

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
100172	Net Operating Losses - Common Questions

State of Wisconsin
Department of Revenue

Net Operating Losses

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

1. When can a net operating loss (NOL) be used?
2. I have a Wisconsin NOL, but not a federal NOL. Can I carry the NOL forward or back and offset my loss against taxable income of another year?
3. Do I have to make a formal election when I want to claim the NOL carryback?
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5. Am I required to carry back the NOL?
6. Is there an election to make on the Wisconsin return if we choose not to claim the two-year carryback?
7. Should Form X-NOL be attached to the Wisconsin income tax return?
8. What are worksheets 1 through 4 and Schedules NOL1, NOL2, and NOL3, and how do I use them?
9. I am a part-year Wisconsin resident. Should I use the same worksheets or schedules as a full-year resident?
10. Federal law does not allow nonbusiness deductions in excess of nonbusiness income in computing the NOL. What is the difference between business and nonbusiness income and deductions?
11. Will I have the same business and nonbusiness income and deductions for federal as for Wisconsin?
12. What are considered business capital gains?
13. Does the NOL carryback provision apply only to individuals?
14. Can Form X-NOL be used to adjust Wisconsin income for items not related to the NOL carryback?

1. **When can a net operating loss (NOL) be used?**

A Wisconsin NOL incurred in taxable years beginning before January 1, 2014, may be carried forward and offset against Wisconsin income of the next 15 taxable years.

A Wisconsin NOL incurred in taxable years beginning on or after January 1, 2014, may be carried back for two taxable years and then carried forward and offset against Wisconsin income of the next 20 years.

Note: A Wisconsin NOL may not be used to offset Wisconsin income unless the loss is computed on a return that is filed within 4 years of the unextended due date for filing the original return. A carry-back may not be used to offset Wisconsin income unless the loss is claimed on a return that is filed within 4 years of the unextended due date for filing the original return.

2. **I have a Wisconsin NOL, but not a federal NOL. Can I carry the NOL forward or back and offset my loss against taxable income of another year?**

Depending on whether you are a full-year resident, part-year resident, or nonresident of Wisconsin, you may or may not be allowed to claim a Wisconsin NOL.

Full-Year Resident

In order to claim a Wisconsin NOL, you must have a federal NOL.

Part-Year Resident/Nonresident

A federal NOL, although not computed on the federal income tax return filed with the Internal Revenue Service (IRS), may result for Wisconsin purposes if you are a part-year resident or nonresident of Wisconsin. The federal NOL should be refigured without regard to income which is not taxable to Wisconsin. If this results in a federal NOL, you are entitled to compute a Wisconsin NOL.

"Federal NOL" is your federal net operating loss as computed under the federal Internal Revenue Code in effect for Wisconsin tax purposes.

Exception: Losses from tax-option (S) corporations may be claimed even if there is no federal NOL. Wisconsin modifications cannot create an NOL except adjustments from tax-option (S) corporations.

3. **Do I have to make a formal election when I want to claim the NOL carryback?**

No. Filing Form X-NOL, *Carryback of Wisconsin Net Operating Loss (NOL)*, for the year of the carryback is all that is necessary. Form X-NOL is used by residents, part-year residents, nonresidents, estates, and trusts when carrying back a Wisconsin NOL. Use Form X-NOL for each year to which you are claiming a carryback of an NOL. For example, if you incurred an NOL for 2019 that you want to carry back to 2017 and 2018, you must file both a 2017 Form X-NOL and a 2018 Form X-NOL.

4. **Is there any particular order to carry back the loss?**

Yes. If you choose to carry back the loss to the second preceding year, compute the amount of loss allowed for this year first. You may then use any remaining loss in the first preceding year and each succeeding year for up to 20 years from the year you incurred the loss.

If you choose to carry the loss back to only the first preceding year, compute the amount of loss allowed. You may then use any remaining loss for each succeeding year for up to 20 years from the year you incurred the loss.

5. Am I required to carry back the NOL?

No. The carryback of an NOL is an election. You may choose to only carry the NOL incurred in taxable years beginning on or after January 1, 2014, forward for up to 20 years.

6. Is there an election to make on the Wisconsin return if we choose not to claim the two-year carryback?

No. If Form X-NOL is not filed, it will be assumed that the taxpayer has elected not to use the carryback provision.

7. Should Form X-NOL be attached to the Wisconsin income tax return?

Form X-NOL is a stand-alone form and should not be attached to Form 1. If Form X-NOL is filed electronically, Form W-RA, *Required Attachments for Electronic Filing*, must be submitted with any required attachments. If paper filed, the Form X-NOL that is mailed to the department should include any required attachments. Persons who originally filed Form 1NPR should also use Form X-NOL to claim an NOL carryback. The revised tax computation will require a revised Form 1NPR that shows the tax calculation to be submitted with Form X-NOL.

8. What are worksheets 1 through 4 and Schedules NOL1, NOL2, and NOL3, and how do I use them?

Worksheets 1 through 4 are listed as an attachment for Wisconsin [Publication 120](#), *Net Operating Losses for Individuals, Estates, and Trusts*. These worksheets are used for 2017 and prior tax years. Beginning in 2018, Schedules NOL1, NOL2, and NOL3 should be used.

Worksheet 1 and [Schedule NOL1](#), *Wisconsin Net Operating Loss Deduction*, is used to compute your Wisconsin NOL. Complete this worksheet or schedule in the year you incur a Wisconsin NOL.

Worksheet 2 and Part II of [Schedule NOL2](#), *Net Operating Loss Deduction and Wisconsin Modified Taxable Income*, is used to compute your Wisconsin modified taxable income. "Modified taxable income" is the amount of NOL used in a carryback or carryforward year. If you carried back or carried forward your NOL, figure your modified taxable income for that year.

Worksheet 3 and [Schedule NOL3](#), *Record of 2019 Wisconsin NOL Carryback and Carryforward of Losses*, is used to keep track of your Wisconsin NOL. Record on Worksheet 3 or Schedule NOL3 the original amount of NOL incurred and the amount of loss used each year.

The amount of loss used each year is equal to your Wisconsin modified taxable income as computed on Worksheet 2 or Part II of Schedule NOL2.

Worksheet 4 and Part I of [Schedule NOL2](#) is used to figure the allowable deduction for a Wisconsin NOL carryforward.

Enclose copies of your NOL worksheets or Schedules NOL1, NOL2, and NOL3 with your tax return for the year you incur the Wisconsin NOL and any other years for which you use an NOL carryback or carryforward. See the instructions for Schedules NOL1, NOL2, and NOL3 for when these schedules must be enclosed with your return.

9. I am a part-year Wisconsin resident. Should I use the same worksheets as a full-year resident?

Yes. However, the Wisconsin standard deduction and the personal exemption must be prorated for Worksheets 2 and 4 or Schedule NOL2. For more information, see the instructions for these worksheets which are listed as attachments for Wisconsin Publication 120 or the Schedule NOL2 instructions.

10. Federal law does not allow nonbusiness deductions in excess of nonbusiness income in computing the NOL. What is the difference between business and nonbusiness income and deductions?

Business income and deductions are those that are related to your trade or business or your employment. Nonbusiness income and deductions are those that are unrelated to your trade or business or your employment.

Some examples of business and non-business income and deductions are as follows:

Business income

- o Salaries and wages
- o Self-employment income
- o Business income from tax-option (S) corporations and partnerships
- o Rental income
- o Unemployment compensation

Business deductions

- o Rental losses
- o Educator expenses
- o Business losses from tax-option (S) corporations and partnerships
- o Self-employed health insurance deduction

Nonbusiness income

- o Dividends
- o Interest
- o Alimony
- o Pensions and annuities

Nonbusiness deductions

- o Federal standard deduction
- o IRA deduction
- o Student loan interest deduction
- o Alimony paid

See federal [Publication 536](#), *Net Operating Losses (NOLs) for Individuals, Estates, and Trusts*, Wisconsin Publication 120, and the [instructions](#) for federal [Form 1045](#), *Application for Tentative Refund*, for more details.

11. Will I have the same business and nonbusiness income and deductions for federal as for Wisconsin?

If there are any adjustments made on Wisconsin [Schedule I](#), *Adjustments to Convert 2019 Federal Adjusted Gross Income and Itemized Deductions to the Amounts Allowable for Wisconsin*, or additions and subtractions on lines 4 and 11 of Wisconsin Form 1, your business and nonbusiness income and deductions will differ from federal purposes. For example, if you had \$600 of interest income for federal purposes, and a subtraction of \$200 for interest from U.S. Government securities on line 7 of Form 1, you would only include \$400 of interest income as nonbusiness income (\$600 less \$200 U.S. Government interest).

12. What are considered business capital gains?

Business capital gains include gains from the sale of business assets as reported on federal [Form 4797](#), *Sales of Business Property*, and those capital gains as reported on Wisconsin Schedule 3K-1 and 5K-1.

13. Does the NOL carryback provision apply only to individuals?

The NOL carryback applies to individuals, estates, and trusts.

14. Can Form X-NOL be used to adjust Wisconsin income for items not related to the NOL carryback?

No. Do not use Form X-NOL to adjust your Wisconsin income for items not related to the NOL carryback. These items must be adjusted by amending Wisconsin Form 1 or 1NPR prior to filing Form X-NOL. When you amend your Wisconsin return for a federal NOL carryback, additional wages, or other income adjustments, certain income items and deductions may be affected, such as:

- o The Wisconsin taxable amount of unemployment income
- o The retirement income exclusion
- o The amount of passive activity loss allowed due to a change in your modified adjusted gross income
- o The tuition and fees deduction
- o The student loan interest deduction
- o The amount of itemized deductions allowed
- o The amount of the earned income credit

Do not adjust for these items on Form X-NOL. Instead, you must file an amended Wisconsin Form 1 or 1NPR to adjust your Wisconsin income and use the adjusted income from line 13 of Form 1 or line 31 of Form 1NPR on Form X-NOL, line 2 of column A.

Example: You incurred both a federal and Wisconsin NOL for 2018. You decided to carry back both your federal NOL and your Wisconsin NOL to 2016 and 2017. When you carry back the federal NOL to 2016, this reduces your 2016 federal adjusted gross income (FAGI). Since your 2016 FAGI is reduced, you now qualify to claim the \$5,000 Wisconsin retirement income exclusion for 2016. The adjustment to FAGI and your Wisconsin retirement income is not related to the carryback of your Wisconsin NOL. Therefore, you must first file an amended 2016 Form 1 to recompute/amend your Wisconsin income. A 2016 amended return is filed by using Form 1 and checking the space at the top of the 2016 Form 1 to indicate that it is an amended return. You then complete 2016 Form X-NOL by entering the amended Wisconsin income from line 13 of 2016 Form 1 on line 2, Column A, of Form X-NOL.

If you amend your 2017 federal return for the federal carryback of the NOL, you must follow the same procedure as for 2016; that is, first file an amended 2017 Form 1 before filing the 2017 Form X-NOL to claim the carryback of the 2018 Wisconsin NOL. You then complete a 2017 Form X-NOL by entering the amended Wisconsin income from line 13 of the amended 2017 Form 1 on line 2, Column A, of Form X-NOL.

Note: For federal purposes, the NOL carryback is eliminated for taxable years beginning after December 31, 2017. However, the NOL carryback to the 2 previous taxable years is allowed for Wisconsin purposes.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of October 23, 2019: Sections 71.01, 71.03, 71.05, 71.125 and 71.80, Wis. Stats., sec. 71.05, Wis. Stats. (2011), sec. Tax 2.08, Wis. Adm. Code, and 26 U.S. Code § 199A.

Laws enacted and in effect after October 23, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to October 23, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

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