


 Colorado Legislative Council Staff Fiscal Note
STATE
REVISED FISCAL IMPACT
(replaces fiscal note dated February 3, 2010)

Drafting Number: LLS 10-0745 **Date:** February 5, 2010
Prime Sponsor(s): Rep. Ferrandino **Bill Status:** Senate Second Reading
Sen. Heath **Fiscal Analyst:** Ron Kirk (303-866-4785)

TITLE: CONCERNING A TEMPORARY LIMIT ON THE STATE INCOME TAX DEDUCTION FOR A NET OPERATING LOSS.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue General Fund	up to \$8.2 million	up to \$16.5 million
State Expenditures		
FTE Position Change		
Effective Date: August 11, 2010, assuming the General Assembly adjourns May 12, 2010, as scheduled and no referendum petition is filed.		
Appropriation Summary for FY 2010-2011: None required.		
Local Government Impact: None.		

Summary of Legislation

Under current law, a corporation may reduce its Colorado taxable income by carrying forward its net operating loss (NOL). There is no limit on the amount of NOL that may be carried forward to reduce a corporation's taxable income.

As amended by the **Senate Finance Committee**, for tax years 2011, 2012, and 2013, this bill limits the amount of NOL that may be carried forward to \$250,000. A NOL may be carried forward one additional year for each year that a corporation is prohibited from carrying forward a portion of its NOL resulting from the \$250,000 cap. In addition, any portion of NOLs that are deferred to 2014 due to the requirements in this bill shall be increased by an amount equal to interest set at the prime rate, as reported by the *Wall Street Journal*, plus one point, rounded to the nearest full percent for a period equal to the deferral period for which the NOL is deferred. The Commissioner of Banking is required to establish this rate as of July 1, 2011, effective, January 1, 2012. **Thus, this bill will reduce state revenue to the extent that interest is added to the NOL beginning in FY 2013-14 by up to \$8.7 million.** This bill does not affect NOLs of individuals, estates, and trusts.

The department is required to account for the revenue attributable to this bill, and to the extent information is available, make quarterly reports to the legislature about the revenue gain. The bill directs that none of the new revenue be used to fund additional state FTE.

Background

The Colorado NOL deduction for corporations is calculated in the same manner as the federal NOL deduction except that, in the case of a corporation apportioning income, it is that part of the federal NOL, as modified, that is from Colorado sources.

State Revenue

State income tax revenue to the General Fund will increase \$8.2 million in FY 2010-11 and \$16.5 million in FY 2011-12.

For tax years beginning on or after August 6, 1997, Colorado corporate NOLs may be carried forward for up to 20 years. They may not be carried back and used to reduce tax liability in earlier years. Three years of sample data from corporate income tax returns were used to evaluate the effect of limiting the NOL carry forward deduction to \$250,000. When capping the NOL carry forward to \$250,000, the increase in corporate gross taxes owed averaged \$16.5 million over the three-year period. A half-year revenue impact for this bill is estimated in the first year, thus, General Fund revenue is estimated to increase \$8.2 million in FY 2010-11 and \$16.5 million in FY 2011-12.

As amended by the **Senate Finance Committee**, beginning in FY 2013-14, this bill allows any portion of NOLs that are deferred to 2014 and afterwards, to increase by an amount equal to interest at the rate reported by the *Wall Street Journal*, plus one point, rounded to the nearest full percent for a period equal to the deferral period for which the NOL is deferred. Based on historical data from the Federal Reserve Bank, it is estimated that the prime rate may increase considerably above the 3.25 percent rate that is effective at the time this fiscal note was revised. For example, during the last two economic upticks, the prime rate climbed to 8.25 percent in February 2007 and 8.75 percent in February 2000. This bill, as amended in the Senate Finance Committee, assumes prime interest rates that may range from 7 percent to the 8 percent range. Based upon these assumptions, this bill will reduce state revenue by up to \$8.7 million in FY 2013-14.

State Expenditures

Since the NOL carry forward deduction is currently programmed in the department's computer accounting system, this bill can be implemented within existing resources. It is assumed that the Department of Revenue can absorb the costs of providing information on the amount of money foregone by taxpayers to the extent that data are available using their current information systems.

Departments Contacted

Revenue