This Revenue Notice was revoked and replaced on November 6, 2017 by Revenue Notice # 17-09.

DEPARTMENT OF REVENUE

Revenue Notice # 99-07: Corporate Franchise Tax - Application of IRC § 382 in Computing Minnesota Net Operating Loss Deductions

This revenue notice explains how to apply the Internal Revenue Code (IRC) § 382 limitation on net operating loss deductions after certain corporate ownership changes have occurred. Minnesota Statutes, § 290.095, subd. 3(d), limits the amount of net operating loss deduction using losses from a corporation that has had an ownership change.

In 1997, the legislature amended Minnesota Statutes § 290.095, subd. 3(d), to require that the federal limitation on amounts of net operating loss that can be carried over after certain corporate acquisitions must be applied to net income before apportionment. Previously, the statute merely stated that the federal provisions applied. The amendment was effective for tax years beginning after December 31, 1996. This revenue notice further explains how to apply the federal limitation, for Minnesota purposes.

An "ownership change" for Minnesota corporate franchise tax purposes is defined by IRC § 382(g). Whenever an ownership change occurs, an IRC § 382 limitation will apply to all Minnesota pre-change losses that are carried over to a post-change year. "Pre-change years" end on or before the date of an ownership change, while "post-change years" end after the date of an ownership change. In a post-change year, the amount of Minnesota net income used to determine the net operating loss deduction, with regard to pre-change losses, is limited to the IRC § 382 limitation determined for that year. This limited net income is then multiplied by that post-change year's apportionment percentage to determine the limited amount of (apportioned) taxable net income that is eligible for a net operating loss deduction for those losses being carried forward from pre-change years.

The IRC § 382 limitation does not reduce the total amount of pre-change Minnesota net operating losses available for carryforward but, similar to federal treatment, restricts the amount of net operating losses from pre-change years that can be applied to the income in a post-change year.

If there is unused IRC § 382 limitation for Minnesota purposes in a post-change year, the following year's limitation shall be increased by the excess amounts determined for Minnesota tax purposes in a manner similar to IRC § 382(b)(2).

The IRC § 382 limitation also applies in determining the alternative minimum tax net operating loss deduction under Minnesota Statutes, § 290.0921, subd. 4.

Dated: 9 August 1999

Jennifer L. Engh, Assistant
Commissioner for Tax Policy