

CHAPTER 135

TAXATION

HOUSE BILL 20-1024

BY REPRESENTATIVE(S) Benavidez and Snyder, Woodrow;
also SENATOR(S) Moreno, Fenberg, Lee, Todd.

AN ACT**CONCERNING MODIFICATIONS TO THE STATE'S NET OPERATING LOSS DEDUCTION.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that the intended purpose of this change to the net operating loss deduction is to limit the state's corporate net operating loss carryforwards to twenty years, as was allowed for many tax years prior to a recent change to federal law, and to partially decouple the state deduction from federal law, which now allows carryforwards for an unlimited number of years. Changing the carryforward period back to twenty years and decoupling from the federal carryforward period will align Colorado with a majority of other states: Thirty states have decoupled from the federal law and sixteen states have adopted the former federal carryforward period of twenty years. The general assembly further finds and declares that twenty years of carryforwards still allows the majority of corporate taxpayers in Colorado to deduct their full net operating losses over that period.

(2) The general assembly hereby finds and declares that the intended purpose of the change to the net operating loss deduction for financial institutions is to treat all taxpayers uniformly, giving all corporate taxpayers a twenty-year carryforward period. When this special provision was enacted for financial institutions in 1987, federal law provided that financial institutions were only allowed to carry losses forward for five years as compared to fifteen years for other corporations. The Colorado law, which allowed financial institutions to carry losses forward for fifteen years, was likely enacted to allow financial institutions to be treated equally to other taxpayers in the state.

SECTION 2. In Colorado Revised Statutes, 39-22-504, **amend** (3) and (4) as

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follows:

39-22-504. Net operating losses. (3) (a) Net operating losses of corporations GENERATED IN INCOME TAX YEARS COMMENCING BEFORE JANUARY 1, 2021, may be carried forward for the same number of years as allowed for a federal net operating loss. Net operating losses of corporations may not be carried back to an earlier tax year.

(b) NET OPERATING LOSSES OF CORPORATIONS GENERATED IN INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2021, MAY BE CARRIED FORWARD FOR TWENTY YEARS. NET OPERATING LOSSES OF CORPORATIONS MAY NOT BE CARRIED BACK TO AN EARLIER TAX YEAR.

(4) If a financial institution suffers a net operating loss for any taxable year beginning on or after January 1, 1984, AND BEFORE JANUARY 1, 2021, the amount of the unused net operating loss may be carried forward to each of the fifteen years following the taxable year of such loss. For the purposes of this subsection (4), "financial institution" means any institution to which section 585 or 593 of the internal revenue code applies.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 26, 2020