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NEW FOR TAX YEAR 2022

Beginning with tax year 2022, North Carolina now provides a separate State net operating loss ("NC NOL") calculation for individual income tax and estates and trusts tax.

Your NC NOL is the amount by which your business deductions for the year exceed income for the year as determined under the Internal Revenue Code ("Code"), adjusted as provided in G.S. 105-153.5 and G.S. 105-153.6, and subject to the modifications required by G.S. 105-153.5A(a).

You may be allowed a deduction in the current taxable year for the NC NOL you incurred in a prior taxable year, subject to the following limitations:

- The NC NOL was incurred in one of the preceding 15 taxable years.
- Any NC NOL carried forward is applied to the next succeeding taxable year before any portion of it is carried forward and applied to a subsequent taxable year.
- The NC NOL deduction may not exceed the amount of your North Carolina taxable income determined without deducting your NC NOL.
- The portion of your NC NOL attributable to a federal NOL carryforward is only allowed as provided under subsection (f) of G.S. 105-153.5A ("Federal NOL Carryover").

The NC NOL cannot be carried back. In addition, the NC NOL deduction will be limited to the amount of the Federal NOL Carryover for tax year 2022.

HOW TO USE THIS FORM

- Individuals and estates and trusts should complete and file Form NC-NOL with their income tax return for a tax year in which they incur an NC NOL or deduct an NC NOL incurred in a prior tax year.
- You must complete your NC income tax return, including all required forms and schedules, before completing Form NC-NOL.
- Complete Part 1 of Form NC-NOL to determine the amount of your NC NOL, if any, incurred for 2022.
- Complete Part 2 of Form NC-NOL to determine the amount of your NC NOL deduction, if any, for 2022. Note: For 2022, the NC NOL deduction will be limited to the amount of the Federal NOL Carryover.
- Additional instructions are provided for nonresidents, part-year residents, and estates and trusts.

PART 1: NET OPERATING LOSS CALCULATION

Use Part 1 of Form NC-NOL to determine your NC NOL for the tax year. If your deductions for the year are more than your income for the year, you may have an NC NOL.

There are rules that limit what you can deduct when calculating an NC NOL. In general, the following items are not allowed when calculating an NC NOL.

- Capital losses in excess of capital gains.
- The section 1202 exclusion of the gain from the sale or exchange of qualified small business stock.
- Nonbusiness deductions in excess of nonbusiness income.
- The NC NOL deduction.
- The section 199A deduction for qualified business income.

Specific Line Instructions for Part 1

Important: Nonresidents, part-year residents, estates, and trusts must also review their specific instructions beginning on page 2.

Line 1a. Federal Adjusted Gross Income. Enter the amount on Form D-400, Line 6.

Line 1b. Additions to Federal Adjusted Gross Income. Enter the amount on Form D-400, Line 7.

Line 1d. Deductions from Federal Adjusted Gross Income. Enter the amount on Form D-400, Line 9.

Line 1e. N.C. Standard Deduction Amount or N.C. Itemized Deduction Amount. Enter the amount on Form D-400, Line 11.

Line 1f. Excess Business Loss Included as Other Income on your 2022 Federal Income Tax Return. Enter the amount of Excess Business Loss included as Other Income on your 2022 Federal Income Tax Return. An excess business loss is the amount by which the total deductions attributable to all of your trades or businesses exceed your total gross income and gains attributable to those trades or businesses plus a threshold amount adjusted for cost of living. *For more information, see the IRS Instructions for Form 461, Limitation on Business Losses.*

Line 2. Nonbusiness Capital Losses. Enter as a positive amount any nonbusiness capital losses. Do not include any IRC section 1202 exclusion amounts.

Line 6. Nonbusiness Deductions. Enter as a positive number on Line 6 deductions that are not connected to your trade or business or your employment. Examples of deductions not related to your trade or business are:

- Deductions for contributions to an individual retirement account (IRA) or a self-employed retirement plan.
- Health savings account deduction.
- The amount of your North Carolina itemized or standard deduction entered on Line 1e. Do NOT enter your federal itemized deductions as nonbusiness deductions if they are not allowed as a North Carolina itemized deduction on D-400 Schedule A.
- Nonbusiness deductions included as adjustments to federal adjusted gross income included on Line 1d. These include the deduction for *Bailey Settlement* retirement benefits, the deduction for retirement benefits received by a retired member of the United States Uniformed Services, and the deduction for Social Security benefits. This also includes the deductions allowed under G.S. 105-153.5(c3) for *nonbusiness* income taxed to a Taxed Pass-Through Entity.

Do not enter business deductions on Line 6. These are deductions that are connected to your trade or business. Examples of deductions related to your trade or business are:

- The deduction for the deductible part of self-employed health insurance and the deduction for the deductible part of self-employment tax.
- Rental losses.

- Loss on the sale or exchange of business real estate or depreciable property.
- Your share of a business loss from a partnership or an S corporation.
- Ordinary loss on the sale or exchange of section 1244 (small business) stock.
- Ordinary loss on the sale or exchange of stock in a small business corporation or a small business investment company.
- Business deductions included as adjustments to federal adjusted gross income included on Line 1d, such as the deduction for ordinary and necessary business expense reduced or not allowed due to claiming a federal tax credit in lieu of a deduction and the deduction allowed under G.S. 105-153.5(c3) for *business* income taxed to a Taxed Pass-Through Entity.

Line 7. Nonbusiness Income Other than Capital Gains. Enter on Line 7 only income that is not related to your trade or business or your employment. Examples of nonbusiness income not related to your trade or business are:

- Your taxable IRA distributions.
- Pension benefits.
- Annuity income.
- Dividends.
- Interest on investments.
- Your share of nonbusiness income from a partnership or an S corporation, including nonbusiness income received from a Taxed Partnership or a Taxed Corporation.
- Additions included as adjustments to federal adjusted gross income on Line 1b that are not related to your trade or business, such as the North Carolina addition for the discharge of certain student loan debt.

Do not include on Line 7 the income you receive from your trade or business or your employment. This includes the following.

- Salaries and wages.
- Self-employment income.
- Unemployment compensation.
- Rental income.
- Ordinary gain from the sale or other disposition of business real estate or depreciable business property.
- Your share of business income from a partnership or an S corporation, including business income received from a Taxed Partnership or a Taxed Corporation.
- Additions included as adjustments to federal adjusted gross income on Line 1b that are related to your trade or business, such as the North Carolina addition for the federal business meal deduction in excess of 50%.

Line 16a. Enter the amount of your Net Short-Term Capital Gain (Loss). Enter the amount from federal Form 1040, Schedule D, Line 7.

Line 16b. Enter the amount of your Net Long-Term Capital Gain (Loss). Enter the amount from federal Form 1040, Schedule D, Line 15.

Line 17. IRC Section 1202 Exclusion from your 2022 Federal Income Tax Return. Enter as a positive number on line 17 any gain you excluded under section 1202 on the sale or exchange of qualified small business stock.

Lines 19-22. Adjustments for Capital Losses. In determining your NC NOL, you can deduct your nonbusiness capital losses (Line 2) only up to the amount of your nonbusiness capital gains without regard to any section 1202 exclusion (Line 3). If your nonbusiness capital losses are more than your nonbusiness capital gains without regard to any section 1202 exclusion, you cannot deduct the excess.

You can deduct your business capital losses (Line 11) only up to the total of:

- Your nonbusiness capital gains that are more than the total of your

- nonbusiness capital losses and excess nonbusiness deductions (Line 10), and
- Your total business capital gains without regard to any section 1202 exclusion (Line 12).

Line 23. N.C. NOL Deduction for Losses from Prior Years. You cannot deduct any NC NOL Carryovers from other years. Enter the total amount of your NC NOL deduction for losses from other years.

Nonresident and Part-Year Resident Individual Instructions for Part 1

When determining the amount of the NC-NOL in Part 1, nonresidents and part-year residents must make the following adjustments based on the information located in Form D-400 Schedule PN.

For Lines 1a, 1b, 1d, and 1e, nonresidents and part-year residents must enter the following amounts:

- Line 1a – D-400 Schedule PN Line 16, Column B
- Line 1b – D-400 Schedule PN Line 18, Column B
- Line 1d – D-400 Schedule PN Line 20, Column B
- Line 1e – D-400 Schedule PN Line 24 x D-400 Line 11

On Lines 2, 3, 6, 7, 11, 12, 16a, 16b, and 17 nonresidents and part-year residents must only enter amounts to the extent they are included in Column B of Form D-400 Schedule PN.

Line 6. Nonbusiness Deductions. When including your standard or itemized deductions in nonbusiness deductions, nonresidents and part-year residents should use the amount entered on Line 1e.

Line 19. Nonresidents and part-year residents must multiply \$3,000 by the amount on D-400 Schedule PN Line 24, or if married filing separately, multiply \$1,500 by the amount on D-400 Schedule PN Line 24. Enter the smaller of Line 16 and this number.

Estates and Trusts Instructions for Part 1

When determining the amount of the NC-NOL, estates and trusts must make the following adjustments when completing Part 1.

Important: Estates and trusts should not include any amounts in the calculation of the NC NOL to the extent the amount is included on Form D-407 Line 6.

On Lines 2, 3, 6, 7, 11, 12, 16a, 16b, and 17 estates and trusts must only enter amounts to the extent they are not excluded on D-407 Line 6.

Line 1a. Federal Adjusted Gross Income. Enter the amount on Form D-407, Line 1 (Federal Taxable Income), increased by the total amount of the charitable deduction, income distribution deduction, and exemption amount claimed on federal Form 1041. Do not include an amount excluded on Form D-407 Line 6.

Line 1b. Additions to Federal Adjusted Gross Income. Enter the amount on Form D-407, Line 2 to the extent the amount is not included on Form D-407 Line 6.

Line 1d. Deductions from Federal Adjusted Gross Income. Enter the amount on Form D-407, Line 4 to the extent the amount is not included on Form D-407 Line 6.

Line 16a. Enter the amount of your Net Short-Term Capital Gain (Loss). Enter the amount from federal Form 1041, Schedule D, Line 17, Column 3, to the extent the amount is not included on Form D-407 Line 6.

Line 16b. Enter the amount of your Net Long-Term Capital Gain (Loss). Enter the amount from federal Form 1041, Schedule D, Line 18a, Column 3, to the extent the amount is not included on Form D-407 Line 6.

**PART 2: FEDERAL NET OPERATING LOSS
CARRYOVER DEDUCTION**

You may carry forward an NC NOL incurred in a prior taxable year and deduct it in the current taxable year, subject to the following limitations:

- The NC NOL was incurred in one of the preceding 15 taxable years.
- Any NC NOL carried forward is applied to the next succeeding taxable year before any portion of it is carried forward and applied to a subsequent taxable year.
- The NC NOL deduction may not exceed the amount of your North Carolina taxable income determined without deducting your NC NOL.
- The portion of your NC NOL attributable to a federal NOL carryforward is only allowed as provided under subsection (f) of G.S. 105-153.5A ("Federal NOL Carryover").

Federal Net Operating Loss Carryovers

The portion of your Federal NOL Carryover that was not absorbed in tax years beginning prior to January 1, 2022, may be included in the amount of your NC NOL beginning with the 2022 tax year. The Federal NOL Carryover is only allowed as an NC NOL to the extent that it meets all of the following conditions:

- The loss would have been allowed in that taxable year under section 172 of the Internal Revenue Code as enacted on April 1, 2021.
- The provisions of G.S. 105-153.5(c2)(8), (9), (10), (13), and (14) do not apply to the Federal NOL Carryover.
- The loss was incurred in one of the preceding 15 taxable years.

Because the separately calculated NC NOL cannot be incurred for tax years prior to 2022, the 2022 NC NOL deduction will be limited to the amount of the available Federal NOL Carryover. NC NOLs incurred in tax year 2022 may be deducted beginning with tax year 2023.

Column A.

For each tax year shown in Lines 1 through 15, enter the amount of your Federal NOL Carryover incurred in that tax year that was not absorbed in tax years prior to 2022.

Column B.

For each tax year shown in Lines 1 through 15, enter the amount of your Federal NOL Carryover incurred in that year that will be deducted as an NC NOL in 2022.

Your total NC NOL deduction for 2022 may not exceed your North Carolina taxable income for 2022 (determined without deducting your NC NOL). If the total amount of your available Federal NOL Carryover exceeds your NC taxable income, you should only include in Column B the amount of the Federal NOL Carryover that will be used in 2022.

If you carry two or more years of Federal NOL Carryovers to 2022, deduct the Federal NOL Carryovers in the order in which they were incurred, beginning with the earliest. Continue to use the incurred Federal NOL Carryovers for each subsequent year until your total NC NOL deduction amount equals your North Carolina taxable income for 2022, or you have utilized all Federal NOL Carryovers.

Column C.

For each tax year shown in Lines 1 through 15, subtract the amount in Column B from the amount in Column A.

This Column provides the amount of Federal NOL Carryover remaining for each tax year after applying the Federal NOL Carryover to the NC NOL deduction for 2022. The amount of Federal NOL Carryovers shown in Column C for tax years 2008 through 2021 will be available for inclusion in the NC NOL deduction for 2023.

Nonresident and Part-Year Resident Instructions for Part 2

Column A

If you were a nonresident in the year of the loss, your NC NOL only includes your income and deductions derived from a business carried on in North Carolina in the year of the loss. For purposes of determining the available Federal NOL Carryover incurred in a tax year, a nonresident may only include the amount of the federal NOL in Column A that was derived from a business carried on in North Carolina during that tax year.

If you were a part-year resident in the year of the loss, your NC NOL includes income and deductions derived from a business carried on in North Carolina while you were a nonresident and includes business income and deductions derived from all sources during the period you were a resident. For purposes of determining the available Federal NOL Carryover incurred in a tax year, a part-year resident may only include the amount of the federal NOL in Column A that was derived from a business carried on in North Carolina during that tax year when a nonresident and the amount from all sources when a resident.

Column B

If you are a nonresident or part-year resident in 2022, the total amount in column B is limited to your total amount of North Carolina income, determined without regard to the NOL deduction. This amount is equal to your total income modified by North Carolina adjustments (Form D-400 Schedule PN, Line 21, Column B) determined without regard to the NOL deduction (Form D-400 Schedule PN-1, Line 28, Column B).