

CARRYBACK OF BUSINESS LOSSES

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House Bill 4879 (proposed substitute H-2)
Sponsor: Rep. Diana Farrington
Committee: Tax Policy
Complete to 10-26-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4879 would amend the Income Tax Act to allow taxpayers to elect to carry back certain business losses to each of the five tax years preceding the tax year of the business loss.

Section 623 of the act provides that a corporate income tax of 6.0% is levied on taxpayers with business activity in Michigan or an ownership or beneficial interest in a flow-through entity that has business in Michigan, subject to certain adjustments, including the deduction of any available business loss after December 31, 2011. Generally, the business loss is carried forward to the year immediately after the loss year as an offset to the allocated or apportioned corporate income tax base, then successively to the next nine taxable years following the loss year or until the loss is used up, whichever comes first.

The bill would add that, for a business loss incurred in a tax year beginning after December 31, 2017, and before January 1, 2021, a taxpayer could elect to carry back the business loss to each of the five preceding tax years. The bill states that the five-year carryback would be an exception to the provision in 1941 PA 122, also known as the revenue act, that a deficiency, interest, or penalty can only be assessed for four years after the due date of a return.

The election to carry back a business loss would be irrevocable and would have to be made as prescribed by the Department of Treasury. The taxpayer would have to make the election before the filing due date of the taxpayer's annual return, including extensions, for the first tax year that begins after December 31, 2020.

[The bill also would amend which sections of the federal Internal Revenue Code under which amounts of dividends and royalties received from foreign persons and operating entities can be deducted. The bill's enacting language states that the change is curative and intended to clarify existing law and accurately reflect the interpretation and application of that provision in accordance with the notice to taxpayers dated July 2, 2018,¹ regarding foreign income repatriation and will be applied retroactively.]

MCL 206.12, 206.607, and 206.623

¹ https://www.michigan.gov/documents/taxes/Notice-Repatriation_626945_7.pdf

BACKGROUND:

The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act² included a similar provision for carrybacks, providing that losses arising in 2018, 2019, and 2020 would be a net operating loss carryback to each of the five taxable years preceding the loss year. However, the federal rule is the default rule (from which taxpayers may opt out). The proposed rule in HB 4879 would be at the election of the taxpayer.

FISCAL IMPACT:

As written, the bill would initially reduce corporate income tax revenue by an unknown, but potentially large amount. However, to the extent that net operating losses are carried back instead of being carried forward (which would ordinarily reduce corporate income tax collections in the future), the initial revenue reduction could be substantially mitigated when returns for future tax years are filed.

Because specific detail from businesses filing Michigan corporate tax returns is not available, it is not possible to construct a precise estimate. However, utilizing estimates from the Joint Committee on Taxation for the impact at the federal level, the initial revenue reduction in Michigan could be at least \$325 million.

As previously mentioned, applying net operating losses against taxable incomes from prior years means that future tax liabilities would presumably be larger than under current law, offsetting much of the initial loss. However, the rate at which (or if) this occurs depends on future economic conditions and corporate profits.

All revenue from the corporate income tax accrues to the general fund.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

² <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>