Net Operating Losses (NOLs)

Content
In this webinar, the student will learn to calculate an NOL, determine whether to carry an NOL back or forward, how to claim an NOL deduction, and figure an NOL carryover for individuals and corporations.

Objectives
Learn how to complete the following forms and worksheets
- Form 1045, Application for a Tentative Refund
- Form 1045, Schedule A - NOL
- Form 1045, Schedule B - NOL Carryover
- Worksheet for NOL Carryover

Additional References
Publication 536 - Net Operating Losses (NOLs) for Individuals, Estates, and Trusts
Publication 542 – Corporations
Publication 4492 – Information for Taxpayers Affected by Hurricanes, Katrina, Rita and Wilma

Introduction
When deductions exceed income, a net operating loss (NOL) may occur. An NOL may be caused by deductions from a trade or business, from working as an employee, from casualty and theft losses, moving expenses, or rental property. An NOL can be used by deducting the NOL from the taxpayer’s income in another year (or years). This may result in a refund of prior years’ taxes. The most common NOL is caused by a business loss.

NOL Steps
Follow Steps 1 through 5 to figure and use your NOL.

Step 1. Complete your tax return for the year. You may have an NOL if a negative amount appears on the line below: Individuals — Form 1040, line 41, or Form 1040NR, line 39. Estates and trusts — see the instructions for Form 1041, line 22, for information about taxable income and NOLs.

Step 2. Determine whether you have an NOL and its amount. If you do not have an NOL, stop here.
Step 3. Decide whether to carry the NOL back to a past year or to waive the carryback period and instead carry the NOL forward to a future year.

Step 4. Deduct the NOL in the carryback or carryforward year. If your NOL deduction is equal to or less than your taxable income without the deduction, stop here — you have used up your NOL.

Step 5. Determine the amount of your unused NOL. Carry over the unused NOL to the next carryback or carryforward year and begin again at Step 4. Note. If your NOL deduction includes more than one NOL amount, apply Step 5 separately to each NOL amount, starting with the amount from the earliest year.

How to figure an NOL
Complete the tax return. If the adjusted gross income (AGI) minus the standard or itemized deductions is less than zero, there is a potential NOL. There are rules that limit what can be deducted when figuring an NOL. In general, the following items are not allowed when figuring an NOL.

- Deduction for personal exemptions
- Capital losses in excess of gains
- The section 1202 exclusion of 50% of the gain from the sale or exchange of qualified small business stock
- Nonbusiness deductions in excess of nonbusiness income.
- Net operating loss deduction from a prior year
- The domestic production activities deduction

Form 1045, Schedule A
This form is used to figure a true NOL. First complete line 1 of Schedule A using amounts from the tax return. If line 1 is a negative amount, there is a potential NOL. The amount on line 1 must then be adjusted for deductions that are allowed when figuring taxable income but are not allowed when figuring an NOL. A brief explanation of these adjustments follows.

Nonbusiness deductions (line 6)
Enter on line 6 deductions that are not connected to the taxpayer’s trade or business or employment such as:

- Alimony paid,
- Deductible contributions to a traditional IRA or other self-employed retirement plan,
- Health savings account deduction,
- Archer MSA deduction,
- Itemized deductions (except for casualty and theft losses, state income tax on trade and business income, and any employee business expenses), and
- The standard deduction

Do not enter personal exemptions for you, your spouse, or your dependents on line 6.
Do not enter business deductions on line 6. These are deductions connected to the taxpayer’s trade or business. They include the following:

- State income tax on income attributable to trade or business (including wages, salary, and unemployment compensation).
- Moving expenses.
- Educator expenses.
- The deduction for the deductible part of self-employed health insurance.
- Domestic production activities deduction.
- Rental losses.
- Loss on the sale or exchange of business real estate or depreciable property.
- The taxpayer’s share of a business loss from a partnership or S corporation.
- Ordinary loss on the sale or exchange of stock in a small business corporation or a small business investment company.
- If itemizing, the deductions for casualty and theft losses (even if they involve nonbusiness property) and employee business expenses (such as union dues, uniforms, tools, education expenses, and travel and transportation expenses).
- Loss on the sale of accounts receivable (if using an accrual method of accounting).
- Interest and litigation expenses on state and federal income taxes related to business.
- Unrecovered investment in a pension or annuity claimed on a decedent's final return.
- Payment by a federal employee to buy back sick leave used in an earlier year.

Nonbusiness income (line 7)
Enter on line 7 only income that is not related to the taxpayer’s trade or business or employment. For example, enter annuity income, dividends and interest on investments. Also include the taxpayer’s share of nonbusiness income from partnerships and S corporations.

Do not include on line 7 the income received from the taxpayer’s trade or business or employment. This includes salaries and wages, self-employment income, unemployment compensation included in gross income, and the share of business income from partnerships and S corporations. Also, do not include rental income or ordinary gain from the sale or other disposition of business real estate or depreciable business property.

Adjustment for section 1202 exclusion (line 17)
Enter on line 17 any gain excluded under section 1202 on the sale or exchange of qualified small business stock.

Adjustments for capital losses (lines 19-22)
The amount deductible for capital losses is limited based on whether the losses are business capital losses or nonbusiness capital losses.

Nonbusiness capital losses can be deducted (line 2) only up to the amount of nonbusiness capital gains without regard to any section 1202 exclusion (line 3). If
nonbusiness capital losses are more than nonbusiness capital gains without regard
to any section 1202 exclusion, the excess cannot be deducted.

**Business capital losses** can be deducted on line 11 only up to the total of:
- Nonbusiness capital gains that are more than the total of nonbusiness
  capital losses and excess nonbusiness deductions (line 10), and
- Total business capital gains without regard to any section 1202 exclusion
  (line 12).

**Domestic production activities deduction (line 23)**
The domestic production activities deduction cannot be taken when figuring NOL. Enter
on line 23 any domestic production activities deduction claimed on Form 1040.

**Adjustment for NOL deduction (line 24)**
NOL carryovers or carrybacks from other years cannot be deducted. Enter the total
amount of the NOL deduction for losses from other years.

**Definitions**

**NOL Year** – The tax year in which a net operating loss occurs.

**NOL Carryback** – The net operating loss that is initially carried back to year(s)
preceding the loss year. These years are known as the carryback period.

**NOL Carryforward** – The net operating loss that is carried to the year(s) after
the loss. These years are known as the carryforward period.

**NOL Carryover** – A carryover occurs when a net operating loss exceeds the
taxable income of the year to which it was carried.

**Carryback Year** – Any tax year preceding the net operating loss year, to which a
net operating loss is carried.

**Carryover Year** – Any succeeding year to which the remainder of a prior net
operating loss is carried.

**When To Use an NOL**
Generally, the entire amount of the NOL for a tax year ending in 2015 must be carried
back to the 2 tax years before the NOL year (the carryback period), and any remaining
NOL carried forward for up to 20 years after the NOL year (the carryforward period). A
taxpayer can also elect not to carry back an NOL and only carry it forward. No part of the
remaining NOL can be deducted after the 20-year carryforward period.

**Exceptions to 2-Year Carryback Rule**
Eligible losses, farming losses, qualified disaster losses, qualified GO Zone losses, and
specified liability losses, defined next, qualify for longer carryback periods.
Eligible loss. The carryback period for eligible losses is 3 years. Only the eligible loss portion of the NOL can be carried back 3 years. An eligible loss is any part of an NOL that:

- Is from a casualty or theft, or
- Is attributable to a federally declared disaster for a qualified small business or certain qualified farming businesses.

Qualified small business. A qualified small business is a sole proprietorship or a partnership that has average annual gross receipts (reduced by returns and allowances) of $5 million or less during the 3-year period ending with the tax year of the NOL. If the business did not exist for this entire 3-year period, use the period the business was in existence.

An eligible loss does not include a farming loss, qualified disaster losses, or a qualified GO Zone loss.

Farming loss. The carryback period for a farming loss is 5 years. Only the farming loss portion of the NOL can be carried back 5 years. A farming loss is the smaller of:

- The amount which would be the NOL for the tax year if only income and deductions attributable to farming businesses were taken into account, or
- The NOL for the tax year.

Farming business. A farming business is a trade or business involving cultivation of land, raising or harvesting of any agricultural or horticultural commodity, operating a nursery or sod farm, raising or harvesting of trees bearing fruit, nuts, or other crops, or ornamental trees. The raising, shearing, feeding, caring for, training and management of animals is also considered a farming business.

A farming business does not include contract harvesting of an agricultural or horticultural commodity grown or raised by someone else. It also does not include a business in which you merely buy or sell plants or animals grown or raised entirely by someone else.

Waiving the 5-year carryback. A taxpayer can choose to figure the carryback period for a farming loss without regard to the special 5-year carryback rule. To make this choice for 2014, attach to the 2015 tax return filed by the due date (including extensions) a statement that he or she is choosing to treat any 2015 farming losses without regard to the special 5-year carryback rule. If the return is filed on time but the statement was not filed with it, the choice can be made on an amended return filed within 6 months after the due date of the return (excluding extensions). Attach an election statement to the amended return, and write “Filed pursuant to section 301.9100-2” at the top of the statement. Once made, this choice is irrevocable.

Qualified disaster loss. The carryback period for a qualified disaster loss is 5 years. Only the qualified disaster loss portion of the NOL can be carried back 5 years. A qualified disaster loss is the smaller of:

- The sum of:
- Any losses attributable to a federally declared disaster and occurring before January 1, 2010 in the disaster area, plus
- Any allowable qualified disaster expenses (even if you did not choose to treat those expenses as deductions in the current year), or
- The NOL for the tax year.

**Qualified disaster expenses.** A qualified disaster expense is any capital expense paid or incurred in connection with a trade or business or with business-related property which is:

- For the abatement or control of hazardous substances that were released as a result of a federally declared disaster occurring before January 1, 2010,
- For the removal of debris from, or the demolition of structures on, real property which is business-related property damaged or destroyed as a result of a federally declared disaster occurring before January 1, 2010, or
- For the repair of business-related property damaged as a result of a federally declared disaster occurring before January 1, 2010.

Business-related property is property held for use in a trade or business, property held for the production of income, or inventory property.

Note. Section 198A allows taxpayers to treat certain capital expenses (qualified disaster expenses) as deductions in the year the expenses were paid or incurred.

**Excluded losses.** A qualified disaster loss does not include any losses from property used in connection with any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, or any store for which the principal business is the sale of alcoholic beverages for consumption off premises.

A qualified disaster loss also does not include any losses from any gambling or animal racing property. Gambling or animal racing property is any equipment, furniture, software, or other property used directly in connection with gambling, the racing of animals, or the on-site viewing of such racing, and the portion of any real property (determined by square footage) that is dedicated to gambling, the racing of animals, or the on-site viewing of such racing, unless this portion is less than 100 square feet.

**Qualified GO Zone loss.** Generally, you can carry a net operating loss (NOL) back to the 2 tax years before the NOL year. The carryback period for a qualified GO Zone loss is 5 years. Only the qualified GO Zone loss portion of the NOL can be carried back 5 years. A qualified GO Zone loss is the smaller of:

- The excess of the NOL for the year over the specified liability loss for the year to which a 10-year carryback applies, or
- The total of any qualified GO Zone casualty loss and any depreciation allowable for any specified GO Zone extension property for the year such property is placed in service (even if you elected not to claim the special GO Zone depreciation
allowance for such property). In most cases, specified GO Zone extension property must have been placed in service before December 31, 2011.

For a list of counties and parishes included in the GO Zone, see Notice 2007-36, 2007-17 I.R.B. 1000.

**Qualified GO Zone casualty loss.** A qualified GO Zone casualty loss is any deductible section 1231 loss of property located in the GO Zone if the loss was caused by Hurricane Katrina. For this purpose, the amount of the loss is reduced by any recognized gain from an involuntary conversion caused by Hurricane Katrina of property located in the GO Zone. Any such loss taken into account in figuring your qualified GO Zone loss is not eligible for the election to be treated as having occurred in the previous tax year.

**5-year NOL carryback of certain timber losses.** Generally, you can carry the portion of an NOL due to income and deductions attributable to a farming business back to the 5 tax years before the NOL year. You can treat income and deductions attributable to qualified timber property as attributable to a farming business if any portion of the property is located in the GO Zone, Rita GO Zone, or Wilma GO Zone, and the income and deductions are allocable to the part of your tax year which is after the applicable date below.

1. August 27, 2005, if any portion of the property is located in the GO Zone.
2. September 22, 2005, if any portion of the property is located in the Rita GO Zone (but not in the GO Zone).
3. October 22, 2005, if any portion of the property is located in the Wilma GO Zone (but not in the GO Zone or the RITA GO Zone).
4. These rules will not apply after 2006.

However, these rules apply only to a timber producer who:

1. Held qualified timber property (defined in Publication 535, Business Expenses) on the applicable date below:
   a. August 28, 2005, if any portion of the property is located in the GO Zone,
   b. September 23, 2005, if any portion of the property is located in the Rita GO Zone (but not in the GO Zone), or
   c. October 23, 2005, if any portion of the property is located in the Wilma GO Zone (but not in the GO Zone or the RITA GO Zone);
2. Is not a corporation with stock publicly traded on an established securities market;
3. Is not a real estate investment trust; and
4. Did not hold more than 500 acres of qualified timber property on the applicable date above.

**Waiving the 5-year carryback.** A taxpayer can choose to figure the carryback period for a qualified GO Zone loss without regard to the special 5-year carryback rule. To make this choice for 2013, attach to the 2013 tax return filed by the due date (including extensions) a statement that he or she is choosing to treat any 2013 qualified GO Zone losses without regard to the special 5-year carryback rule. If the return is filed on time but
the statement was not filed with it, the choice can be made on an amended return filed within 6 months after the due date of the return (excluding extensions). Attach a statement to the amended return, and write “Filed pursuant to section 301.9100-2” at the top of the statement. Once made, this choice is irrevocable.

**Specified liability loss.** The carryback period for a specified liability loss is 10 years. Only the specified liability loss portion of the NOL can be carried back 10 years. Generally, a specified liability loss is a loss arising from:

- Product liability and expenses incurred in the investigation or settlement of, or opposition to, product liability claims, or
- An act (or failure to act) that occurred at least 3 years before the beginning of the loss year and resulted in a liability under a federal or state law requiring:
  - Reclamation of land,
  - Dismantling of a drilling platform,
  - Remediation of environmental contamination, or
  - Payment under any workers compensation act.

Any loss from a liability arising from the above can be taken into account as a specified liability loss only if the accrual method of accounting was used throughout the period in which the act (or failure to act) occurred.

**Waiving the 10-year carryback.** A taxpayer can choose to figure the carryback period for a specified liability loss without regard to the special 10-year carryback rule. To make this choice for 2015, attach to the 2015 tax return filed by the due date (including extensions) a statement that he or she is choosing to treat any 2015 specified liability loss without regard to the special 10-year carryback rule. If the return is filed on time but the statement was not filed with it, the choice can be made on an amended return filed within 6 months after the due date of the return (excluding extensions). Attach a statement to the amended return, and write “Filed pursuant to section 301.9100-2” at the top of the statement. Once made, this choice is irrevocable.

**Waiving the Carryback Period**
An election can be made to waive the carryback years and only use the NOL in the 20-year carryforward period. (This choice also means that no alternative NOL is carried back.)

The election must be made on a timely filed return (including extensions) for the NOL year. To make this election, the following statement must be attached to the return: “The taxpayer elects to waive the net operating loss carryback period under section 172(b)(3) of the Internal Revenue Code.” Once this election is made, it generally is irrevocable. If the taxpayer chooses to waive the carryback period for more than one NOL, a separate choice must be made and a separate statement attached for each NOL year.

If the return was timely filed but the statement was not included, the statement must be filed with an amended return for the NOL year within 6 months of the due date of the
original return (excluding extensions). Write “Filed pursuant to section 301.9100-2” at the top of the statement.

⚠️ If a statement with the election to waive the carryback is not filed with a timely filed return, the carryback period cannot be waived.

**How To Carry an NOL Back or Forward**

If the taxpayer chooses to carry back the NOL, the entire NOL must first be carried back to the earliest carryback year. If the NOL is not used up in that year, any remaining NOL can be carried back to the next earliest carryback year, and so on.

If the NOL is not used up in the carryback years, what remains of it is carried forward to the 20 tax years following the NOL year. Start by carrying it to the first tax year after the NOL year. If it is not used up then carry the unused part to the next year. Continue to carry any unused part of the NOL until the 20-year carryforward period is completed.

**How To Claim an NOL Deduction**

If the taxpayer has not already carried the NOL to an earlier year, the NOL deduction is the total NOL. If the taxpayer carried the NOL to an earlier year, the NOL deduction is the NOL minus the amount used in the earlier year or years. If the NOL is more than the taxable income of the year it is carried to, there will generally be an NOL carryover to the next year.

**Deducting a carryback**

To claim a refund from an NOL deduction, taxpayers may file Form 1045, *Application for a Tentative Refund*, or Form 1040X, *Amended U.S. Individual Income Tax Return*.

- Form 1045 may be used to apply an NOL to all available carryback years. It must be filed no later than one year after the end of the NOL year.
- Taxpayers must use a separate Form 1040X for each year to which the NOL is applied. This form must be filed within three years after the due date (including extensions) for filing the return for the NOL year.

Filing Form 1045 results in a faster refund but it must be filed within a shorter period of time.

**NOL carryback year computation on Form 1045**

To calculate the reduced tax for the carryback year, it is necessary to recalculate deductions, credits and taxes, taking into account a refugured AGI and taxable income that now includes the NOL. The following are some of the items to be recalculated:

- Special allowance for passive activity losses from rental real estate activities,
- Taxable social security benefits, tier 1 railroad retirement benefits,
- Deductions for contribution to an IRA or self-employed retirement plan,
- Excludable savings bond interest,
- Excludable employer-provided adoption benefits,
- Student loan interest deduction,
- Tuition and fees deduction.
If more than one of the above items apply, refigure them in the order listed, using the adjusted gross income after applying the NOL deduction and any of the previous items. Specific line-by-line instructions are available in the Instructions for Form 1045 available at www.irs.gov.

The following items must be refigured for re-computing the taxable income:
- Itemized deduction for medical expenses,
- Itemized deduction for qualified mortgage insurance premiums,
- Itemized deduction for charitable deductions,
- Itemized deduction for casualty losses,
- Miscellaneous itemized deductions subject to the 2% limit,
- The overall limit on itemized-deductions (do not apply to carryback years beginning after December 31, 2009).
- Phaseout of the deduction for exemptions (do not apply to carryback years beginning after December 31, 2009).
- Qualified motor vehicle tax (do not apply to carryback years beginning after December 31, 2009).

Charitable contributions are not recalculated in an NOL carryback year.

Use the refigured taxable income to recalculate the total tax liability. Refigure income tax, alternative minimum tax, and any credits that are based on, or limited to, the amount of tax. The earned income credit, for example, may be affected by changes in adjusted gross income or the amount of tax (or both) and, therefore must be recomputed. If the taxpayer becomes eligible for a credit because of the carryback, the form for that specific credit (such as the EIC Worksheet) for that year must be completed.

An NOL never changes the self-employment tax of a carryback year.

**Deducting a Carryforward**

If a taxpayer carries forward an NOL to a tax year after the NOL year, list the NOL deduction as a negative figure on the Other income line of Form 1040 or Form 1040NR (line 21 for 2015). Estates and trusts include an NOL deduction on Form 1041 with other deductions not subject to the 2% limit (line 15a for 2015).

When a taxpayer carries forward an NOL, a statement must be attached to the return showing all the important facts about the NOL. The statement should include a computation as to how the NOL deduction was figured.

If the taxpayer is deducting more than one NOL in the same year, your statement must cover each of them separately.

**Change in Marital Status**

If you and your spouse were not married to each other in all years involved in figuring
NOL carrybacks and carryovers, only the spouse who had the loss can take the NOL deduction. If you file a joint return, the NOL deduction is limited to the income of that spouse.

For example, if your marital status changes because of death or divorce, and in a later year you have an NOL, you can carry back that loss only to the part of the income reported on the joint return (filed with your former spouse) that was related to your taxable income. After you deduct the NOL in the carryback year, the joint rates apply to the resulting taxable income.

**Refund limit.** If you are not married in the NOL year (or are married to a different spouse), and in the carryback year you were married and filed a joint return, your refund for the overpaid joint tax may be limited. You can claim a refund for the difference between your share of the re-figured tax and your contribution toward the tax paid on the joint return. The refund cannot be more than the joint overpayment. Attach a statement showing how you figured your refund.

**Figuring your share of a joint tax liability.** There are five steps for figuring your share of the refigured joint tax liability.
1. Figure your total tax as though you had filed as married filing separately.
2. Figure your spouse's total tax as though your spouse had also filed as married filing separately.
3. Add the amounts in (1) and (2).
4. Divide the amount in (1) by the amount in (3).
5. Multiply the refigured tax on your joint return by the amount figured in (4). This is your share of the joint tax liability.

**Figuring your contribution toward tax paid.** Unless you have an agreement or clear evidence of each spouse's contributions toward the payment of the joint tax liability, figure your contribution by adding the tax withheld on your wages and your share of joint estimated tax payments or tax paid with the return. If the original return for the carryback year resulted in an overpayment, reduce your contribution by your share of the tax refund. Figure your share of a joint payment or refund by the same method used in figuring your share of the joint tax liability. Use your taxable income as originally reported on the joint return in steps (1) and (2) above, and substitute the joint payment or re-fund for the refigured joint tax in step (5).

**Change in Filing Status**

If you and your spouse were married and filed a joint return for each year involved in figuring NOL carrybacks and carryovers, figure the NOL deduction on a joint return as you would for an individual. However, treat the NOL deduction as a joint NOL.

If you and your married and filed separate returns for each year involved in figuring NOL carrybacks and carryovers, the spouse who sustained the loss may take the NOL deduction on a separate return.
Special rules apply for figuring the NOL carrybacks and carryovers of married people whose filing status changes for any tax year involved in figuring an NOL carryback or carry-over.

**Separate to joint return.** If you and your spouse file a joint return for a carryback or carryforward year, and were married but filed separate returns for any of the tax years involved in figuring the NOL carryback or carryover, treat the separate carryback or carryover as a joint carryback or carryover.

**Joint to separate returns.** If you and your spouse file separate returns for a carryback or carryforward year, but filed a joint return for any or all of the tax years involved in figuring the NOL carryover, figure each of your carryovers separately.

**Joint return in NOL year.** Figure each spouse's share of the joint NOL through the following steps.

1. Figure each spouse's NOL as if he or she filed a separate return. If only one spouse has an NOL, stop here. All of the joint NOL is that spouse's NOL.

2. If both spouses have an NOL, multiply the joint NOL by a fraction, the numerator of which is spouse A's NOL figured in (1) and the denominator of which is the total of the spouses' NOLs figured in (1). The result is spouse A's share of the joint NOL. The rest of the joint NOL is spouse B's share.

**Example 1.** Mark and Nancy are married and file a joint return for 2015. They have an NOL of $5,000. They carry the NOL back to 2013, a year in which Mark and Nancy filed separate returns. Figured separately, Nancy's 2015 deductions were more than her income, and Mark's income was more than his deductions. Mark does not have any NOL to carry back. Nancy can carry back the entire $5,000 NOL to her 2013 separate return.

**Example 2.** Assume the same facts as in Example 1, except that both Mark and Nancy had deductions in 2015 that were more than their income. Figured separately, his NOL is $1,800 and her NOL is $3,000. The sum of their separate NOLs ($4,800) is less than their $5,000 joint NOL because his deductions included a $200 net capital loss that is not allowed in figuring his separate NOL. The loss is allowed in figuring their joint NOL because it was offset by Nancy's capital gains. Mark's share of their $5,000 joint NOL is $1,875 ($5,000 × $1,800/$4,800) and Nancy's is $3,125 ($5,000 − $1,875).

**Joint return in previous carryback or carryforward year.** If only one spouse had an NOL deduction on the previous year's joint return, all of the joint carryover is that spouse's carryover. If both spouses had an NOL deduction (including separate carryovers of a joint NOL, figured as explained in the previous discussion), figure each spouse's share of the joint carryover through the following steps.

1. Figure each spouse's modified taxable in-come as if he or she filed a separate return.
2. Multiply the joint modified taxable income you used to figure the joint carryover by a fraction, the numerator of which is spouse A's modified taxable income figured in (1) and the denominator of which is the total of the spouses' modified taxable incomes figured in (1). This is spouse A's share of the joint modified taxable income.

3. Subtract the amount figured in (2) from the joint modified taxable income. This is spouse B's share of the joint modified taxable income.

4. Reduce the amount figured in (3), but not below zero, by spouse B's NOL deduction.

5. Add the amounts figured in (2) and (4).

6. Subtract the amount figured in (5) from spouse A's NOL deduction. This is spouse A's share of the joint carryover. The rest of the joint carryover is spouse B's share.

Example. Sam and Wanda filed a joint return for 2012 and separate returns for 2014 and 2015. In 2015, Sam had an NOL of $18,000 and Wanda had an NOL of $2,000. They choose to carry back both NOLs 2 years to their 2012 joint return and claim a $20,000 NOL deduction.

Their joint modified taxable income (MTI) for 2013 is $15,000, and their joint NOL carryover to 2014 is $5,000 ($20,000 – $15,000). Sam and Wanda each figure their separate MTI for 2013 as if they had filed separate returns. Then they figure their shares of the $5,000 carryover as follows.

**Step 1.**

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<td>Sam's separate MTI</td>
<td>$9,000</td>
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<td>Wanda's separate MTI</td>
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<td><strong>Total MTI</strong></td>
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**Step 2.**

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<td>Sam's MTI ÷ total MTI($9,000 ÷ $12,000)</td>
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<td><strong>Sam's share of joint MTI</strong></td>
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**Step 3.**

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<td><strong>Wanda's share of joint MTI</strong></td>
<td><strong>$3,750</strong></td>
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**Step 4.**

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<td><strong>Wanda's share of joint MTI</strong></td>
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<td>Wanda's NOL deduction</td>
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<tr>
<td><strong>Wanda's remaining share</strong></td>
<td><strong>$1,750</strong></td>
</tr>
</tbody>
</table>

**Step 5.**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sam's share of joint MTI</td>
<td>$11,250</td>
</tr>
<tr>
<td>Wanda's remaining share</td>
<td>+ 1,750</td>
</tr>
<tr>
<td><strong>Joint MTI to be offset</strong></td>
<td><strong>$13,000</strong></td>
</tr>
</tbody>
</table>

**Step 6.**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sam's NOL deduction</td>
<td>$18,000</td>
</tr>
</tbody>
</table>
Joint MTI to be offset \(-13,000\)
Sam's carryover to 2013 \(\$5,000\)
Joint carryover to 2013 \(\$5,000\)
Sam's carryover \(-5,000\)
Wanda's carryover to 2013 \(-$0-\)

**Corporate Net Operating Losses (NOLs)**

A corporation generally figures and deducts a net operating loss (NOL) the same way an individual, estate, or trust does. The same 2-year carryback and up to 20-year carryforward periods apply, and the same sequence applies when the corporation carries two or more NOLs to the same year. For more information on these general rules, see Publication 536, Net Operating Losses (NOLs) for Individuals, Estates, and Trusts.

A corporation’s NOL generally differs from individual, estate, and trust NOLs in the following ways.

1. A corporation can take different deductions when figuring an NOL.
2. A corporation must make different modifications to its taxable income in the carryback or carryforward year when figuring how much of the NOL is used and how much is carried over to the next year.
3. A corporation uses different forms when claiming an NOL deduction.

For more information, see the Instructions for Form 1139, and the instructions for the corporation’s tax return.

**Claiming the NOL Deduction**

Generally, a corporation must carry an NOL back 2 years prior to the year the NOL is generated. If the NOL is not used in the prior years, the remaining NOL can be carried forward for up to 20 years after the tax year in which the NOL was generated. Special rules apply to certain losses including a specified liability loss, a farming loss, certain disaster losses, an applicable 2008 or 2009 NOL, an eligible loss, or an excess interest loss. See the Instructions for Form 1139.

A corporation can make an election to waive the carryback period and use only the 20 year carryforward period. To make the election check the box on Schedule K, Form 1120, consolidated tax return filers must also attach a statement to the original return, filed by the due date (including extensions) for the NOL year.

**NOL carryback.** The following rules apply.

- If a corporation carries back the NOL, it can use either Form 1120X or Form 1139. A corporation can get a refund faster by using Form 1139. It cannot file Form 1139 before filing the return for the corporation’s NOL year, but it must file
Form 1139 no later than 1 year after the year it sustains the NOL.

- If the corporation does not file Form 1139, it must file Form 1120X within 3 years of the due date, plus extensions, for filing the return for the year in which it sustains the NOL.
- A personal service corporation may not carryback an NOL to or from any tax year in which a section 444 election to have a tax year other than a required tax year applies.

**NOL carryforward.** If a corporation carries forward its NOL, it enters the carryover on Schedule K, Form 1120, line 12. It also enters the deduction for the carryover (but not more than the corporation’s taxable income after special deductions) on line 29(a) of Form 1120, or the applicable line of the corporation’s income tax return.

**Carryback expected.** If a corporation expects to have an NOL in its current year, it can automatically extend the time for paying all or part of its income tax for the immediately preceding year. It does this by filing Form 1138, Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback. It must explain on the form why it expects the loss.

The payment of tax that may be postponed cannot exceed the expected overpayment from the carryback of the NOL.

**Period of extension.** The extension is in effect until the end of the month in which the return for the NOL year is due (including extensions).

If the corporation files Form 1139 before this date, the extension will continue until the date the IRS notifies the corporation that its Form 1139 is allowed or disallowed in whole or in part.

**Figuring the NOL Carryover**

If the NOL available for a carryback or carryforward year is greater than the taxable income for that year, the corporation must modify its taxable income to figure how much of the NOL it will use up in that year and how much it can carry over to the next tax year. Its carryover is the excess of the available NOL over its modified taxable income for the carryback or carryforward year.

**Modified taxable income.** A corporation figures its modified taxable income the same way it figures its taxable income, with the following exceptions.

- It can deduct NOLs only from years before the NOL year whose carryover is being figured.
- The corporation must figure its deduction for charitable contributions without considering any NOL carrybacks.

The modified taxable income for any year cannot be less than zero.
Modified taxable income is used only to figure how much of an NOL the corporation uses up in the carryback or carryforward year and how much it carries to the next year. It is not used to fill out the corporation’s tax return or figure its tax.

**Ownership change.** A loss corporation (one with cumulative losses) that has an ownership change is limited on the taxable income it can offset by NOL carryforwards arising before the date of the ownership change. This limit applies to any year ending after the change of ownership.

See sections 381 through 384, and 269 of the Internal Revenue Code and the related regulations for more information about the limits on corporate NOL carryovers and corporate ownership changes.