

MAINE STATE LEGISLATURE

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SMC
R. 103

L.D. 140

Date: 5/16/11

Report A

(Filing No. H-255)

TAXATION

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 123, L.D. 140, Bill, "An Act To Eliminate the Restriction on Net Operating Loss Carry-forwards"

Amend the bill by adding after section 1 the following:

'Sec. 2. 36 MRS §5122, sub-§2, ¶H, as amended by PL 2009, c. 213, Pt. ZZZ, §2, is further amended to read:

H. For each taxable year subsequent to the year of the loss, an amount equal to the absolute value of the net operating loss arising from tax years beginning on or after January 1, 1989, but before January 1, 1993, for which federal adjusted gross income was increased in accordance with subsection 1, paragraph H, and the absolute value of the amount of any net operating loss arising from tax years beginning on or after January 1, 2002, for which federal adjusted gross income was increased in accordance with subsection 1, paragraph H and that pursuant to the Code, Section 172 was carried back for federal income tax purposes, less the absolute value of loss used in the taxable year of loss to offset any addition modification required by subsection 1, but only to the extent that:

- (1) Maine taxable income is not reduced below zero;
- (2) The taxable year is within the allowable federal period for carry-over;
- (3) The amount has not been previously used as a modification pursuant to this subsection; and
- (4) The modification under this paragraph is not claimed for any tax year beginning in 2009; or 2010 ~~or 2011~~. The amount not deducted as the result of the restriction with respect to tax years beginning in 2009; or 2010 ~~or 2011~~ may be deducted in any tax year beginning after December 31, ~~2011~~ 2010, but only to the extent that the requirements of subparagraphs (1) and (3) are met and the taxable year is within the allowable federal period for carry-over plus the number of years that the net operating loss carry-over adjustment was not deducted as a result of the restriction with respect to tax years beginning in 2009; or 2010 ~~or 2011~~;

COMMITTEE AMENDMENT

R.S.

1 **Sec. 3. 36 MRSA §5122, sub-§2, ¶P**, as amended by PL 2009, c. 213, Pt. ZZZ,
2 §3, is further amended to read:

3 P. An amount equal to the absolute value of any net operating loss arising in a tax
4 year beginning or ending in 2001 for which federal adjusted gross income was
5 increased in accordance with subsection 1, paragraph M and that, pursuant to Section
6 102 of the federal Job Creation and Worker Assistance Act of 2002, Public Law 107-
7 147, was carried back more than 2 years to the taxable year for federal income tax
8 purposes, but only to the extent that:

- 9 (1) Maine taxable income is not reduced below zero;
- 10 (2) The taxable year is either within 2 years prior to the year in which the loss
11 arose or within the allowable federal period for carry-over of net operating losses;
- 12 (3) The amount has not been previously used as a modification pursuant to this
13 subsection; and
- 14 (4) The modification under this paragraph is not claimed for any tax year
15 beginning in 2009; or 2010 ~~or 2011~~. The amount not deducted as the result of the
16 restriction with respect to tax years beginning in 2009; or 2010 ~~or 2011~~ may be
17 deducted in any tax year beginning after December 31, ~~2011~~ 2010, but only to the
18 extent that the requirements of subparagraphs (1) and (3) are met and the taxable
19 year is within the allowable federal period for carry-over plus the number of
20 years that the net operating loss carry-over adjustment was not deducted as a
21 result of the restriction with respect to tax years beginning in 2009; or 2010 ~~or~~
22 ~~2011~~;

23 **Sec. 4. 36 MRSA §5122, sub-§2, ¶V**, as amended by PL 2009, c. 213, Pt. ZZZ,
24 §4, is further amended to read:

25 V. The taxpayer's pro rata share of an amount that was previously added back to
26 federal taxable income pursuant to section 5200-A, subsection 1, paragraph H by an S
27 corporation of which the taxpayer is a shareholder and by which, absent the S
28 corporation election, the corporation could have reduced its federal taxable income
29 for the taxable year pursuant to section 5200-A, subsection 2, paragraph H, except
30 that the modification under this paragraph may not be claimed for any tax year
31 beginning in 2009; or 2010 ~~or 2011~~. The amount not deducted as the result of the
32 restriction with respect to tax years beginning in 2009; or 2010 ~~or 2011~~ may be
33 deducted in any tax year beginning after December 31, ~~2011~~ 2010, but only to the
34 extent that the requirements of section 5200-A, subsection 2, paragraph H,
35 subparagraphs (1) and (3) are met and the taxable year is within the allowable federal
36 period for carry-over plus the number of years that the net operating loss carry-over
37 adjustment was not deducted as a result of the restriction with respect to tax years
38 beginning in 2009; or 2010 ~~or 2011~~;

39 **Sec. 5. 36 MRSA §5122, sub-§2, ¶CC**, as corrected by RR 2009, c. 1, §26, is
40 amended to read:

41 CC. An amount equal to the value of any prior year addition modification under
42 subsection 1, paragraph DD, but only to the extent that:

- 1 (1) Maine taxable income is not reduced below zero;
- 2 (2) The taxable year is within the allowable federal period for carry-over plus the
3 number of years that the net operating loss carry-over adjustment was not
4 deducted as a result of the restriction with respect to tax years beginning in 2009;
5 or 2010 ~~or 2011~~;
- 6 (3) The amount has not been previously used as a modification pursuant to this
7 subsection; and
- 8 (4) The modification under this paragraph is not claimed for any tax year
9 beginning in 2009; or 2010 ~~or 2011~~;

10 **Sec. 6. 36 MRSA §5200-A, sub-§1, ¶V**, as amended by PL 2009, c. 652, Pt. A,
11 §54, is further amended to read:

12 V. For any taxable year beginning in 2009; or 2010 ~~or 2011~~, an amount equal to the
13 absolute value of any net operating loss carry-forward claimed for purposes of the
14 federal income tax; and

15 **Sec. 7. 36 MRSA §5200-A, sub-§2, ¶H**, as amended by PL 2009, c. 213, Pt.
16 ZZZ, §9, is further amended to read:

17 H. For each taxable year subsequent to the year of the loss, an amount equal to the
18 absolute value of the net operating loss arising from tax years beginning on or after
19 January 1, 1989 but before January 1, 1993 and the absolute value of the amount of
20 any net operating loss arising from tax years beginning on or after January 1, 2002,
21 for which federal adjusted gross income was increased under subsection 1, paragraph
22 H and that, pursuant to the Code, Section 172, was carried back for federal income
23 tax purposes, less the absolute value of loss used in the taxable year of loss to offset
24 any addition modification required by subsection 1, but only to the extent that:

- 25 (1) Maine taxable income is not reduced below zero;
- 26 (2) The taxable year is within the allowable federal period for carry-over;
- 27 (3) The amount has not been previously used as a modification pursuant to this
28 subsection;
- 29 (4) For taxable years beginning in 2008, the amount does not exceed \$100,000.
30 In the case of an affiliated group of corporations engaged in a unitary business,
31 the \$100,000 threshold applies with respect to the entire affiliated group of
32 corporations; and
- 33 (5) The modification under this paragraph is not claimed for any tax year
34 beginning in 2009; or 2010 ~~or 2011~~. The amount not deducted as the result of the
35 restriction with respect to tax years beginning in 2009; or 2010 ~~or 2011~~ may be
36 deducted in any tax year beginning after December 31, ~~2011~~ 2010, but only to the
37 extent that the requirements of subparagraphs (1) and (3) are met and the taxable
38 year is within the allowable federal period for carry-over plus the number of
39 years that the net operating loss carry-over adjustment was not deducted as a

1 result of the restriction with respect to tax years beginning in 2009; or 2010 ~~or~~
2 2011;

3 **Sec. 8. 36 MRSA §5200-A, sub-§2, ¶L**, as amended by PL 2009, c. 213, Pt.
4 ZZZ, §10, is further amended to read:

5 L. An amount equal to the absolute value of any net operating loss arising from a tax
6 year beginning or ending in 2001 for which federal taxable income was increased
7 under subsection 1, paragraph M and that, pursuant to Section 102 of the federal Job
8 Creation and Worker Assistance Act of 2002, Public Law 107-147, was carried back
9 more than 2 years to the taxable year for federal income tax purposes, but only to the
10 extent that:

- 11 (1) Maine taxable income is not reduced below zero;
- 12 (2) The taxable year is either within 2 years prior to the year in which the loss
13 arose or within the allowable federal period for carry-over of net operating losses;
- 14 (3) The amount has not been previously used as a modification pursuant to this
15 subsection;
- 16 (4) For taxable years beginning in 2008, the amount does not exceed \$100,000.
17 In the case of an affiliated group of corporations engaged in a unitary business,
18 the \$100,000 threshold applies with respect to the entire affiliated group of
19 corporations; and
- 20 (5) The modification under this paragraph is not claimed for any tax year
21 beginning in 2009; or 2010 ~~or~~ 2011. The amount not deducted as the result of the
22 restriction with respect to tax years beginning in 2009; or 2010 ~~or~~ 2011 may be
23 deducted in any tax year beginning after December 31, ~~2011~~ 2010, but only to the
24 extent that the requirements of subparagraphs (1) and (3) are met and the taxable
25 year is within the allowable federal period for carry-over plus the number of
26 years that the net operating loss carry-over adjustment was not deducted as a
27 result of the restriction with respect to tax years beginning in 2009; or 2010 ~~or~~
28 2011;

29 **Sec. 9. 36 MRSA §5200-A, sub-§2, ¶T**, as repealed and replaced by PL 2009, c.
30 652, Pt. A, §56, is amended to read:

- 31 T. An amount equal to the value of any prior year addition modification under
32 subsection 1, paragraph V, but only to the extent that:
- 33 (1) Maine taxable income is not reduced below zero;
- 34 (2) The taxable year is within the allowable federal period for carry-over plus the
35 number of years that the net operating loss carry-over adjustment was not
36 deducted as a result of the restriction with respect to tax years beginning in 2009;
37 or 2010 ~~and~~ 2011;
- 38 (3) The amount has not been previously used as a modification pursuant to this
39 subsection; and

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(4) The modification under this paragraph is not claimed for any tax year beginning in 2009, or 2010 ~~or 2011~~; and

Sec. 10. Application. This Act applies to tax years beginning on or after January 1, 2011.'

SUMMARY

This amendment adds provisions to ensure that corporations as well as individuals are eligible to claim net operating losses as income tax deductions for tax years beginning in 2011 and makes technical corrections related to net operating loss recapture provisions.

FISCAL NOTE REQUIRED

(See attached)



125th MAINE LEGISLATURE

LD 140

LR 695(02)

An Act To Eliminate the Restriction on Net Operating Loss Carry-forwards

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Taxation

Fiscal Note Required: Yes

Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
Net Cost (Savings)				
General Fund	\$7,467,000	\$1,140,000	(\$1,083,000)	(\$1,710,000)
Revenue				
General Fund	(\$7,467,000)	(\$1,140,000)	\$1,083,000	\$1,710,000
Other Special Revenue Funds	(\$393,000)	(\$60,000)	\$57,000	\$90,000

Fiscal Detail and Notes

Eliminating the restriction on net operating loss carry-forwards (NOLs) for both individual taxpayers and corporations allows individuals to deduct NOLs for the purposes of computing Maine income tax. This bill reduces General Fund revenue and reduces revenue sharing in the present biennium in both fiscal years 2011-12 and 2012-13, but increases General Fund revenue and revenue sharing in the following biennium.