

State Net Operating Losses:

Understanding the Rules & Maximizing the Benefits

58th TEI Annual Upstate New York Tax
Conference

Tuesday, May 9, 2017

Bloomberg
BNA

Agenda

- Key challenges in the State NOL area
- Understanding the mechanics of State NOLs
- Strategies to monetize NOLs
- Impacts of Federal Tax Reform Plans
- Q&A



Key challenges for state NOLs

- States don't follow federal NOL rules
- States differ on how to compute and use NOLs
- State NOL rules change from year to year
- Reporting on a group basis frequently means tracking NOLs by entity
- Some states allow sharing of losses and some do not
- Most states require modifications, limitations, suspensions, or other adjustments to NOLs
- Proper management of the NOL asset mitigates cash tax impacts and increases earnings per share

Current approach to managing NOLs

- Most create their own spreadsheets
 - Time invested to research and keep up with the changing NOL rules
 - Resources needed with Excel skills to program complex, related computations across entities and states
 - Risks of broken links
 - Lack of audit trail & permissions control
 - Increasingly coming under scrutiny of internal and external auditors
 - Understood by one or only a few people (what if creator leaves or retires?)
- Most then retype those numbers into:
 - Compliance & Provision systems
 - Other Excel workbooks to support provision, cash tax planning, etc.

Questions You Should be Asking

- How do we maximize the tax / cash value of state NOLs in the year they are generated?
- How do we maximize NOL utilization in carryforward years and utilize a large NOL before it expires?
- How do we increase the opportunity to share NOLs between members of a combined return?
- How do we maximize the use of pre-merger NOLs?
- **How do we plan???**



Leveraging State NOLs



- Understand mechanics of NOL computation in year of generation & utilization
- Know the apportionment facts for each entity & any existing strategies in place across the states
- Have an inventory of the NOL generation & utilization
 - Acquired – 382/SRLY
 - Home grown
- Know Federal NOL situation & how translates to each state
- What is your motivation?
 - Manage ETR?
 - Tax Cash Benefit?
 - Both?

Mechanics of State NOL

Basic Concepts

- Federal Taxable Income (Loss) – Form 1120 Lines 28, 29a, 29b
- State’s treatment of Federal NOL
 - Pre-apportionment NOL
 - Post-apportionment NOL
- Apportionment factor in year of generation vs utilization
- Net Add modifications (NAMs)
- State’s rules on grouping
 - To compute state taxable income vs NOL
 - Share vs no share
- Entity changes – M&A – 382/SRLY
- State’s NOL rules – c/o, c/b, limitations, suspensions, etc.

State Treatment of Federal NOL

- **16 states add-back Federal NOL**
- **25 states start with Line 28 FTI before NOL**
- **Some states modify Federal NOL**
 - Delaware uses federal NOL deduction (with limitation)
 - Limits NOL carryback to \$30,000; balance may be carried-forward
 - Maryland uses federal NOL with potential modification
 - May require NOL recapture of excess of additions over subtractions from year NOL incurred when NOL is claimed
 - Missouri
 - May require modification to NOL through state additions or subtractions
 - Vermont (prior to 2007)
 - Virginia (requires adjustments)
 - Requires adjustments for state additions and subtractions from year NOL incurred

Carryback & Carryover Rules

- Carryback
 - 29 States do not allow NOL carrybacks
 - 3 States allow NOLs to be carried back 3 years
 - 13 States allow NOL carrybacks to same extent as federal law or allow NOLs to be carried back 2 years
- Carryforward
 - Approximately 26 States allow NOLs to be carried forward 15 or 20 years
 - 3 States allow NOLs to be carried forward 5 or 7 years
 - 5 States allow NOLs to be carried forward 10 or 12 years
 - 11 States allow NOLs to be carried forward to same extent as federal law

Above is generalized over the past 2 decades

Post-Appportionment Rules

- Majority of states (36 plus DC)
 - Calculate state NOL based on apportionment percentage in year NOL incurred
 - Includes:
 - Massachusetts (2009+; combined groups); (2010+; separate return filers and S corporations)
 - New York (2015+)
 - Vermont (2007+)

Pre-Appportionment Rules

Less than a dozen (11) states calculate state NOL based on apportionment percentage in year NOL used – includes:

- Delaware
- Kentucky
- Maryland
- Massachusetts (before 2009 combined groups; before 2010 separate return filers and S corporations)
- Missouri
- New Jersey
- New Mexico
- New York (before 2015)
- Rhode Island
- Vermont (before 2007)
- Virginia

- Combined or Consolidated Reporting
 - 28 states plus the District of Columbia allow or require combined reporting
 - 24 states that have default filing method of separate reporting or combined also allow elective consolidation
 - (note: Kentucky requires mandatory nexus consolidation)
- Combining Group Income
 - The majority of combined reporting states combine group members income on a group apportionment basis
 - Mississippi and Virginia combined return (consolidated return in other states) combines group members income on a 'stacked' entity-by-entity apportionment basis

Group Reporting Complicates NOLs

- **Group-Post:** Most states combine incomes on a group basis and then calculate and track NOLs on a post-apportionment basis
- **Group-Pre:** group basis for income, but NOLs on pre-apportionment
Kentucky, Missouri, New Mexico, Rhode Island, and Virginia consolidated return (combined returns in other states)
- **Stacked-Entity-Post:** Mississippi
- **Stacked-Entity-Pre:** Virginia combined return (consolidated return in other states)
- **Intrastate:** California uses group based apportionment to compute the generated income/loss, but in NOL area, when it's time to utilize an NOL, each entity must track it's own NOL – there is no sharing of losses

Sharing vs No Sharing

- **Current Year Losses**
 - States generally allow current year losses to be shared among group members without limitation
 - Exception: Kentucky (consolidated return) limits NOLs to 50% of income realized by remaining affiliated members that did not realize NOLs
- **Carrybacks and Carryforwards**
 - Combined returns
 - 15 states allow sharing among group members that were part of the original loss year return
 - 11 states plus District of Columbia do not allow sharing; only allow NOL c/b or c/f to be claimed by member that incurred the NOL
 - Consolidated returns - majority of states have SRLY rules

Limitations on Sharing

- **Examples:**
 - **Wisconsin – limits sharing of pre-2009 NOL carryforwards related to separate reporting (combined reporting started in 2009)**
 - Tax years before 2012: no sharing of pre-2009 NOL carryforwards with group
 - Tax years after 2011: apply NOL carryforward to member's own income, then apply 5% of NOL c/f to other members
- **Rhode Island – proposed regulations do not allow pre-2015 NOL carryforwards to be shared among members of a combined return (combined reporting started in 2015)**

Limitations on NOLs

Limitations, Suspensions, NAMs

Examples

- **California** - Phased in 2-year carryback period
 - Limited NOL carrybacks for NOLs incurred in:
 - Tax years beginning on or after January 1, 2013 and before January 1, 2014 to 50% of NOL incurred
 - Tax years beginning on or after January 1, 2014 to 75% of NOL incurred
- **Illinois** - Limited NOL carryover deduction to \$100,000 per tax year for tax years ending after December 31, 2012 and prior to December 31, 2014
- **Delaware** (permanent limitation)
 - Does not have a state NOL / Utilizes federal NOL deduction
 - Limits NOL carrybacks to only \$30,000; remaining balance of NOL is carried forward

Group Reporting Examples

Group Return Post-Apportionment

Bloomberg **BNA** BNA State Tax™ Analyzer

Projects Entities Groups History Reports

Project 3 Analysis: Tax calculation Scenario: Group-Post States

Scenario details					
State		Arizona			
Entity/Group		ABC Group			
Period begin		1/1/2015			
Period end		12/31/2015			
Scenario		Group-Post States			
Apportionment calculation method		Group			
		Total	Entity A	Entity B	Entity C
State subtractions total	175,000		100,000	50,000	25,000
FTI adjusted to state basis	(59,890,000)		(29,950,000)	(9,990,000)	(19,950,000)
State allocated income					
Nonbusiness interest	1,050,000		1,000,000	0	50,000
Nonbusiness royalties	0				
Nonbusiness rents	0				
Other	0				
Less state allocated income total	1,050,000		1,000,000	0	50,000
State income subject to apportionment	(60,940,000)		(30,950,000)	(9,990,000)	(20,000,000)
Apportionment factor %	0.000000%		5.000000%	2.500000%	3.333300%
Apportioned state income total	0		(3,047,000)	(1,523,500)	(2,031,313)
Add state specific allocated income total	0		0	0	0
STI/(loss) before post-apportionment NOL	0		(3,047,000)	(1,523,500)	(2,031,313)
STI/(loss) for post-apportionment NOL	(6,601,813)				

NOL on Post-Apportionment Basis

Group Return Pre-Apportionment

Bloomberg **BNA** BNA State Tax™ Analyzer

Projects Entities Groups History Reports

Project 3 Analysis: Tax calculation Scenario: Group-Pre States - NM

Scenario details					
State		New Mexico			
Entity/Group		ABC Group			
Period begin		1/1/2015			
Period end		12/31/2015			
Scenario		Group-Pre States - NM			
Apportionment calculation method		Group			
		Total	Entity A	Entity B	Entity C
FTI to use in this state		(60,000,000)	(30,000,000)	(10,000,000)	(20,000,000)
FTI adjustments total		25,000	(50,000)	50,000	25,000
FTI as adjusted		(59,975,000)	(30,050,000)	(9,950,000)	(19,975,000)
Less pre-apportionment NOL		0			
State additions total		260,000	200,000	10,000	50,000
State subtractions total		175,000	100,000	50,000	25,000
FTI adjusted to state basis		(59,890,000)	(29,950,000)	(9,990,000)	(19,950,000)
Less state allocated income total		1,050,000	1,000,000	0	50,000
State income subject to apportionment		(60,940,000)	(30,950,000)	(9,990,000)	(20,000,000)
Apportionment factor %		0.000000%	5.000000%	2.500000%	3.333300%
Apportioned state income total		0	(3,047,000)	(1,523,500)	(2,031,313)

NOL on Pre-Apportionment Basis

Stacked Return *Post-Apportionment*

Bloomberg **BNA** BNA State Tax™ Analyzer

Projects Entities Groups History Reports

Project 3 Analysis: Tax calculation Scenario: Stacked-Post States

Scenario details					
State		Mississippi			
Entity/Group		ABC Group			
Period begin		1/1/2015			
Period end		12/31/2015			
Scenario		Stacked-Post States			
Apportionment calculation method		Entity			
		Total	Entity A	Entity B	Entity C
+	FTI to use in this state	(60,000,000)	(30,000,000)	(10,000,000)	(20,000,000)
+	FTI adjustments total	25,000	(50,000)	50,000	25,000
	FTI as adjusted	(59,975,000)	(30,050,000)	(9,950,000)	(19,975,000)
	Less pre-apportionment NOL				
+	State additions total	260,000	200,000	10,000	50,000
+	State subtractions total	175,000	100,000	50,000	25,000
	FTI adjusted to state basis	(59,890,000)	(29,950,000)	(9,990,000)	(19,950,000)
+	Less state allocated income total	1,050,000	1,000,000	0	50,000
	State income subject to apportionment	(60,940,000)	(30,950,000)	(9,990,000)	(20,000,000)
+	Apportionment factor %		15.000000%	7.500000%	10.000000%
	Apportioned state income total	(7,391,750)	(4,642,500)	(749,250)	(2,000,000)
+	Add state specific allocated income total	150,000	150,000	0	0
	STI/(loss) before post-apportionment NOL	(7,241,750)	(4,492,500)	(749,250)	(2,000,000)
	STI/(loss) for post-apportionment NOL		(4,492,500)	(749,250)	(2,000,000)

NOL on Post-Apportionment Basis

Stacked Return *Pre-Apportionment*

Bloomberg **BNA** BNA State Tax[™] Analyzer

Projects Entities Groups History Reports

Project 3 Analysis: Tax calculation Scenario: Stacked-Pre States

Scenario details					
State	Virginia				
Entity/Group	ABC Group				
Period begin	1/1/2015				
Period end	12/31/2015				
Scenario	Stacked-Pre States				
Apportionment calculation method	Entity				
	Total	Entity A	Entity B	Entity C	
FTI to use in this state	(60,000,000)	(30,000,000)	(10,000,000)	(20,000,000)	
FTI adjustments total	25,000	(50,000)	50,000	25,000	
FTI as adjusted	(59,975,000)	(30,050,000)	(9,950,000)	(19,975,000)	
Less pre-apportionment NOL	0				
State additions total	260,000	200,000	10,000	50,000	
State subtractions total	175,000	100,000	50,000	25,000	
FTI adjusted to state basis	(59,890,000)	(29,950,000)	(9,990,000)	(19,950,000)	
Less state allocated income total	1,050,000	1,000,000	0	50,000	
State income subject to apportionment	(60,940,000)	(30,950,000)	(9,990,000)	(20,000,000)	
Apportionment factor %		15.000000%	7.500000%	10.000000%	
Apportioned state income total	(7,391,750)	(4,642,500)	(749,250)	(2,000,000)	

NOL on Pre-Apportionment Basis - By Entity

Sharing/No Sharing Examples

Group-Post & Allows Share

Example 1

Bloomberg **BNA** BNA State Tax™ Analyzer

Projects Entities Groups History Reports

Project 3 Analysis: Tax calculation Scenario: Group-Post States - AZ

Scenario details

- State: Arizona
- Entity/Group: ABC Group
- Period begin: 1/1/2015
- Period end: 12/31/2015
- Scenario: Group-Post States - AZ

Apportionment calculation method: **Group**

	Total	Entity A	Entity B	Entity C
FTI to use in this state	(60,000,000)	(30,000,000)	(10,000,000)	(20,000,000)
FTI adjustments total	25,000	(50,000)	50,000	25,000
FTI as adjusted	(59,975,000)	(30,050,000)	(9,950,000)	(19,975,000)
Less pre-apportionment NOL				
State additions total	260,000	200,000	10,000	50,000
State subtractions total	175,000	100,000	50,000	25,000
FTI adjusted to state basis	(59,890,000)	(29,950,000)	(9,990,000)	(19,950,000)
State allocated income				
Nonbusiness interest	1,050,000	1,000,000	0	50,000
Nonbusiness royalties	0			
Nonbusiness rents	0			
Other	0			
Less state allocated income total	1,050,000	1,000,000	0	50,000
State income subject to apportionment	(60,940,000)	(30,950,000)	(9,990,000)	(20,000,000)
Apportionment factor %	0.000000%	5.000000%	2.500000%	3.333300%
Apportioned state income total	0	(3,047,000)	(1,523,500)	(2,031,313)
Add state specific allocated income total	0	0	0	0
STI/(loss) before post-apportionment NOL	0	(3,047,000)	(1,523,500)	(2,031,313)
STI/(loss) for post-apportionment NOL	(6,601,813)			
Less post-apportionment NOL	0			
State taxable income/(loss)	0			

AZ allows sharing of NOL c/b, c/o

Group NOL Tracking Schedule

Example 1

Bloomberg BNA BNA State Tax Analyzer

Projects Entities Groups History Reports

Project 3 Analysis: NOL calculation ABC Group - AZ Edit

NOL schedule details							
Name:	ABC Group - AZ (Group)						
State:	Arizona						
NOL calculation method:	Post						
Scenario:	Group-Post States - AZ						
Group:	ABC Group						
Period begin:	1/1/2013	1/1/2014	1/1/2015	1/1/2016	1/1/2017		
Period end:	12/31/2013	12/31/2014	12/31/2015	12/31/2016	12/31/2017	1;	
Tax year:	2013	2014	2015	2016	2017	2018	
NOL rules							
Carryback:	0	0	0	0	0		
Carryforward:	20	20	20	20	20		
NOL calculation method:	Post	Post	Post	Post	Post	Post	
Option to waive carryback available?:	N/A	N/A	N/A	N/A	N/A	N/A	
Scenario details							
State income/(loss) for NOL:	500,000	1,500,000	(6,601,813)	1,000,000	2,000,000		
NOL adjustments/limitations							
Waive carryback?:	N/A	N/A	N/A	N/A	N/A	N/A	
Dividends not in adds/subst above:							
Other:							
State income/(loss) after adjustments:	500,000	1,500,000	(6,601,813)	1,000,000	2,000,000		
NOL utilization schedule							
NOL utilization:	2013	2014	2015	2016	2017	2018	
Carryback from this year utilized:	0	0	0	0	0		
NOL available for carryforward:	0	0	(6,601,813)	0	0		
Carryforward from this year utilized:	0	0	(3,000,000)	0	0		
Total NOL utilized:	0	0	3,000,000	0	0		
NOLs available for utilization in future years:	0	0	(3,601,813)	(3,601,813)	(3,601,813)	(3)	
Expiration details							
NOL expiration year:	2033	2034	2035	2036	2037		
Amount expiring:	0	0	3,601,813	0	0		
Less NOLs allowed – computed:	0	0	0	1,000,000	2,000,000		
Less NOLs allowed – scenario:	0						
Update all			Update				

NOL Utilization

Example 1

Bloomberg BNA BNA State Tax Analyzer

Projects Entitles Groups History Reports

Project 3 Analysis: NOL calculation ABC Group - AZ Edit

NOL schedule details

- Name: ABC Group - AZ (Group)
- State: Arizona
- NOL calculation method: Post
- Scenario
- Group
- Period begin 1/1/2013 1/1/2014 1/1/2015 1/1/2016 1/1/2017
- Period end 12/31/2013 12/31/2014 12/31/2015 12/31/2016 12/31/2017
- Tax year 2013 2014 2015 2016 2017 2018

Tax year	2013	2014	2015	2016	2017	2018
2010						
2011						
2012						
2013	0					
2014		0				
2015			(3,000,000)			
2016			1,000,000	1,000,000		
2017			2,000,000		2,000,000	
2018						
2019						
2020						
2021						
2022						
2023						
2024						
2025						
2026						
2027						
2028						
2029						
2030						
NOL utilization						
Carryback from this year utilized	0	0	0	0	0	0
NOL available for carryforward	0	0	(6,601,813)	0	0	0
Carryforward from this year utilized	0	0	(3,000,000)	0	0	0
Total NOL utilized	0	0	3,000,000	0	0	0

NOL Remaining with Expiration

Example 1

Bloomberg BNA BNA State Tax Analyzer

Projects Entitles Groups History Reports

Project 3 Analysis: NOL calculation ABC Group - AZ Edit

NOL schedule details		Group-Post States - AZ					
Name: ABC Group - AZ (Group)		ABC Group					
State: Arizona							
NOL calculation method: Post							
Scenario							
Group							
Period begin		1/1/2013	1/1/2014	1/1/2015	1/1/2016	1/1/2017	
Period end		12/31/2013	12/31/2014	12/31/2015	12/31/2016	12/31/2017	1:
Tax year		2013	2014	2015	2016	2017	2018
NOL rules							
Carryback		0	0	0	0	0	
Carryforward		20	20	20	20	20	
NOL calculation method		Post	Post	Post	Post	Post	Post
Option to waive carryback available?		N/A	N/A	N/A	N/A	N/A	N/A
Scenario details							
State income/(loss) for NOL		500,000	1,500,000	(6,601,813)	1,000,000	2,000,000	
NOL adjustments/limitations							
Waive carryback?		N/A	N/A	N/A	N/A	N/A	N/A
Dividends not in adds/subt above							
+ Other							
State income/(loss) after adjustments		500,000	1,500,000	(6,601,813)	1,000,000	2,000,000	
NOL utilization schedule		2013	2014	2015	2016	2017	2018
NOL utilization							
Carryback from this year utilized		0	0	0	0	0	
NOL available for carryforward		0	0	(6,601,813)	0	0	
Carryforward from this year utilized		0	0	(3,000,000)	0	0	
Total NOL utilized		0	0	3,000,000	0	0	
NOLs available for utilization in future years		0	0	(3,601,813)	(3,601,813)	(3,601,813)	(3)
Expiration details							
NOL expiration year		2033	2034	2035	2036	2037	
Amount expiring		0	0	3,601,813	0	0	
Less NOLs allowed - computed		0	0	0	1,000,000	2,000,000	
Less NOLs allowed - scenario							
Update all		Update					

Group-Post No Sharing

Example 2

Bloomberg BNA BNA State Tax Analyzer

Projects Entties Groups History Reports

Project 3 Analysis: Tax calculation Scenario: Group-Post States - DC

	Total	Entity A	Entity B	Entity C
Scenario details				
State	District of Columbia			
Entity/Group	ABC Group			
Period begin	1/1/2015			
Period end	12/31/2015			
Scenario	Group-Post States - DC			
Apportionment calculation method	Group			
FTI to use in this state	(60,000,000)	(30,000,000)	(10,000,000)	(20,000,000)
FTI adjustments total	25,000	(50,000)	50,000	25,000
FTI as adjusted	(59,975,000)	(30,050,000)	(9,950,000)	(19,975,000)
Less pre-apportionment NOL				
State additions total	260,000	200,000	10,000	50,000
State subtractions total	175,000	100,000	50,000	25,000
FTI adjusted to state basis	(59,890,000)	(29,950,000)	(9,990,000)	(19,950,000)
Less state allocated income total	1,050,000	1,000,000	0	50,000
State income subject to apportionment	(60,940,000)	(30,950,000)	(9,990,000)	(20,000,000)
Apportionment factor %	0.000000%	5.000000%	2.500000%	3.333300%
Apportioned state income total	0	(3,047,000)	(1,523,500)	(2,031,313)
Add state specific allocated income total	0	0	0	0
STI/(loss) before post-apportionment NOL	0	(3,047,000)	(1,523,500)	(2,031,313)
STI/(loss) for post-apportionment NOL	(3,047,000)	(3,047,000)	(1,523,500)	(2,031,313)
Less post-apportionment NOL	0			
State taxable income/(loss)	0			
State tax rate/graduated effective rate	0.000%			
Calculated state tax	0			
State minimum tax	0			
State tax before credits	0			
Less state credits total	0			
State income tax liability total	0			
State effective income tax rate (rate x apport %)	0.000%			
Additional state taxes total	0			
State tax liability total	0			
Payment due/(overpayment)	0			

Group NOL Tracking Schedule

Example 2

Bloomberg BNA BNA State Tax Analyzer

Projects Entitles Groups History Reports

Project 3 Analysis: NOL calculation Entity A - DC Edit

NOL schedule details		Group-Post States - DC					
Name: Entity A - DC (Entity)		Entity A					
State: District of Columbia							
NOL calculation method: Post							
Scenario							
Entity							
Period begin		1/1/2014	1/1/2015	1/1/2016	1/1/2017	1/1/2018	1/1/2019
Period end		12/31/2014	12/31/2015	12/31/2016	12/31/2017	12/31/2018	12/31/2019
Tax year		2014	2015	2016	2017	2018	2019
NOL rules							
Carryback		0	0	0	0	0	0
Carryforward		20	20	20	20	20	20
NOL calculation method		Post	Post	Post	Post	Post	Post
Option to waive carryback available?		N/A	N/A	N/A	N/A	N/A	N/A
Scenario details							
State income/(loss) for NOL		1,500,000	(3,047,000)	1,000,000	2,000,000		
NOL adjustments/limitations							
Waive carryback?		N/A	N/A	N/A	N/A	N/A	N/A
Dividends not in adds/subt above							
Other							
State income/(loss) after adjustments		1,500,000	(3,047,000)	1,000,000	2,000,000		0
NOL utilization schedule		2014	2015	2016	2017	2018	2019
NOL utilization							
Carryback from this year utilized		0	0	0	0	0	0
NOL available for carryforward		0	(3,047,000)	0	0	0	0
Carryforward from this year utilized		0	(3,000,000)	0	0	0	0
Total NOL utilized		0	3,000,000	0	0	0	0
NOLs available for utilization in future years		0	(47,000)	(47,000)	(47,000)	(47,000)	
Expiration details							
NOL expiration year		2034	2035	2036	2037	2038	
Amount expiring		0	47,000	0	0	0	0
Less NOLs allowed - computed		0	0	1,000,000	2,000,000	0	
Less NOLs allowed - scenario							
Update all		Update					

NOL Utilization

Example 2

Bloomberg BNA BNA State Tax Analyzer

Projects Entites Groups History Reports

Project 3 Analysis: NOL calculation Entity A - DC Edit

NOL schedule details

- Name: Entity A - DC (Entity)
- State: District of Columbia
- NOL calculation method: Post
- Scenario
- Entity: Entity A
- Period begin: 1/1/2014, 1/1/2015, 1/1/2016, 1/1/2017, 1/1/2018
- Period end: 12/31/2014, 12/31/2015, 12/31/2016, 12/31/2017, 12/31/2018
- Tax year: 2014, 2015, 2016, 2017, 2018, 2019

Tax year	2014	2015	2016	2017	2018	2019
2008						
2009						
2010						
2011						
2012						
2013						
2014	0					
2015		(3,000,000)				
2016		1,000,000	1,000,000			
2017		2,000,000		2,000,000		
2018					0	
2019						
2020						
2021						
2022						
2023						
2024						
2025						
2026						
2027						
2028						
2029						
2030						
NOL utilization						
Carryback from this year utilized	0	0	0	0	0	0
NOL available for carryforward	0	(2,047,000)	0	0	0	0

NOL Remaining with Expiration

Example 2

Bloomberg BNA BNA State Tax Analyzer

Projects Entities Groups History Reports

Project 3 Analysis: NOL calculation Entity A - DC Edit

NOL schedule details							
Name:	Entity A - DC (Entity)						
State:	District of Columbia						
NOL calculation method:	Post						
Scenario	Group-Post States - DC						
Entity	Entity A						
Period begin	1/1/2014	1/1/2015	1/1/2016	1/1/2017	1/1/2018	1/1/2019	
Period end	12/31/2014	12/31/2015	12/31/2016	12/31/2017	12/31/2018	12/31/2019	
Tax year	2014	2015	2016	2017	2018	2019	
NOL rules							
Carryback	0	0	0	0	0	0	
Carryforward	20	20	20	20	20	20	
NOL calculation method	Post	Post	Post	Post	Post	Post	Post
Option to waive carryback available?	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Scenario details							
State income/(loss) for NOL	1,500,000	(3,047,000)	1,000,000	2,000,000			
NOL adjustments/limitations							
Waive carryback?	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Dividends not in adds/subt above							
Other							
State income/(loss) after adjustments	1,500,000	(3,047,000)	1,000,000	2,000,000	0		
NOL utilization schedule							
NOL utilization	2014	2015	2016	2017	2018	2019	
Carryback from this year utilized	0	0	0	0	0	0	
NOL available for carryforward	0	(3,047,000)	0	0	0	0	
Carryforward from this year utilized	0	(3,000,000)	0	0	0	0	
Total NOL utilized	0	3,000,000	0	0	0	0	
NOLs available for utilization in future years	0	(47,000)	(47,000)	(47,000)	(47,000)		
Expiration details							
NOL expiration year	2034	2035	2036	2037	2038		
Amount expiring	0	47,000	0	0	0		
Less NOLs allowed - computed	0	0	1,000,000	2,000,000	0		
Less NOLs allowed - scenario							



A decorative horizontal band with a blue top half and a white bottom half, both containing a grid of small dots. A vertical dashed line is positioned on the left side of the blue section.

Apportionment Strategy

Maximizing NOLs via Apportionment

- **In year NOL generated**
 - Post-Apportionment states
 - Make NOL larger through inter-company transactions, other state tax deductions, or state allocable income
 - Increase apportionment % **in year incurred**
 - Pre-Apportionment states - focus on utilization year
- **In NOL utilization years**
 - Increase apportionment % **in year used**
 - Increase tax base through inter-company transactions
 - Transfer / sell assets to entity with NOL that create income
 - Convert C corporation to single-member LLC to apply losses against income of other entity

Mixed Industry Groups

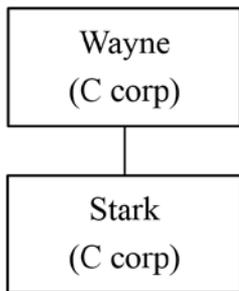
Bloomberg BNA BNA State Tax Analyzer

Projects Entities Common Data Groups Reports History

Furniture 2014 - DT Analysis: Tax calculation Scenario: VA Consol current group

Scenario details		Virginia		General		Motor carriers		Manufacturing	
State tax law industry		General		General		General		General	
Apportionment formula		Double sales		Double sales		Single sales		Double sales	
Entity/Group		Consolidated Filing States				Single sales		4x sales	
Period begin		1/1/2014							
Period end		12/31/2014							
Type		Planning							
Scenario		VA Consol current group							
Apportionment calculation method		Entity							
		Total	Fine Furniture Company	Fine Furniture Realty, Inc.	Fine Furniture Transport, Inc.	Fine Interiors & Furniture, Inc.	Furniture and Electronics Co.	Headsets	Mid-We Furniture
+	FTI to use in this state	16,889,721	4,604,769	675,443	514,254	(357,055)	2,667,888	0	0
+	FTI adjustments total	0	0	0	0	0	0	0	0
+	FTI as adjusted	16,889,721	4,604,769	675,443	514,254	(357,055)	2,667,888	0	0
+	State additions total	3,280,000	1,780,000	0	0	0	0	0	0
+	State subtractions total	1,000,000,000	1,000,000,000	0	0	0	0	0	0
	FTI adjusted to state net income/(loss)	(979,830,279)	(993,615,231)	675,443	514,254	(357,055)	2,667,888	0	0
	Income/(loss) for pre-apportionment NOL	16,889,721	4,604,769	675,443	514,254	(357,055)	2,667,888	0	0
	Less pre-apportionment NOL	0							
	FTI adjusted to state basis	(979,830,279)	(993,615,231)	675,443	514,254	(357,055)	2,667,888	0	0
+	Less state allocated income total	70,000	70,000	0	0	0	0	0	0
	State income subject to apportionment	(979,900,279)	(993,685,231)	675,443	514,254	(357,055)	2,667,888	0	0
Apportionment factors		[Mixed]	Double sales	Double sales	Single sales	Double sales	4x sales	Double sales	Double
+	Weighted sales factor		16.0000 %	20.0000 %	16.0000 %	36.0000 %	56.0000 %	0.0000 %	0.0000 %
+	Weighted property factor		0.0000 %	0.0000 %	0.0000 %	0.0000 %	0.0000 %	0.0000 %	0.0000 %
+	Weighted payroll factor		1.0000 %	0.0000 %	0.0000 %	0.0000 %	0.0000 %	0.0000 %	0.0000 %
	Apportionment factor %		4.2500 %	5.0000 %	16.0000 %	0.0000 %	0.2333 %	0.0000 %	0.0000 %

Post Apportionment Separate TN



- Filing separately in TN
- Wayne has large loss and a 5% TN apportionment
- Stark has large income and a 95% TN apportionment

Total Tax Liability: \$7,129,457

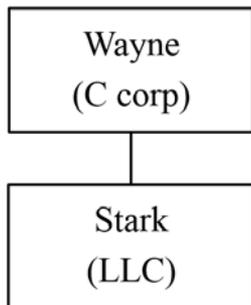
Bloomberg **BNA** BNA State Tax™ Analyzer

Projects Entities Common Data Groups Reports History

State NOL Planning Analysis: Side by side Name: TN Separate Filing Edit Add Report

Scenario	Total	<input checked="" type="checkbox"/> Stark Industries, Inc. TN	<input checked="" type="checkbox"/> Wayne Enterprises, Inc TN
Scenario details			
State		Tennessee	Tennessee
State tax law industry		Manufacturing	General
Apportionment formula		Triple sales	Triple sales
Entity/Group		Stark Industries, Inc	Wayne Enterprises, Inc
Period begin		1/1/2017	1/1/2017
Period end		12/31/2017	12/31/2017
Type		[None]	[None]
Scenario	Total	<input checked="" type="checkbox"/> Stark Industries, Inc. TN	<input checked="" type="checkbox"/> Wayne Enterprises, Inc TN
FTI to use in this state	85,256,444	115,456,789	(30,200,345)
FTI adjustments total	0	0	0
FTI as adjusted	85,256,444	115,456,789	(30,200,345)
State additions total	0	0	0
State subtractions total	0	0	0
FTI adjusted to state net income/(loss)	85,256,444	115,456,789	(30,200,345)
Income/(loss) for pre-apportionment NOL	0		
Less pre-apportionment NOL	0		
FTI adjusted to state basis	85,256,444	115,456,789	(30,200,345)
Less state allocated income total	0	0	0
State income subject to apportionment	85,256,444	115,456,789	(30,200,345)
Apportionment factor %	100.00 %	95.0000 %	5.0000 %
Apportioned state income total	108,173,933	109,683,950	(1,510,017)
Add state specific allocated income total	0	0	0
STI/(loss) before post-apportionment NOL	108,173,933	109,683,950	(1,510,017)
STI/(loss) for post-apportionment NOL	108,173,933	109,683,950	(1,510,017)
Less post-apportionment NOL	0		
State taxable income/(loss)	108,173,933	109,683,950	(1,510,017)
State tax rate/graduated effective rate	3.250 %	6.500 %	0.000 %
Calculated state tax	7,129,457	7,129,457	0
State minimum tax	0		
State tax before credits	7,129,457	7,129,457	0
Less state credits total	0	0	0
State income tax liability total	7,129,457	7,129,457	0
State effective income tax rate (rate x apport %)	6.175 %	6.175 %	0.000 %
Additional state taxes total	0	0	0
State tax liability total	7,129,457	7,129,457	0
Payment due/(overpayment)	0	0	0

Post Apportionment – Disregarded



Now files 1 TN Return

Total Tax Liability: \$4,201,926

Tax Savings: \$2,927,531

Stark gets benefit of:

- Current Wayne loss
- Wayne NOL carryovers
- Apportionment reduced from 95% to 65%

Bloomberg BNA BNA State Tax Analyzer

Projects Entities Common Data Groups Reports History

State NOL Planning Analysis: Tax calculation Scenario: Wayne Industries w Stark LLC TN

Scenario details		
State	Tennessee	
State tax law industry	General	
Apportionment formula	Triple sales	
Entity/Group	Wayne Enterprises w/ Stark LLC	
Period begin	1/1/2017	
Period end	12/31/2017	
Type	Planning	
Scenario	Wayne Industries w Stark LLC TN	
FTI to use in this state	(100,200,345)	
FTI adjustments total	210,456,789	
FTI as adjusted	110,256,444	
State additions total	0	
State subtractions total	0	
FTI adjusted to state net income/(loss)	110,256,444	
Income/(loss) for pre-apportionment NOL		
Less pre-apportionment NOL		
FTI adjusted to state basis	110,256,444	
Less state allocated income total	0	
State income subject to apportionment	110,256,444	
Apportionment factor %	65.0000 %	
Apportioned state income total	71,666,689	
Add state specific allocated income total	0	
STI/(loss) before post-apportionment NOL	71,666,689	
STI/(loss) for post-apportionment NOL	71,666,689	
Less post-apportionment NOL	7,021,680	
State taxable income/(loss)	64,645,009	
State tax rate/graduated effective rate	6.500 %	
Calculated state tax	4,201,926	
State minimum tax		
State tax before credits	4,201,926	
Less state credits total	0	
State income tax liability total	4,201,926	
State effective income tax rate (rate x apport %)	4.225 %	
Additional state taxes total	0	
State tax liability total	4,201,926	
Payment due/(overpayment)	0	

TN Combined NOL Schedule

Wayne and Stark combined TN NOL tracker shows NOL generation and utilization.

Bloomberg **BNA** BNA State Tax™ Analyzer

Projects Entitles Common Data Groups Reports History

State NOL Planning - Analysis: NOL calculation - Wayne Enterprises w/ Stark LLC - TN - Edit Report Schedules for this entity -

NOL schedule details						
Name: Wayne Enterprises w/ Stark LLC - TN (Entity)						
State: Tennessee						
NOL calculation method: Post						
Project		State NOL Planning				
Scenario		Wayne Industries w Stark LLC TN				
Entity		Wayne Enterprises w/ Stark LLC				
Period begin	1/1/2015	1/1/2016	1/1/2017	1/1/2018	12/31/2019	
Period end	12/31/2015	12/31/2016	12/31/2017	12/31/2018	12/31/2019	
Tax year	2015	2016	2017	2018	2019	
NOL rules						
Scenario details						
State income/(loss) for NOL	(2,453,789)	(4,567,891)	71,666,689			
NOL adjustments/limitations						
NOL utilization schedule						
NOL utilization						
Carryback from this year utilized	0	0	0	0		
NOL available for carryforward	(2,453,789)	(4,567,891)	0	0		
Carryforward from this year utilized	(2,453,789)	(4,567,891)	0	0		
Total NOL utilized	2,453,789	4,567,891	0	0		
NOLs available for utilization in future years	0	0	0	0		
Expiration details						
NOL expiration year	2030	2031	2032	2033		
Amount expiring	0	0	0	0		
Less NOLs allowed - computed	0	0	7,021,680	0		
Less NOLs allowed - scenario			7,021,680			
Update all		Update				

A decorative horizontal bar with a blue background and a white grid pattern. The text "Group Reporting Strategy" is centered in white. The bar is divided into two sections by a vertical dashed line.

Group Reporting Strategy

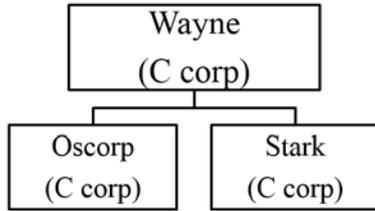
Sharing NOL carryover problem

- **PROBLEM:** How do we increase the opportunity to share NOL carryovers between members of a combined return?
- **SOLUTIONS:**
 - **During year of loss** - If you know an entity will have losses and is not filing combined, consider the potential for filing combined in the year loss is generated (since current losses are generally sharable)
 - May be able to use argument similar to New Mexico case
 - If not, consider converting C corp to SMLLC

New Mexico Covenant Case

- *In the Matter of the Protest of Covenant Transportation Group Inc., N.M. Tax'n & Rev. Dep't, No. 14-45* (Dec. 29, 2014)
 - Parent and 3 subsidiaries
 - 2 subsidiaries had NOLs
 - All 3 subsidiaries filed separate New Mexico returns
 - Federal law (IRC 172(a)) allows consolidated groups to deduct member NOLs arising in separate years
 - **NM regulation incorporates federal law and allows NOL deductions after change of reporting method**
 - Hearing officer held that nothing in NM law alters federal rules
 - *Covenant* could file combined return and utilize sub NOLs against income of other members of combined return

NM Separate Reporting Example



- Each files separately in NM
- Wayne large loss & **3%** NM apportionment with NOL c/o
- Stark large income & **90%** NM apportionment (no NOLs)
- Oscorp large loss & **15%** NM apportionment with NOL c/o
- **Total New Mexico tax liability:**
\$6,436,189

58th TEI Annual Upstate New York Tax Conference

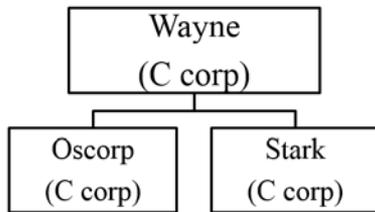
Bloomberg **BNA** BNA State Tax[™] Analyzer

Projects Entities Common Data Groups Reports History

State NOL Planning Analysis: Side by side Name: New Mexico Separate Filings Edit Add Report

Scenario details		New Mexico	New Mexico	New Mexico
State		General	General	Manufacturing
State tax law industry		Three-factor	Three-factor	8x sales
Apportionment formula		Wayne Enterprises, Inc	Oscorp	Stark Industries, Inc
Entity/Group		1/1/2017	1/1/2017	1/1/2017
Period begin		12/31/2017	12/31/2017	12/31/2017
Period end		[None]	[None]	[None]
Type		<input checked="" type="checkbox"/> Wayne Industries NM	<input checked="" type="checkbox"/> Oscorp NM	<input checked="" type="checkbox"/> Stark NM
Scenario	Total			
FTI to use in this state	58,359,012	(30,200,345)	(26,897,432)	115,456,789
FTI adjustments total	0	0	0	0
FTI as adjusted	58,359,012	(30,200,345)	(26,897,432)	115,456,789
State additions total	0	0	0	0
State subtractions total	0	0	0	0
FTI adjusted to state net income/(loss)	58,359,012	(30,200,345)	(26,897,432)	115,456,789
Income/(loss) for pre-apportionment NOL	58,359,012	(30,200,345)	(26,897,432)	115,456,789
Less pre-apportionment NOL	0			0
FTI adjusted to state basis	58,359,012	(30,200,345)	(26,897,432)	115,456,789
Less state allocated income total	0	0	0	0
State income subject to apportionment	58,359,012	(30,200,345)	(26,897,432)	115,456,789
Apportionment factor %	108.00 %	3.0000 %	15.0000 %	90.0000 %
Apportioned state income total	98,970,485	(906,010)	(4,034,615)	103,911,110
Add state specific allocated income total	0	0	0	0
STI/(loss) before post-apportionment NOL	0			
STI/(loss) for post-apportionment NOL	0			
Less post-apportionment NOL	0			
State taxable income/(loss)	98,970,485	(906,010)	(4,034,615)	103,911,110
State tax rate/graduated effective rate	2.065 %	0.000 %	0.000 %	6.194 %
Calculated state tax	6,436,189	0	0	6,436,189
State minimum tax	0			
State tax before credits	6,436,189	0	0	6,436,189
Less state credits total	0	0	0	0
State income tax liability total	6,436,189	0	0	6,436,189
State effective income tax rate (rate x apport %)	5.575 %	0.000 %	0.000 %	5.575 %
Additional state taxes total	0	0	0	0
State tax liability total	6,436,189	0	0	6,436,189
Payment due/(overpayment)	0	0	0	0

NM Combined Reporting Example



- Combined filing
- Total tax liability: \$399,549
- Tax savings: **\$6,036,640**

Bloomberg BNA BNA State Tax Analyzer

Projects Entities Common Data Groups Reports History

State NOL Planning Analysis: Tax calculation Scenario: Wayne Group NM

Scenario details		New Mexico			
State			General	Manufacturing	General
State tax law industry			Three-factor	8x sales	Three-factor
Apportionment formula	[Mixed]				
Entity/Group	Wayne Global with Oscorp				
Period begin	1/1/2017				
Period end	12/31/2017				
Type	[None]				
Scenario	Wayne Group NM				
Apportionment calculation method	Group				
	Total	Wayne Enterprises, Inc	Stark Industries, Inc	Oscorp	
FTI to use in this state	58,359,012	(30,200,345)	115,456,789	(26,897,432)	
FTI adjustments total	0	0	0	0	
FTI as adjusted	58,359,012	(30,200,345)	115,456,789	(26,897,432)	
State additions total	0	0	0	0	
State subtractions total	0	0	0	0	
FTI adjusted to state net income/(loss)	58,359,012	(30,200,345)	115,456,789	(26,897,432)	
Income/(loss) for pre-apportionment NOL	58,359,012	(30,200,345)	115,456,789	(26,897,432)	
Less pre-apportionment NOL	45,687,923				
FTI adjusted to state basis	12,671,089	(30,200,345)	115,456,789	(26,897,432)	
Less state allocated income total	0	0	0	0	
State income subject to apportionment	12,671,089	(30,200,345)	115,456,789	(26,897,432)	
Apportionment factor %	51.3158 %	0.7895 %	47.3684 %	3.1579 %	
Apportioned state income total	6,502,270	100,038	6,002,092	400,140	
Add state specific allocated income total	0	0	0	0	
STI/(loss) before post-apportionment NOL					
STI/(loss) for post-apportionment NOL					
Less post-apportionment NOL					
State taxable income/(loss)	6,502,270				
State tax rate/graduated effective rate	6.145 %				
Calculated state tax	399,549				
State minimum tax	0				
State tax before credits	399,549				
Less state credits total	0				
State income tax liability total	399,549				
State effective income tax rate (rate x apport %)	3.153 %				
Additional state taxes total	0				
State tax liability total	399,549				
Payment due/(overpayment)	0				

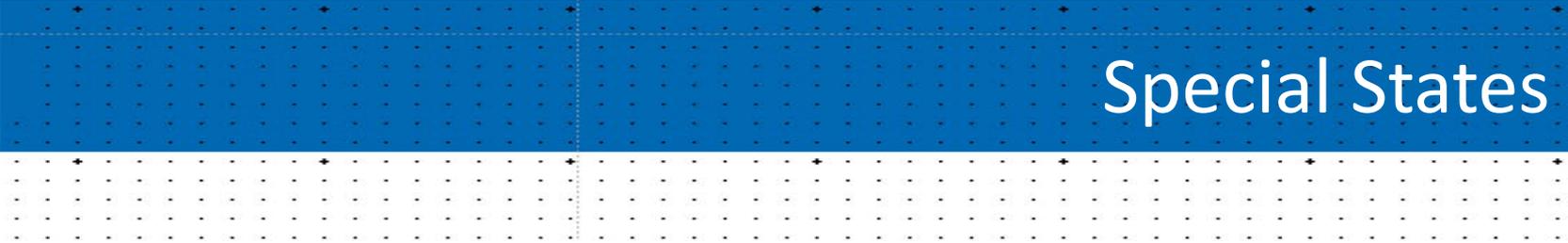
Different Carryback/over Periods



Carryback/Carryforward Periods



- Since most states disallow carrybacks or have short carryback periods, utilization in the future is vital
 - 29 states do not allow NOL carrybacks
- Use some of the techniques we have described to improve utilization, such as:
 - Apportionment factor adjustments
 - State additions and subtractions
 - Intercompany transactions
 - Entity conversions



Special States

PA NOL cap controversy

- *Nextel Commc'ns of the Mid-Atlantic, Inc. v. Pennsylvania*, No. 98 F.R. 2012, 2015 BL 384486 (Pa. Commw. Ct. Nov. 23, 2015) – currently pending before PA Supreme Court
 - **Is PA NOL cap unconstitutional?**
 - Current cap is larger of \$5 million or 30% of taxable income
 - During the year in the case (2007), the cap was \$3 million or 12.5% of taxable income
 - Court unanimously ruled Nov. 2015 cap as unconstitutional
 - PA appealed
 - Oral arguments heard in PA Supreme Court 4/5/17

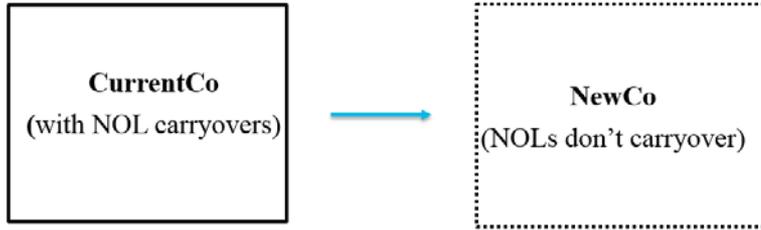
PA NOL cap controversy

- **Potential remedies**
 - Remove limitation entirely
 - Remove flat dollar cap and keep % cap
 - Remove 20 year carryover limit
- If flat dollar cap is removed and % cap kept, Nextel will receive no refund
 - Nextel could win case and get nothing
- Others could benefit from Nextel case
 - In 2007: 19,537 companies in PA had NOL carryovers; 19,303 had income of less than \$3 million and were able to reduce their taxable income to zero
 - Only 1.2% or just 234 companies had income of more than \$3 million
 - Nextel had income of \$45 million with NOL carryovers of \$150 million; NOL deduction was limited to \$5.6 million

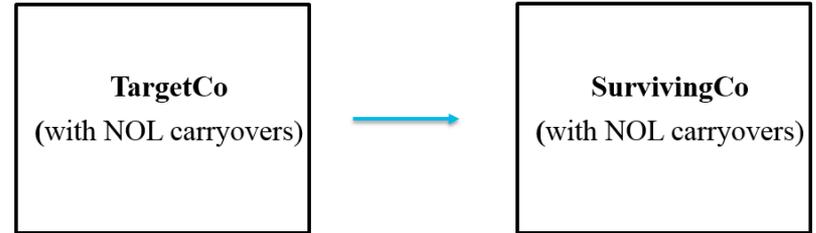
Montana NOL disallowance

- Montana disallows NOL deduction for any pre-merger Montana NOLs of **merged** corporations (MT. Code Ann. Sec. 15-31-119(8))
- *GBN, Inc. vs Montana* (1991)
 - Surviving corporation could not deduct NOLs of each merged corporation sustained prior to merger
 - Pre-merger loses by **surviving and target** corporations **both disallowed**
- A simple (F reorganization) is tax free for federal tax purposes and tax attributes carryover
 - Tax attributes of Montana NOLs don't carryover according to Montana
- MT. Admin. Reg. 42.23.804(3) disallows pre-conversion NOLs of a corporation that has converted to a disregarded entity

MT Cautionary Tale...



If an empty shell corporation (NewCo) is created in a new state and CurrentCo is merged into NewCo, Montana NOL carryovers will not transfer to NewCo



If 2 corporations merge, the pre-merger NOLs of **both** the surviving and target are not allowed to be carried to the surviving entity

Louisiana NOL Complexity Abounds

- For tax returns filed on or after 7/1/15, the LA NOL deduction is limited as follows:
 - First**, by 72% of the LA NOL carryforward
 - Then**, by 72% of LA net income
- Simple example:
 - 2018 NOL carryforward = \$1 million
 - 72% = 720,000
 - LA net income in 2019 = \$3 million
 - 72% = \$2,160,000
 - 2019 NOL utilization is limited to \$720,000

	2018	2019
	0	0
	20	20
Post		Post
N/A		N/A
	(1,000,000)	3,000,000
N/A		N/A
		(2,280,000)
	(1,000,000)	720,000

Louisiana NOL complexity

- **The order of LA NOL carryover utilization**
 - Tax years before January 1, 2017 use **FIFO** method
 - Tax years after January 1, 2017 use **LIFO** method
- **Example:**
 - LA NOL carryover schedule is as follows:
 - 2014 – (500,000)
 - 2015 – (700,000)
 - 2016 – (900,000)
 - If the 2017 tax return shows LA net income of \$400,000, the 2016 NOL would be used first
- Under the LIFO method, prior year NOLs have a **higher probability of expiring** before being utilized

Louisiana NOL complexity

- **For tax years filed on or after 7/1/2015**
 - LA NOL **carryback** period changed from 3 years to zero
 - LA NOL **carryforward** period changed from 15 to 20 years
- Disallowing carryback eliminates the opportunity to obtain immediate benefits from Louisiana NOLs
- Louisiana may have extended the carryforward period, but the other rules we discussed make it more difficult to utilize NOLs before they expire

NOL schedule details		2010	2011	2012	2013	2014	2015	2016	2017	2018
Tax year		2010	2011	2012	2013	2014	2015	2016	2017	2018
NOL rules										
Carryback		3	3	3	3	3	3	0	0	
Carryforward		15	15	15	15	15	15	20	20	
NOL calculation method	Post	Post	Post	Post	Post	Post	Post	Post	Post	Post
Option to waive carryback available?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	N/A	N/A
Scenario details										
State income/(loss) for NOL		100,000	100,000	300,000	(2,000,000)	1,200,000	(3,000,000)	1,308,269	5,000,000	
NOL adjustments/limitations										
Waive carryback?	No	No	No	No	No	No	No	N/A	N/A	N/A
Dividends not in adds/subt above										
LA Limitation								(366,315)	(1,400,000)	
Other										
State income/(loss) after adjustments		100,000	100,000	300,000	(2,000,000)	1,200,000	(3,000,000)	941,954	3,600,000	
NOL utilization schedule		2010	2011	2012	2013	2014	2015	2016	2017	2018
1998										
1999										
2000										
2001										
2002										
2003										
2004										
2005										
2006										
2007										
2008										
2009										
2010		100,000				100,000				
2011			100,000			100,000				
2012				300,000		300,000	0			
2013					(2,000,000)					
2014						1,200,000				
2015							1,200,000			
2016								(3,000,000)		
2017						300,000		641,954	941,954	
2018						0		2,358,046		2,358,046
2019						0		0		
2020										
2021										

Limit to lesser of
72% of Loss c/f
or 72% of LA Net Income

FIFO Carryforward to 2016

1/1/2017 starts
LIFO
Carryforward

Acquisitions/Reorg Challenges

Proactive State Tax Planning is Key

Prior to the implementation of any acquisition/reorganization

- Determine whether state NOL carryovers can be used subsequent to that acquisition/reorganization
- Know 382/SRLY impacts
- ASC 805 & ASC 740 requires M&A impact during a quarter be included in quarterly financial statements
- Model out impacts to group filings & know carryover values
 - Adjust Valuation Allowance accordingly

- Internal Revenue Code (IRC) Sec. 382 limits the use of NOL carryforwards and certain built-in losses following an ownership change
- **The ‘good’ news:**
 - 35 states conform to IRC Sec. 382
- **The ‘bad’ news:**
 - Most states do not provide ‘explicit’ guidance on how to apply IRC Sec. 382

- **Main questions:**
 - **Is the federal IRC Sec. 382 limitation apportioned?**
 - 7 states explicitly say 'yes'
 - 24 states provide no guidance
 - **If yes, what apportionment % is used? In year of ownership change or when utilized?**
 - 26 states provide no guidance
 - **Is the IRC Sec. 382 limitation calculated on an entity or group basis within a state combined return?**
 - 27 states provide no guidance

- Corporations that acquire a loss corporation are generally required to limit the allowed Louisiana NOL carryover from an acquired corporation using one of the following three methods - the NOL that the acquiring corporation is allowed to deduct each year is limited to:
 1. $(\text{value of the loss corporation} \times \text{LA apportionment ratio}) \times \text{long-term tax-exempt rate}$;
OR
 2. $\text{the value of the loss corporation} \times (\text{LA income} / \text{federal income from all sources on a LA basis}) \times \text{long-term tax-exempt rate}$, **OR**
 3. $\text{LA NOL available from the acquired corporation for the year} \times (\text{NOL from the acquired corporation allowed for federal purposes} / \text{federal NOL available from the acquired corporation for the year})$

Louisiana Admin. Rev. Ruling No. 06-008 (May 31, 2006)

State IRC Sec. 382 Limitations – South Carolina

- South Carolina follows IRC Sec. 382
- SC IRC Sec. 382 limitation depends on whether the loss corporation is 100% based in South Carolina or operates in multiple states, during the taxable year that the ownership change occurs
- If 100% based in South Carolina during the taxable year that the ownership change occurs,
 - SC IRC Sec. 382 limitation = federal IRC. Sec. 382 limitation
- If operating in multiple states during the taxable year that the ownership change occurs
 - SC IRC Sec. 382 limitation = the federal IRC Sec. 382 limitation x SC apportionment factor for the taxable year that the ownership change occurs

- **For example, assume the following for Company A at the time of ownership change:**
 - **Company A's value is \$5,000,000;**
 - **The applicable federal long-term tax exempt rate is 2.80%;**
 - Company A's federal NOL carryforward is \$1,000,000;
 - Company A's previously apportioned South Carolina NOL carryforward is \$350,000;
 - **Company A's South Carolina apportionment ratio for the year of the ownership change is 25%**
- The South Carolina IRC Sec. 382 limitation is \$35,000 ($\$5,000,000 \times 2.8\% \times 25\%$).
- The taxpayer can use its pre-ownership change South Carolina NOL carryforward to offset up to \$35,000 of its South Carolina taxable income in each year following the ownership change

State IRC Sec. 382 Limitations – South Carolina

- Any pre-ownership change SC NOL carryforward that cannot be deducted in the tax year because of the SC IRC Sec. 382 limitation is carried forward to the following year
- SC NOL remains subject to the maximum 20 year carryforward period

State IRC Sec. 382 Limitations - EXAMPLE

- South Carolina example
- Track pre-change losses separately (before 2016)

Bloomberg **BNA** BNA State Tax™ Analyzer

Projects Entitles Common Data Groups Reports History

State NOL Planning Analysis: Tax calculation Scenario: Oscorp SC

	Total	Oscorp	Oscorp 382
Scenario details			
State	South Carolina		
State tax law industry		General	General
Apportionment formula	Single sales	Single sales	Single sales
Entity/Group	Oscorp 382		
Period begin	1/1/2017		
Period end	12/31/2017		
Type	[None]		
Scenario	▾Oscorp SC		
Apportionment calculation method	Group		
FTI to use in this state	26,897,432	26,897,432	0
FTI adjustments total	0	0	0
FTI as adjusted	26,897,432	26,897,432	0
State additions total	0	0	0
State subtractions total	0	0	0
FTI adjusted to state net income/(loss)	26,897,432	26,897,432	0
Income/(loss) for pre-apportionment NOL	0		
Less pre-apportionment NOL			
FTI adjusted to state basis	26,897,432	26,897,432	0
Less state allocated income total	0	0	0
State income subject to apportionment	26,897,432	26,897,432	0
Apportionment factor %	25.0000 %	25.0000 %	0.0000 %
Apportioned state income total	6,724,358	6,724,358	0
Add state specific allocated income total	0	0	0
STI/(loss) before post-apportionment NOL	6,724,358	6,724,358	0
STI/(loss) for post-apportionment NOL			6,724,358
Less post-apportionment NOL	6,724,358	6,689,368	35,000
State taxable income/(loss)	0		
State tax rate/graduated effective rate	0.000 %		
Calculated state tax	0		
State minimum tax	0		
State tax before credits	0		
Less state credits total	0		
State income tax liability total	0		
State effective income tax rate (rate x apport %)	0.000 %		
Additional state taxes total	0		
State tax liability total	0		
Payment due/(overpayment)	0		

State IRC Sec. 382 Limitations - EXAMPLE

- South Carolina example
- Separate schedule for 382 limited NOL

Bloomberg **BNA** BNA State Tax⁺ Analyzer

Projects Entities Common Data Groups Reports History

State NOL Planning Analysis: NOL calculation Oscorp 382 - SC 382 Edit Report Schedules for this state

NOL schedule details					
•	Name: Oscorp 382 - SC 382 (Entity)				
•	State: South Carolina				
•	NOL calculation method: Post				
•	Project			State NOL Planning	
•	Scenario			Oscorp SC	
•	Entity			Oscorp 382	
•	Period begin	1/1/2015	1/1/2016	1/1/2017	1/1/2018
•	Period end	12/31/2015	12/31/2016	12/31/2017	12/31/2018
	Tax year	2015	2016	2017	2018
NOL rules					
Scenario details					
•	State income/(loss) for NOL	(10,000,000)		6,724,358	
NOL adjustments/limitations					
•	Waive carryback?	N/A	N/A	N/A	N/A
•	Dividends not in adds/subt above				
•	382 Limitation			35,000	
•	Adjustment for 382 Utilization			(6,724,358)	
•	+ Other				
•	State income/(loss) after adjustments	(10,000,000)	0	35,000	0
NOL utilization schedule					
		2015	2016	2017	2018
NOL utilization					
	Less NOLs allowed – computed	0	0	35,000	0
	Less NOLs allowed – scenario			35,000	
	Update all			Update	

State IRC Sec. 382 Limitations - EXAMPLE

- South Carolina example
- Adjustment for 382 utilization on regular NOL schedule

Bloomberg **BNA** BNA State Tax™ Analyzer

Projects Entities Common Data Groups Reports History

State NOL Planning Analysis: NOL calculation Oscorp - SC-Regular NOL Edit Report Schedules for this entity

NOL schedule details				
•	Name: Oscorp - SC-Regular NOL (Entity)			
•	State: South Carolina			
•	NOL calculation method: Post			
•	Project		State NOL Planning	
•	Scenario		Oscorp SC	
•	Entity		Oscorp	
•	Period begin	1/1/2015	1/1/2016	1/1/2017
•	Period end	12/31/2015	12/31/2016	12/31/2017
	Tax year	2015	2016	2017
	2018			
NOL rules				
Scenario details				
•	State income/(loss) for NOL		(7,000,000)	6,724,358
NOL adjustments/limitations				
•	Waive carryback?	N/A	N/A	N/A
•	Dividends not in adds/subt above			
•	Adj for 382 NOL Utilized			(35,000)
•	Other			
•	State income/(loss) after adjustments	0	(7,000,000)	6,689,358
	0			0
NOL utilization schedule				
	2015	2016	2017	2018
NOL utilization				
			6,689,358	
			6,689,358	
Update all				
Update				

State Impacts of Federal Tax Reform



History

DEC 3, 1985



Introduced

This is the first step in the legislative process.

DEC 3, 1985



Ordered Reported by Committee

A committee has voted to issue a report to the full chamber recommending that the bill be considered further. Only about 1 in 4 bills are reported out of committee.

DEC 17, 1985



Passed House

The bill was passed in a vote in the House. It goes to the Senate next. The vote was by Voice Vote so no record of individual votes was made.

JUN 24, 1986



Passed Senate with Changes

The Senate passed the bill with changes not in the House version and sent it back to the House to approve the changes.

SEP 27, 1986



Conference Report Agreed to by Senate

A conference committee was formed, comprising members of both the House and Senate, to resolve the differences in how each chamber passed the bill. The Senate approved the committee's report proposing the final form of the bill for consideration in both chambers. The House must also approve the conference report.

OCT 22, 1986



Enacted — Signed by the President

The President signed the bill and it became law.

OCT 22, 1986



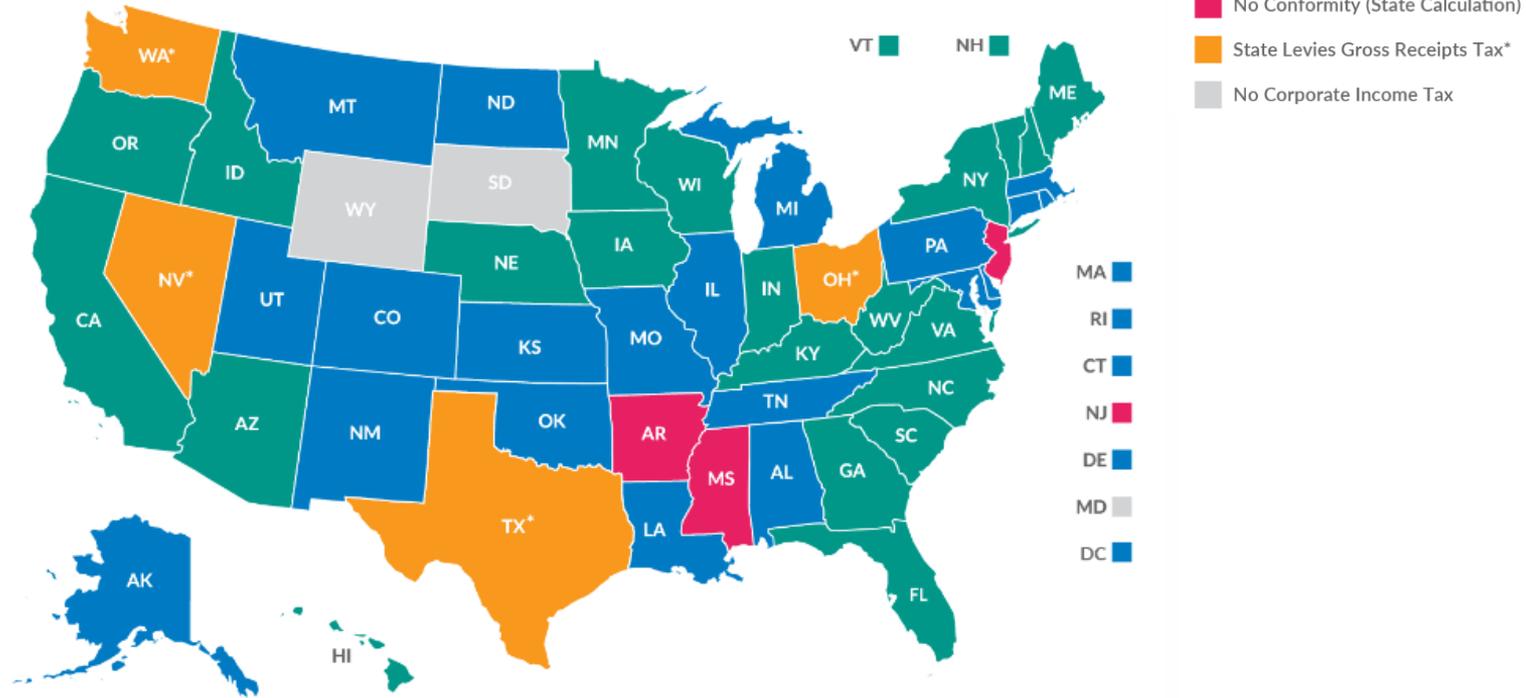
Text Published

Updated bill text was published as of Passed Congress/Enrolled Bill.

[Read Text »](#)

History Shows States Decouple

Does Your State's Corporate Income Tax Code Conform With the Federal Tax Code?



Federal Tax Reform for NOLs

- Proposed Federal tax changes:
 - Full expensing of Fixed Assets (if enacted) drives up NOLs!
 - Offset by Border Tax or other non-allowable deductions or increases to taxable income?
 - NOL carryforward indefinitely - No carryback
 - Unused NOL carryforward has interest factor adjustment to compensate for inflation
 - In year of utilization
 - NOL C/F utilization limited to 90% of taxable income
 - IRC 382
 - No mention yet...

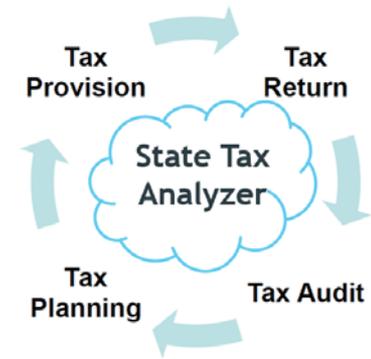
Federal Tax Reform

- **Will states conform to NOL carryforward indefinitely?**
 - 26 states carryforward 15 to 20 years; some 5 to 12 years
 - Other states follow federal currently
- **Will states conform to no carryback?**
 - Currently 29 states have no carryback
- **Will states conform to interest factor adjustment and to 90% offset limitation?**
 - In non-conforming pre-apportioned NOL states
 - States would have different NOL carryforward schedules and no longer simply be using the federal NOL
 - In post-apportioned NOL states
 - Already tracking a different NOL amount

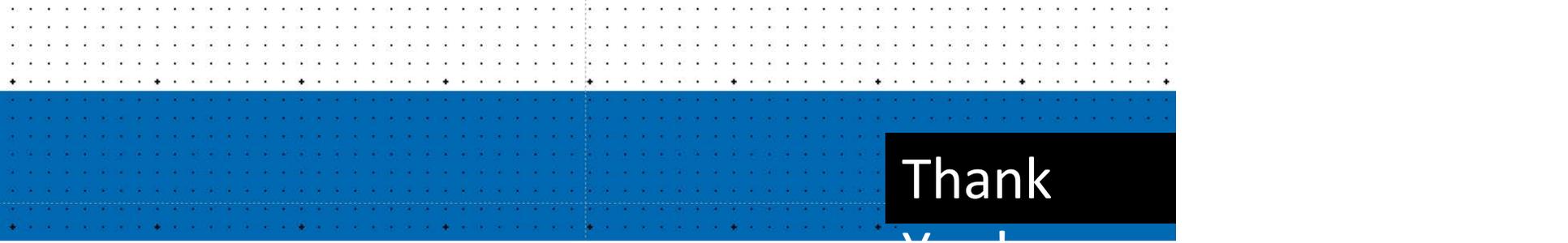
Key Take Aways

Key Take Aways

- According to an analysis performed by Bloomberg BNA of the financial statements of the Fortune 1000, an estimated \$200 billion in NOLs is sitting on their books.
- State NOL tracking is essential to tax compliance, provision and financial statement compliance.
- Managing and maximizing the cash / tax benefits related to the generation and utilization of state NOLs is complex. Strategies are available, but must be modeled.
- Tax departments are currently focused on leveraging technology to move away from spreadsheets to create tax ready data, better manage cash tax, reduce effective tax rate, and increase earnings per share.
 - Technology exists to do the same for State NOLs.







Thank

**To learn more about managing state NOLs & state tax analysis in general,
contact our speaker:**

Diane Tinney at 703.341.3635 or dtinney@bna.com

Disclaimer: This presentation contains general information only and the speakers and their companies are not, by means of this presentation, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This presentation is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. The speakers and their companies shall not be responsible for any loss sustained by any person who relies on this presentation.