

Minnesota Department of Revenue

Revenue Notice # 21-01: Special Taxes – Unrelated Business Income Tax – Revocation and Replacement of Revenue Notice # 17-04

Introduction

This Revenue Notice revokes in part and replaces in part Revenue Notice # 17-04. Revenue Notice # 17-04 provided that unrelated business income taxpayers are not subject to the limitations and modifications on net operating losses in *Minnesota Statutes*, sections 290.0133, subdivision 5 and 290.095.

During the 2019 Special Legislative Session, the Legislature enacted 2019 Minn. Laws, 1st Special Session chapter 6, article 1, section 35, which among other things, aligned Unrelated Business Income Tax (UBIT) with corporate treatment of net operating loss (NOL) deductions. The Legislature accomplished this by amending *Minnesota Statutes*, section 290.05 to add subdivision 3(d):

“In calculating unrelated business taxable income under section 512 of the Internal Revenue Code, the amount of any net operating loss deduction claimed under section 172 of the Internal Revenue Code is an addition. Taxpayers making an addition under this paragraph may deduct a net operating loss for the taxable year in the same manner as a corporation under section 290.095, in a form and manner prescribed by the commissioner, and may calculate the loss without the application of the limitation provided for under section 512(a)(6) of the Internal Revenue Code.”

As a result of these changes, Revenue Notice # 17-04 is in direct conflict with *Minnesota Statutes*, section 290.05, subdivision 3(d). Under the new law, UBIT taxpayers must add back any amount of NOLs claimed under section 172 of the Internal Revenue Code. They may then calculate and deduct Minnesota NOLs consistent with corporate treatment of NOLs.

Department’s Position

This Revenue Notice does not revoke the other portions of Revenue Notice # 17-04, which are restated as follows:

The term “unrelated business income” is defined in *Minnesota Statutes* section 290.05, subdivision 3(a)(3), by a cross-reference to sections 511 to 515 of the Internal Revenue Code. Section 512(b)(6) of the Internal Revenue Code permits net operating losses to be deducted in the calculation of Unrelated Business Income as provided in section 172 of the Internal Revenue Code. Accordingly, exempt entities that are subject to Minnesota unrelated business income tax are required to use the attribute calculation and timing provisions provided for in section 172 of the Internal Revenue Code in determining their income under *Minnesota Statutes* section 290.05, subdivision 3(a)(3).

Revenue Notice # 17-04 is hereby revoked in part and replaced with Revenue Notice # 21-01.