



Net Deferred Tax Liability Deduction and Combined Returns

TB-96(R) – Revised September 19, 2023 Tax: Corporation Business Tax

Revision Information: This Technical Bulletin was revised on September 19, 2023, to include law changes that govern the Net Deferred Tax Liability Deduction that were codified in P.L. 2023, c. 96. The law does not change when taxpayers can begin taking the deduction or the full amount of the deduction but does affect the amount that can be claimed and the amount of privilege periods over which the deduction will be claimed.

P.L. 2018, c. 48 and P.L. 2018, c. 131 collectively mandate combined reporting for privilege periods ending on and after July 31, 2019 (beginning on and after August 1, 2018, if a full 12-month privilege period of the managerial member begins August 1, 2018, and ends July 31, 2019). Recognizing that certain companies could be adversely affected by the shift to combined reporting, a special ASC-740 relief deduction was included in the two laws. P.L. 2023, c. 96, made a series of amendments to the deduction. This bulletin explains the Net Deferred Tax Liability Deduction and addresses specific questions that the Division has received.

N.J.S.A. 54:10A-4(k)(16) as amended by P.L. 2023, c. 96 states:

- (A) There shall be allowed as a deduction an amount computed in accordance with this paragraph.
- (B) For purposes of this paragraph, "net deferred tax liability" means deferred tax liabilities that exceed the deferred tax assets of the combined group, as computed in accordance with generally accepted accounting principles, and "net deferred tax asset" means that deferred tax assets exceed the deferred tax liabilities of the combined group, as computed in accordance with generally accepted accounting principles.
- (C) Only publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company's financial statements prepared in accordance with generally accepted accounting principles, as of the effective date of this paragraph, shall be eligible for this deduction.
- (D) If the provisions of sections 18 through 23 of P.L.2018, c.48 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to the members' net deferred tax liability or an aggregate decrease to the members' net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the combined group shall be entitled to a deduction, as determined in this paragraph.
- (E)(i) Beginning with the combined group's first privilege period on or after January 1 of the fifth year after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a combined group shall be entitled to a deduction from combined group entire net income equal to one-tenth of the amount necessary to offset the increase in the net deferred tax liability or decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability, according to the schedule provided by subsubparagraphs (ii) and (iii) of this subparagraph (E). Such increase in the net deferred tax liability or decrease in the net deferred tax asset or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the unitary reporting requirements under sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and C.54:10A-

4.6 to C.54:10A-4.11) but for the deduction provided under this paragraph as of the effective date of this paragraph.

- (ii) For group privilege periods beginning on and after January 1, 2023, but before January 1, 2030, the combined group may deduct one percent of the amount necessary to offset the increase in the net deferred tax liability or decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability, during a group privilege period. Such increase in the net deferred tax liability or decrease in the net deferred tax asset or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the unitary reporting requirements under sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided under this paragraph as of the effective date of this paragraph.
 - (iii) For group privilege periods beginning on and after January 1, 2030, the combined group may deduct up to five percent of any remaining unused amount of the deduction during the group privilege period, until the group privilege period in which the total deduction amount has been fully utilized. Such increase in the net deferred tax liability or decrease in the net deferred tax asset or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the unitary reporting requirements under sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided under this paragraph as of the effective date of this paragraph.
- (F) The deferred tax impact determined in subparagraph (E) of this paragraph must be converted to the annual Deferred Tax Deduction amount, as follows: (i) the deferred tax impact determined in subparagraph (E) of this paragraph shall be divided by the rate determined under section 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.); (ii) the resulting amount shall be further divided by the New Jersey unitary business allocation factor that was used by the combined group in the calculation of the deferred tax assets and deferred tax liabilities as described in subparagraph (E) of this paragraph; (iii) the resulting amount represents the total net Deferred Tax Deduction available over the [ten-year] period as described in subparagraph (E) of this paragraph.
- (G) The deduction calculated under this paragraph shall not be adjusted as a result of any events happening subsequent to such calculation, including, but not limited to, any disposition or abandonment of assets. Such deduction shall be calculated without regard to the federal tax effect and shall not alter the tax basis of any asset. If the deduction under this section is greater than combined group entire net income, any excess deduction shall be carried forward and applied as a deduction to combined group entire net income in future privilege periods until fully utilized.
- (H) Any combined group intending to claim a deduction under this paragraph shall file a statement with the director on or before July 1 of the year subsequent to the first privilege period for which a combined return is required. Such statement shall specify the total amount of the deduction which the combined group claims on such form and in such manner as prescribed by the director. No deduction shall be allowed under this paragraph for any privilege period except to the extent claimed on such timely filed statement in accordance with this paragraph.

Definitions

For purposes of the Net Deferred Tax Liability Deduction, the Division defines the following terms as stated:

Publicly Traded Company means a company that is listed on a stock exchange or over-the-counter markets.

Generally Accepted Accounting Principles refers to accounting principles, standards, and procedures established by either:

- *U.S. Generally Accepted Accounting Principles (U.S. GAAP)*, which are issued by the Financial Accounting Standards Board (FASB); **or**
- *International Financial Reporting Standards (IFRS)*, which are issued by the International Accounting Standards Board (IASB).

Financial Statements are statements that are required to be filed on a schedule (annually, quarterly, etc.) and that are prepared in accordance with generally accepted accounting principles. This includes, but is not limited to, 10-K, 10-Q, or SEC Form 8-K that are filed with the U.S. Securities and Exchange Commission.

Net Deferred Tax Asset refers to the deferred tax assets that exceed the deferred tax liabilities of a combined group that are computed in accordance with generally accepted accounting principles.

Net Deferred Tax Liability refers to the deferred tax liabilities that exceed the deferred tax assets of the combined group that are computed in accordance with generally accepted accounting principles.

Net Deferred Tax Liability Deduction Applications

Publicly traded companies and their affiliates (subsidiaries) whose deferred tax positions were negatively affected as a direct result of the change to mandatory combined reporting were eligible to submit a claim for a Net Deferred Tax Liability Deduction (NDTLD). Applications (Form DT-1, New Jersey Corporation Business Tax Statement of Net Deferred Tax Liability Deduction) were required to be uploaded through the New Jersey Online Notice Response Service (NJ ONRS) on or before July 1, 2020. Taxpayers must include a copy of their completed Form DT-1 with their CBT-100U when claiming the deduction. **If a combined group never timely applied for the deduction, the combined group is not entitled to the deduction.**

Financial statements must have been filed with a United States regulatory authority or a regulatory authority of a foreign nation with which the United States has a reciprocal agreement. Financial statements must have been prepared in accordance with generally accepted accounting principles.

Changes to the Net Deferred Tax Liability Allowable Deduction Amount

P.L. 2023, c. 96 amended the net deferred tax liability deduction. While the deduction can still be taken for privilege periods beginning on and after January 1, 2023, the allowable deduction amount will be calculated differently than originally legislated. The deduction can be taken over a minimum of 27 group privilege periods (instead of the originally legislated 10 group privilege periods). There is no requirement that the periods be consecutive. There are two deduction periods: one for group privilege periods beginning on or after January 1, 2023, but before January 1, 2030, and another for group privilege periods beginning on or after January 1, 2030. The amount that can be claimed on the tax return is governed by the deduction percentage for that period. If an entity cannot use the deduction in a particular group privilege period because of the income limitation in N.J.S.A. 54:10A-4(k)(16)(G), the balance is carried forward for use in a future period but the total amount used in a given period cannot exceed the allowable deduction percentage for that privilege period.

For the first deduction period (group privilege periods beginning on or after January 1, 2023, but before January 1, 2030), the deduction is limited to 1% per period of the total NDTLD amount for the first 7 group privilege periods.

For the second deduction period (privilege periods beginning on or after January 1, 2030), the deduction is limited to 5% per period of the total remaining NDTLD until fully used.

The 1% and 5% amounts are calculated once at the beginning of each deduction period. They are not recalculated each time a deduction is claimed on the tax return. This means that for the first group

privilege period beginning on or after January 1, 2030, to calculate the amount of the allowable deduction for each period, you deduct the amount that was used by the combined group during the previously deduction period from the total NDTLD and then multiply the remainder by 5%. This will give you the amount that you deduct each group privilege period starting with the group privilege period beginning on or after January 1, 2030, until the deduction is fully used.

Q & A on Net Deferred Tax Liability Deduction

The Division has received several questions regarding the Net Deferred Tax Liability Deduction (NDTLD), which are answered below:

1. In the case of a merger or split-off, what happens to the NDTLD?

The NDTLD survives a merger or split-off. In the case of a merger, the deduction amount is the unused total of the NDTLD that both entities had applied for with the Division. If the group splits into two separate groups, the total remaining unused amount of the deduction must be prorated between the groups. Copies of the DT-1s that were filed must be included with the tax returns and, if applicable, a copy of any proration calculation.

2. The combined group has a loss for the privilege period, can the combined group use the net deferred tax liability deduction?

No. If there is no income, the combined group cannot use the net deferred tax liability deduction. However, the net deferred tax liability deduction does not expire and can be carried forward for use in a future privilege period.

Note: If the combined group had income that was less than the amount of the calculated deduction for any given deduction period, the group can use a portion of the deduction amount and carry the balance forward for use in a future privilege period.

3. I have an unused net deferred tax liability deduction carryover amount, may I use it along with the allotted current privilege period unused net deferred tax liability deduction amount if the entire net income of the combined group after other State modifications exceeds the allotted current privilege period unused net deferred tax liability deduction amount?

No. However, as the deduction does not expire, if a portion of the deduction cannot be completely used in the period, the combined group may carry over the unused amount of the deduction into a future period for use after the original periods for which the 1% and 5% deduction amounts were taken. The carried over amounts being used by the combined group cannot exceed 5% of the total deduction when deducted.

4. We submitted Form DT-1 before the deadline of July 1, 2020. Line 7 of the form shows an amount for us to use annually over a 10-year period beginning on or after January 1, 2023. Is this the amount we should use?

No. P.L. 2023, c.96 changed the percent of the deduction that can be claimed and the number of privilege periods over which the deduction can be claimed. Eligible applicants must use the amount recorded on line 6 of Form DT-1 to calculate their NDTLD percentages for each of the deduction periods.

5. Can the Division provide an example of how to calculate the deduction amounts?

Example: Group A timely applied for a net deferred tax liability deduction totaling \$100 million with the Division. To start this example, let's say that the group has an entire net income of \$8,500,000 annually and they are a calendar year filer.

For the first deduction period (group privilege periods beginning on January 1, 2023, but before January 1, 2030), Group A would be entitled to a \$1,000,000 per group privilege period deduction for a total of \$7,000,000 the first 7 group privilege periods.

For the second deduction period (privilege periods beginning on or after January 1, 2030), Group A would be entitled to a \$4,650,000 deduction $((\$100M - \$7M) * 0.05)$ per group privilege period.

Now let's change the example and say that for Tax Year 2029, Group A had a net operating loss (all other facts remain the same). This means that instead of using \$7,000,000 of their NDTLD in the first 7 group privilege periods, Group A only used \$6,000,000.

Since Group A was unable to deplete the total NDTLD calculated for the first deduction period in this example, the unused amount is carried forward and becomes part of the calculation for the second deduction period. Meaning that for the second deduction period (privilege periods beginning on or after January 1, 2030), Group A would be entitled to a \$4,700,000 deduction $((\$100M - \$6M) * 0.05)$ per group privilege period.

If during the second deduction period Group A cannot use any or all of its \$4,700,000 deduction in a given privilege period, the balance is carried forward for use in a future period. The number of privilege periods over which the deduction will be used is increased if there is a balance carried forward in the second deduction period. The deduction for each privilege period is not recalculated.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

Note: A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.