

**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
100106	Net Business Losses for Combined Groups - Common Questions

State of Wisconsin
Department of Revenue

D - Net Business Losses for Combined Groups

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. If a corporation has a Wisconsin net business loss (NBL) carryforward as of the beginning of its 2009 taxable year, what happens to that NBL carryforward under 2011 Wisconsin Act 32?
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1. **If a corporation has a Wisconsin net business loss (NBL) carryforward as of the beginning of its 2009 taxable year, what happens to that NBL carryforward under 2011 Wisconsin Act 32?**

The law concerning the use of pre-2009 NBL carryforwards under combined reporting was changed by 2011 Wisconsin Act 32. If a combined group member has unused NBL incurred prior to January 1, 2009, the pre-2009 NBL carryforward not used by the corporation prior to the taxable year beginning on or after January 1, 2012, may be shared with other combined group members in taxable years beginning on or after January 1, 2012 through December 31, 2031.

Under sec. 71.255(6)(bm)1., a pre-2009 NBL carryforward is a corporation's total NBL carryforward computed under secs. 71.26(4) or 71.45(4), Wis. Stats., as of the beginning of its first taxable year that begins after December 31, 2008 and that has not been used by the corporation in any taxable year beginning before January 1, 2012. The corporation must first use the pre-2009 NBL carryforward to offset its own income. Then it must use the combined group's available shareable losses to offset its own unitary income for the year.

Up to 5% of the pre-2009 NBL carryforward may then be used to offset the income of all members of the combined group on a proportionate basis to the extent such income is attributable to the unitary business in 2012 and each of the subsequent 19 years until used or expired. If the full 5% of the pre-2009 NBL carryforward cannot be fully used to offset the Wisconsin income of all other members of the combined group in a given reporting year, the remainder may be added to that portion of pre-2009 NBL carryforward that may offset the Wisconsin income of all other members of the combined group in a subsequent year until the pre-2009 NBL carryforward is completely used or expired. Pre-2009 NBL carryforward may not be used in any taxable year that begins after December 31, 2031.

Question 1: A company that is part of a combined group had a NBL generated in 1994, 1995, and 1996. The losses, if not used, would have expired by December 31, 2009, 2010, and 2011, respectively. Are these losses eligible for the new 20-year carryforward?

Answer 1: Yes. Although these losses would have expired prior to January 1, 2012 under prior law, any pre-2009 NBL carryforward that was not used or expired under the 20-year NBL carryforward rule, found in secs. 71.26(4) or 71.45(4), Wis. Stats., becomes part of the new pre-2009 NBL carryforward and the 20-year limitation, found in secs. 71.255(6)(bm)1., 71.26(4)(b) or 71.45(4)(b), Wis. Stats.

Question 2: A company which is part of a combined group during the current reporting period had a NBL generated in years 1997 through 2008. If this NBL has not been used prior to January 1, 2012, does the NBL become eligible for the new pre-2009 NBL carryforward with an expiration date of December 31, 2031?

Answer 2: Yes. Pre-2009 NBL carryforward amounts that were not used or expired under the 15-year NBL carryforward rule are considered pre-2009 NBL carryforward amounts and qualify for the new 20-year NBL carryforward ending December 31, 2031. Regardless of the number of years remaining from the 15-year NBL carryforward period, the losses qualifying for the 20-year NBL carryforward start a new 20-year carryforward period.

Question 3: Under the new statutes, up to 5% of pre-2009 NBL carryforward may be shared with other members of the combined group in each year from 2012 through 2031. How is the 5% carryforward amount calculated?

Answer 3: Each entity in the combined group performs a one-time calculation of its own pre-2009 NBL carryforward amount by first subtracting from its total pre-2009 NBL carryforward any portion of the pre-2009 NBL carryforward used during years 2009 through 2011. The remaining loss is multiplied by 5% to arrive at the annual shareable amount allowed.

Example: A member of a combined group has pre-2009 NBL of \$100 million as of December 31, 2008. The member's share of the combined group's income was \$2 million in 2009, \$3 million in 2010, and \$5 million in 2011. The member's annual 5% shareable amount is \$4.5 million $[(-\$100 \text{ million pre-2009 NBL} + \$2 \text{ million} + \$3 \text{ million} + 5 \text{ million taxable income}) \times 5\%]$, not to exceed a total of \$90 million over the 20 years.

Question 4: In what order must a member of a combined group use its own and other members' NBL carryforwards?

Answer 4: A combined group member shall apply net business loss carryforwards in the order that the underlying NBL was incurred and using the following sequence:

1. For 100% Wisconsin combined groups only: sharing of current year unitary losses;
2. Its own pre-2009 NBL carryforward to offset its own Wisconsin net income from separate entity items;
3. Its own pre-2009 NBL carryforward to offset its share of the Wisconsin combined group's Wisconsin income;

4. Its own post-2008 shareable NBL carryforward to offset its share of the Wisconsin combined group's Wisconsin income;
5. Its share of post-2008 shareable NBL carryforward from other combined group members to offset its share of the Wisconsin combined group's Wisconsin income;
6. Its share of shareable pre-2009 NBL carryforward from other combined group members up to the allowable 5% amount to offset its share of the Wisconsin combined group's Wisconsin income.

Question 5: A combined group member has a pre-2009 NBL equal to an annual 5% amount of \$4.5 million. In 2012 the member's share of the combined group's income is \$1 million. How does this affect the 5% shareable NBL amount?

Answer 5: The 5% shareable loss carryforward amount calculated based on the losses remaining prior to January 1, 2012 is not changed. The member must first apply its pre-2009 NBL carryforward against its own 2012 income to offset the total amount of the pre-2009 NBL carryforward. The member may then share up to the 5% amount - that is, up to 4.5 million - with other members of the combined group.

Example: Member A of Wisconsin Combined Group ABC has a \$90 million pre-2009 NBL carryforward. Member A calculates the 5% shareable amount as \$4.5 million (\$90 million x 5%). In 2012, Member A's share of the combined group's Wisconsin income is \$1 million. Member A first applies its pre-2009 NBL carryforward against its \$1 million share of the combined group's Wisconsin income. The remaining members of the group may use the \$4.5 million shareable loss to offset the remaining group income on a proportionate basis. Assuming the combined group has enough income in 2012 to fully use the entire \$4.5 million in pre-2009 NBL carryforward, the pre-2009 NBL carryforward available in 2013 is \$84.5 (\$90 million - \$1 million - \$4.5 million). If Member A's share of the combined group's income is \$0 for all remaining years of the pre-2009 NBL, and the remaining members of the combined group were eligible to share the full \$4.5 million NBL carryforward each year, the shareable pre-2009 NBL available in 2013 through 2030 will be \$4.5 million. The shareable pre-2009 NBL available in 2031 will be \$3.5 million (\$90 million - \$1 million used by Member A in 2012 - [19 years {2012 through 2030} x \$4.5 million per year shared]).

Question 6: What happens to a shareable pre-2009 NBL carryforward if a member does not have enough income in a given reporting year to use its proportionate share of the allowable shareable 5% of pre-2009 NBL carryforwards?

Answer 6: If a combined group member does not have enough income to use its full proportionate share of the 5% NBL, the portion not used becomes available to the other combined group members to use in the succeeding year in addition to the 5% pre-2009 NBL available for that year.

Example: Member D of Combined Group DEF has a pre-2009 NBL carryforward. The 5% allowed to members E and F in each year 2012 through 2031 is \$100,000. Member E's proportionate share of the \$100,000 in 2012 is \$30,000. After using all other allowable

losses, Member E has only \$20,000 income remaining to offset its share of the pre-2009 NBL carryforward. The remaining \$10,000 NBL carryforward not used by Member E in 2012 becomes part of the combined group's pre-2009 NBL carryforward that may be shared by all group members in 2013 and is in addition to the 5% NBL carryforward previously computed (\$110,000 in pre-2009 NBL carryforward available for 2013).

Question 7: Is it possible for a combined group to use their entire pre-2009 NBL carryforward amount over the 20-year period from 2012 through 2031?

Answer 7: Yes, if the combined group has sufficient Wisconsin taxable income over the 20-year period.

Question 8: What happens to a pre-2009 NBL carryforward if the members of the combined group choose to not use their share of the loss in the current taxable year?

Answer 8: A pre-2009 NBL that is not utilized by the originating member and not shared among other members of the combined group in the current taxable year may be carried forward to future taxable years that end prior to December 31, 2031. The remaining NBL carryforward that may be shared by all members in the following taxable year is the 5% NBL carryforward for the current taxable year plus the 5% NBL carryforward from the prior taxable year.

Example: Member G of Wisconsin Combined Group GHI has a pre-2009 NBL carryforward of \$10 million and performs the one-time 5% shareable calculation to determine that it may share up to \$500,000 of the NBL with the other combined group members. Each member of Combined Group GHI has a Wisconsin research credit that allows the group to eliminate its Wisconsin tax without using any of the pre-2009 NBL carryforward. As a result, all members of the combined group choose not to use their share of the pre-2009 NBL carryforward from member G. The \$500,000 pre-2009 NBL not utilized in the current taxable year becomes available to the combined group in the succeeding year. The total available pre-2009 NBL for the following year is equal to \$1 million, which is the current year allowable pre-2009 NBL of \$500,000 and the \$500,000 pre-2009 NBL not used in the prior taxable year.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of December 13, 2019: Sections 71.255, 71.26 and 71.45, Wis. Stats., and sec. Tax 2.61(9), Wis. Adm. Code.

Laws enacted and in effect after December 13, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to December 13, 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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