

Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

DRAFT  
10.10.19

BILL 15

LLS NO. 20-0238.01 Esther van Mourik x4215

INTERIM COMMITTEE BILL

**Tax Expenditure Evaluation Interim Study Committee**

**BILL TOPIC: "Net Operating Loss Deduction Modifications"**

**A BILL FOR AN ACT**

101 **CONCERNING MODIFICATIONS TO THE STATE'S NET OPERATING LOSS**  
102 **DEDUCTION.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Tax Expenditure Evaluation Interim Study Committee.** Colorado taxpayers can claim a net operating loss deduction on their Colorado tax return. Unless statute otherwise provides, the state deduction is currently allowed in the same manner that a similar deduction is allowed under the internal revenue code to determine federal taxable income.

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

Under current law, corporate taxpayers in Colorado are allowed to carry forward their net operating loss deduction for the same number of years as allowed for a federal net operating loss. For many years, taxpayers were limited to a 20-year carryforward period for both state and federal taxes. The federal "Tax Cuts and Jobs Act" (TCJA), enacted in 2017, allowed federal taxpayers unlimited years to carry forward net operating losses. Because Colorado's statute specifies that net operating losses may be carried forward "for the same number of years as allowed for a federal net operating loss", the TCJA's change resulted in the same change to Colorado's law. The bill partially decouples the corporate net operating loss deduction from the federal net operating loss deduction by returning the state's carryforward period to 20 years.

The bill also repeals a state provision that was effective only for financial institutions, so that, for purposes of the period of years a loss can be carried forward, financial institutions will now be treated the same as any other taxpayer.

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

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

16           (2) The general assembly hereby finds and declares that the

1 intended purpose of the change to the net operating loss deduction for  
2 financial institutions is to treat all taxpayers uniformly, giving all  
3 corporate taxpayers a twenty-year carryforward period. When this special  
4 provision was enacted for financial institutions in 1987, federal law  
5 provided that financial institutions were only allowed to carry losses  
6 forward for five years as compared to fifteen years for other corporations.  
7 The Colorado law, which allowed financial institutions to carry losses  
8 forward for fifteen years, was likely enacted to allow financial institutions  
9 to be treated equally to other taxpayers in the state.

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

12 **39-22-504. Net operating losses.** (3) (a) FOR INCOME TAX YEARS  
13 COMMENCING BEFORE JANUARY 1, 2021, net operating losses of  
14 corporations may be carried forward for the same number of years as  
15 allowed for a federal net operating loss. Net operating losses of  
16 corporations may not be carried back to an earlier tax year.

17 (b) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY  
18 1, 2021, NET OPERATING LOSSES OF CORPORATIONS MAY BE CARRIED  
19 FORWARD FOR TWENTY YEARS. NET OPERATING LOSSES OF CORPORATIONS  
20 MAY NOT BE CARRIED BACK TO AN EARLIER TAX YEAR.

21 (4) If a financial institution suffers a net operating loss for any  
22 taxable year beginning on or after January 1, 1984, AND BEFORE JANUARY  
23 1, 2021, the amount of the unused net operating loss may be carried  
24 forward to each of the fifteen years following the taxable year of such  
25 loss. For the purposes of this subsection (4), "financial institution" means  
26 any institution to which section 585 or 593 of the internal revenue code  
27 applies.

1           **SECTION 3. Act subject to petition - effective date.** This act  
2 takes effect at 12:01 a.m. on the day following the expiration of the  
3 ninety-day period after final adjournment of the general assembly (August  
4 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a  
5 referendum petition is filed pursuant to section 1 (3) of article V of the  
6 state constitution against this act or an item, section, or part of this act  
7 within such period, then the act, item, section, or part will not take effect  
8 unless approved by the people at the general election to be held in  
9 November 2020 and, in such case, will take effect on the date of the  
10 official declaration of the vote thereon by the governor.

11       <{*TABOR subsection (8) specifies that a new state definition of taxable*  
12       *income can't apply before the next tax year, in this case January 1,*  
13       *2021. That means no safety clause is necessary.*>