowable under federal and state tax laws and regulations, the deduction will be allowed to the same relative extent for the City of Portland Business License Tax and the Multnomah County Business Income Tax.

6/28/11

Thomas Lannom

Date

Director, Revenue Bureau

Adopted 6-28-2011