

§ 105-153.5A. (Effective for taxable years beginning on or after January 1, 2022) Net operating loss provisions.

(a) **State Net Operating Loss.** – A taxpayer's State net operating loss for a taxable year is the amount by which business deductions for the year exceed gross income for the year as determined under the Code adjusted as provided in G.S. 105-153.5 and G.S. 105-153.6. The amount of a taxpayer's State net operating loss must also be determined in accordance with the following modifications:

- (1) No State net operating loss deduction shall be allowed.
- (2) The amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets.
- (3) The exclusion provided by Code section 1202 shall not be allowed.
- (4) No deduction shall be allowed under G.S. 105-153.5(a1) for the child deduction.
- (5) The deductions which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business.
- (6) Any deduction under Code section 199A shall not be allowed.

(b) **Deduction.** – A taxpayer may carry forward a State net operating loss the taxpayer incurred in a prior taxable year and deduct it in the current taxable year, subject to the limitations in this subsection:

- (1) The loss was incurred in one of the preceding 15 taxable years.
- (2) Any loss carried forward is applied to the next succeeding taxable year before any portion of it is carried forward and applied to a subsequent taxable year.
- (3) The taxpayer's State net operating loss deduction may not exceed the amount of the taxpayer's North Carolina taxable income determined without deducting the taxpayer's State net operating loss.
- (4) The portion of the State net operating loss attributable to the carryforward allowed under subsection (f) of this section is only allowed to the extent described in subsection (f) of this section.

(c) **Nonresidents.** – In the case of a taxpayer that is a nonresident in the year of the loss, the State net operating loss only includes income and deductions derived from a business carried on in this State in the year of the loss. In the case of a taxpayer that is a nonresident in the year of the deduction, the State net operating loss must be included in the numerator of the fraction used to calculate taxable income as defined in G.S. 105-153.4(b).

(d) **Part-Year Residents.** – In the case of a taxpayer that is a part-year resident in the year of the loss, the State net operating loss includes income and deductions derived from a business carried on in this State while the taxpayer was a nonresident and includes business income and deductions derived from all sources during the period the taxpayer was a resident. In the case of a taxpayer that is a part-year resident in the year of the deduction, the State net operating loss must be included in the numerator of the fraction used to calculate taxable income as defined in G.S. 105-153.4(c).

(e) **Administration.** – A taxpayer claiming a deduction under this section must maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The Secretary or the taxpayer may redetermine a loss originating in a taxable year that is closed under the statute of limitations for the purpose of determining the amount of loss that can be carried forward to a taxable year that remains open under the statute of limitations.

(f) **Federal Net Operating Loss Carryforwards.** – The portion of a taxpayer's federal net operating loss carryforward that was not absorbed in tax years beginning prior to January 1, 2022,

may be included in the amount of a taxpayer's State net operating loss in taxable years beginning on or after January 1, 2022. The federal net operating loss carryforward is only allowed as a State net operating loss in tax years beginning after January 1, 2022, to the extent that it meets all of the following conditions:

- (1) The loss would have been allowed in that taxable year under section 172 of the Code as enacted on April 1, 2021.
- (2) The provisions of G.S. 105-153.5(c2)(8), (9), (10), (13), and (14) do not apply to the federal net operating loss carryforward.
- (3) The loss was incurred in one of the preceding 15 taxable years. (2021-180, s. 42.6(b); 2022-13, s. 2.2(a).)