



**Legislative
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**FINAL
FISCAL NOTE**

Drafting Number:	LLS 20-0238	Date:	August 11, 2020
Prime Sponsors:	Rep. Benavidez; Snyder Sen. Moreno	Bill Status:	Signed into Law
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Bill Topic: **NET OPERATING LOSS DEDUCTION MODIFICATIONS**

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue <input checked="" type="checkbox"/> State Expenditure <input checked="" type="checkbox"/> State Transfer	<input type="checkbox"/> TABOR Refund <input type="checkbox"/> Local Government <input type="checkbox"/> Statutory Public Entity
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This bill modifies the Colorado Net Operating Loss Deduction allowing taxpayers to carry the deduction forward for 20 years, rather than for an unlimited number of years. The bill increases state expenditures in FY 2021-22 and may have a minimal revenue impact starting in FY 2035-36.

**Appropriation
Summary:** No appropriation is required.

**Fiscal Note
Status:** The fiscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under HB 20-1024

		FY 2020-21	FY 2021-22
Revenue		-	-
Expenditure	General Fund	-	\$22,859
Transfer		-	-
TABOR Refund		-	-

Summary of Legislation

Starting with the 2021 tax year, this bill modifies the net operating loss (NOL) deduction taxpayers are allowed to claim on Colorado corporate income taxes. The bill specifies that the Colorado NOL deduction may be carried forward for up to 20 years, instead of an unlimited number of years, and that financial institutions are subject to the same NOL provisions as other taxpayers.

Background

A business may claim a NOL deduction when its business expenses exceed taxable income. Generally, the NOL deduction may offset income in other tax periods through carry-forwards and carry-backs. The Colorado NOL deduction piggy-backs off the federal tax code, which changed with the passage of the federal Tax Cuts and Jobs Act (TCJA).

Federal law prior to the TCJA. Prior to the passage of the TCJA, corporations were allowed to carry a NOL backwards for two tax years or carry a NOL forward for 20 tax years. Carrying a NOL backwards allowed companies to claim a refund for taxes paid in previous years. Carrying a NOL forward allows companies to offset future profits.

Colorado law prior to the TCJA. Colorado allowed corporations to carry forward a NOL in the same manner as allowed for federal law. Because federal law allowed a 20-year carry-forward, Colorado allowed corporations to carry a NOL forward 20 years. Colorado decoupled from federal law for amending tax returns for prior years and does not allow corporations to carry back a NOL deduction.

Federal law after the TCJA. The TCJA changed the federal NOL deduction by:

- limiting the deduction to only allow a NOL to offset 80 percent of taxable income;
- allowing taxpayers to carry forward a NOL for an unlimited number of years; and
- eliminated the two-year carry-back provision so that a NOL cannot be carried back to prior tax years.

Colorado law after the TCJA. Colorado law allows taxpayers to carry forward a NOL in the same manner as allowed under federal law. The TCJA had the following effects on Colorado taxpayers:

- limiting the deduction to only allow a NOL to offset 80 percent of taxable income; and
- allowing taxpayers to carry forward a NOL for an unlimited number of years.

This bill limits the Colorado NOL carry-forward to 20 years, the same period allowed for state and federal taxes prior to passage of the TCJA.

Current law also limits Colorado financial institutions to carry forward a NOL for 15 years. The bill eliminates the 15-year carry-forward for financial institutions and treats them like other taxpayers.

Pursuant to Senate Bill 16-203, the Office of the State Auditor published its evaluation of the NOL deduction in July 2019. The evaluation is available online here: https://leg.colorado.gov/sites/default/files/images/2019-te16_c-corp_nol.pdf

State Revenue

The bill will have a minimal General Fund revenue impact starting in FY 2035-36.

Between FY 2035-36 and FY 2040-41, corporate tax revenue will decrease by a minimal amount as financial institutions are allowed to carry forward NOL deductions for an additional five years. The bill may increase corporate income tax revenue by a minimal amount starting in FY 2040-41. The bill limits the NOL carry-forward to 20 years, impacting taxpayers with a sufficient NOL to offset revenue for more than 20 years. Corporations that are not profitable for 20 years are unlikely to remain in business and any NOLs carried forward for 21 years are likely to be small.

State Expenditures

The bill is expected to require one-time General Fund expenditures of \$22,859 in FY 2021-22 only. Expenditures are summarized in Table 2 and detailed below.

Table 2
Expenditures Under HB 20-1024

	FY 2020-21	FY 2021-22
Department of Revenue		
GenTax Programming and Testing	-	\$13,840
Temporary Personal Services	-	\$7,819
Form Change Cost	-	\$1,200
Total Cost	-	\$22,859

Department of Revenue. The Department of Revenue will be required to administer the Colorado NOL deduction for three distinct periods:

- prior to passage of the TCJA for tax years before 2018 allowing a 20-year carry forward;
- after the passage of the TCJA and prior to passage of this bill for tax years 2018 and prior to tax year 2021; and
- after the passage of this bill for tax years starting in 2021.

Because of the different carry-forward periods, the Department of Revenue will have to track and maintain the NOL generated by taxpayers in each distinct period.

GenTax. This bill requires changes to the Department of Revenue's GenTax software system. Changes are programmed by a contractor at a rate of \$250 per hour. The changes in this bill are expected to require programming expenditures of \$10,000, representing 40 hours of programming. All GenTax programming changes are tested by the department. Testing for this bill will require the expenditures for contract personnel totaling \$3,840, representing 160 hours of testing at a rate of \$24 per hour.

Office of Research and Analysis. In order to aggregate the NOL data changed under the bill, the Office of Research and Analysis within the Department of Revenue's executive director's office will map the data requiring 40 hours of temporary work. This will cost \$7,819 in FY 2021-22.

Form changes. The bill requires a change to one tax form at a cost of \$1,200. Form changes are performed by a Department of Personnel and Administration contractor paid using reappropriated Department of Revenue funds.

Effective Date

This bill was signed into law by the Governor on June 26, 2020, and takes effect September 14, 2020, assuming no referendum petition is filed.

State and Local Government Contacts

Information Technology Personnel Revenue State Auditor