

ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-3-35.1
ASSESSMENT OF INCOME TAXES - DEDUCTION FOR A
LIMITED NET OPERATING LOSS
CARRYFORWARD FOR CORPORATIONS

TABLE OF CONTENTS

810-3-35.1-.01 Carryforward Of Net Operating Losses For Corporations - General

810-3-35.1-.02 Carryforward Of Net Operating Losses For Corporations Apportioning And Allocating Income

810-3-35.1-.03 Carryforward Of Net Operating Losses For Corporations Filing Consolidated Returns (Repealed 11/19/10)

810-3-35.1-.01 Carryforward Of Net Operating Losses For Corporations - General.

(1) In addition to the deductions allowed to corporations by §40-18-35, a deduction is also allowed for net operating losses carried forward from any year which began after December 31, 1983.

(2) The term "net operating loss" means the excess of deductions (other than the net operating loss carryforward) allowed by Chapter 18, Title 40, Code of Ala. 1975, over the gross income.

(3)(a) For any tax year that begins after December 31, 1983, but before January 1, 1985, the loss may be carried forward for a maximum of five (5) years or until exhausted. For all tax years beginning after December 31, 1984, losses may be carried forward for a maximum of fifteen (15) years or until exhausted. A loss must be carried first to the earliest year in which the corporation has net income (determined without taking into account the loss carryforward). The excess, if any, may then be carried forward to the next earliest year, in succession, in which the corporation has net income. Any years in which the corporation had elected to be an Alabama S corporation are included within the maximum carryforward

limitation of five or fifteen years, as well as any "year" of less than twelve months (as outlined in subparagraph (b) below).

(b) The term "year" includes a period of less than twelve months (short-year) resulting from a change in accounting period pursuant to §40-18-30. Thus, a short-year loss may be carried to a succeeding full year, or a full year loss may be utilized in a short-year.

(4) The loss for any year is to be computed under the law applicable to that year.

(5) In computing the amount of a net operating loss available for carryforward, certain adjustments must be taken into account.

(a) Due to the limitation on the charitable contributions deduction of §40-18-35(10), contributions may not form part of a net operating loss carryforward. For tax years beginning on or after January 1, 1985, excess contributions may be carried forward for a maximum of five years. See Rule 810-3-35-.01(1)(g)2.

(b) The net operating loss will be increased by the amount of any federal income tax accrued (or reduced by the amount of any refund) attributed to the corporation for the loss year.

(c) The amount available for carryforward must be reduced by the amount of any loss deduction which was available for use, even if not actually used. No adjustment will be required under this subparagraph for years in which the corporation had in effect an election to be an Alabama S corporation.

(6)(a) For tax years beginning before January 1, 1990, the maximum amount of net operating loss carryforward which may be utilized in any year is \$600,000. The excess, if any, may continue to be carried forward not to exceed the time limitations in paragraph (3) above. The net operating loss deduction utilized cannot create a net operating loss - that is, the result, after subtracting the net operating loss carryforward cannot be less than zero.

(b) For tax years beginning after December 31, 1989, the \$600,000 limitation for subparagraph (a) no longer applies.

(7) EXAMPLE:

Income	1,000,000	4,000,000	3,500,000
--------	-----------	-----------	-----------

Revenue	Chapter 810-3-35.1		
Expenses (except contributions)	2,400,400	2,000,000	2,400,000
Contributions	100,000	100,000	100,000
Totals	(1,500,000)	1,900,000	1,000,000
Contributions adjustment	<u>100,000</u>	<u>-0-</u>	<u>-0-</u>
Income before Federal Tax Deduction	(1,400,000)	1,900,000	1,000,000
Federal Tax (Deduction/Refund)	<u>400,000</u>	<u>(500,000)</u>	<u>(300,000)</u>
Taxable Income/ (Net Operating Loss)	(1,000,000)	1,400,000	700,000
Net Operating Loss Carryforward	<u>1,000,000</u>	<u>(600,000)</u>	<u>(400,000)</u>
Net Taxable Income	<u>-0-</u>	<u>800,000</u>	<u>300,000</u>

(8) A net operating loss carryforward deduction may only be utilized by the corporation which incurred the loss. A corporation, resulting from a reorganization will be considered to have incurred the losses not utilized by the parties to a reorganization in a transaction described in sections 1., 2., 5. and 6. of Rule 810-3-80.04(1)(a). The limitations on the maximum carryforward period and the ordering rules for multiple losses in paragraph (3) above, will be applied to the carryforwards after the reorganization as if the reorganization had not taken place. The limitation on the maximum amount of net operating losses which may be deducted in a taxable year in paragraph (6) above will be applied to the total of all carryforwards resulting from a reorganization.

(9) In the case of an acquiring corporation subject to the rules of 26 U.S.C. §381, or in the case of a new loss corporation within the meaning of 26 U.S.C. §382, or in the case of the recognized built-in gains of a gain corporation within the meaning of U.S.C. §384, only such net operating losses as are allowable in accordance with said U.S.C. §§381, 382, and 384 shall be allowed as a deduction under this section. This paragraph shall be applied before the limitations in this preceding example are applied.

(10) A net operating loss from any year in which the corporation had elected to be an Alabama S corporation may not be carried forward. See Rule 810-3-168-.01.

Author: Voncile Catledge, Individual and Corporate Tax Division

Statutory Authority: Code of Ala. 1975, §40-18-35.1.

History: Adopted September 30, 1982. **Amended:** Filed May 15, 1992. **Amended:** Filed February 1, 2000; effective March 7, 2000.

810-3-35.1-.02 Carryforward Of Net Operating Losses For Corporations Apportioning And Allocating Income.

(1)(a) For corporations apportioning and allocating income to Alabama, the amount of a net operating loss to be attributed to Alabama will be computed in the manner provided in §40-18-33, Code of Ala. 1975, and modified as provided in the Multistate Tax Compact, Chapter 27, Title 40, Code of Ala. 1975.

(b) In other words, a corporation apportioning and allocating income to Alabama will have a net operating loss attributed to Alabama if the sum of the following items is less than zero:

1. the income (or loss) apportioned to Alabama,
2. the income (or loss) allocated to Alabama,
3. any deductions allocated to Alabama (such as pollution control capital expenditures),
4. any federal income tax attributed to the corporation which is apportioned to Alabama income (this usually will be -0- because the federal tax apportionment factor will have -0- as either the numerator, the denominator or both), and
5. any overpayment of federal income tax previously taken as a deduction in Alabama returns for prior periods which is attributable to the taxpayer for the loss year.

(2) For a corporation apportioning and allocating income, the net operating loss attributed to Alabama will be treated as allocated to Alabama in the year utilized. That is, income (including the deduction for charitable contributions and the federal income tax deduction) for the year of utilization will first be computed as provided in §§40-18-33 and 40-27-1, and the net operating loss deduction then will be subtracted to determine taxable income.

Author: Voncile Catledge, Individual and Corporate Tax Division

Statutory Authority: Code of Ala. 1975, §40-18-35.1.

History: Adopted January 28, 1987. **Amended:** June 17, 1988; filed July 27, 1988. **Amended:** Filed February 1, 2000; effective March 7, 2000.

810-3-35.1-.03 Carryforward Of Net Operating Losses For Corporations Filing Consolidated Returns. (Repealed)

Author: Voncile Catledge

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-57, as amended.

History: New Rule: Filed February 1, 2000, effective March 7, 2000. **Amended:** Filed June 6, 2001, effective July 11, 2001. **Amended:** Filed October 15, 2010; effective November 19, 2010.