





STATE OF HAWAII — DEPARTMENT OF TAXATION  
**GENERAL INSTRUCTIONS FOR APPLICATION FOR TENTATIVE  
REFUND FROM CARRYBACK OF NET OPERATING LOSS (NOL)**

**FOR USE BY INDIVIDUALS, ESTATES, OR TRUSTS**

*(Section references are to the Internal Revenue Code unless otherwise specified)*

**CHANGES TO NOTE**

- For net operating losses arising in tax years ending after December 31, 2017, Act 27, Session Laws of Hawaii 2018, eliminates NOL carrybacks (except for farming NOLs which are permitted a two-year carryback), and allows unused NOLs to be carried forward indefinitely.
- For net operating losses arising in tax years beginning after December 31, 2017, Act 27, Session Laws of Hawaii 2018, limits the NOL deduction to 80% of taxable income.
- For tax years beginning after December 31, 2017, and before January 1, 2026, Act 27, Session Laws of Hawaii 2018, limits the amount of losses from the trades or businesses of noncorporate taxpayers that the taxpayer can claim each year. Taxpayers can't deduct losses in excess of a threshold amount in the current year. The amount of the excess business loss is treated as an NOL carryover to later tax years. Use federal Form 461 to figure the excess business loss.

**A. WHO MAY FILE AN APPLICATION.**—An application for a tentative carryback adjustment may be filed by any individual, estate, trust, or fiduciary who desires a quick refund of taxes which are affected by the carryback of a farming NOL.

A "farming loss" means the lesser of (1) the amount which would be the NOL for the taxable year if only income and deductions attributable to farming businesses are taken into account, or (2) the amount of the NOL for such taxable year.

**Note:** NOLs are limited by IRC section 461(l), so the NOL carryback generally will not exceed \$250,000 (\$500,000 for joint returns). See the Instructions for federal Form 461, Limitation on Business Losses.

**Note:** If you are a nonresident or part-year resident (Form N-15 filer), you cannot file Form N-109. However, you may use Schedule A (Form N-109) to figure your NOL that is available for carryback or carryforward. You must file an amended return on Form N-15 to carry back your farming NOL. See Item G, Amended Return, for information on filing an amended return.

A taxpayer has an option on whether or not to carry a farming loss back first before carrying it forward. *This form should only be used by those taxpayers choosing to carry their farming losses back.*

**Election Not to Carryback.** You may elect to carry the farming NOL forward instead of first carrying it back to prior years. If you make this election, then you can use your farming NOL only in the carryforward period.

To make this election, attach a statement to your original return filed by the due date (including extensions) for the farming NOL year. This statement must state that you are electing to waive the carryback period under section 235-7(d), HRS, and IRC section 172(b)(1)(B)(iv).

If you filed your original return on time but did not file the statement with it, you can make this election on an amended return filed within 6 months of the original due date of the return, but not including any extension. Attach a statement to your amended return, and write "Filed pursuant to 26 C.F.R. 301.9100-2" at the top of the statement. Also include the statement noted above that you are waiving the carryback period.

Once you elect to waive the carryback period, it cannot be changed later.

If you do not file this statement on time, the carryback period cannot be waived and you must first carry the farming NOL back before carrying it forward.

However, no part of any farming NOL incurred outside of the State prior to beginning business in the State may be included in such election.

**Change in Filing Status.** Special rules apply if you filed a joint return (or a separate return) for some but not all of the tax years involved in figuring an NOL carryback. For details, see federal Publication 536. Attach a computation showing how you figured the carryback.

**B. TIME AND PLACE FOR FILING.**—This form must be filed with the Hawaii Department of Taxation at P.O. Box 3559, Honolulu, Hawaii 96811-3559, and must be filed on or after the date of filing of the return for the taxable year of the NOL and within 12 months from the end of such taxable year. Do not attach this form to your income tax return.

**Note:** If you fail to meet the foregoing limitation, you may file an amended return within three years of the due date prescribed for filing the return, including extensions, for the NOL year or the period agreed to under a written extension of time, whichever is later.

**C. RECOMPUTATION OF TAX LIABILITY.**—To arrive at the decrease in the tax previously determined, recompute the tax after taking the carryback(s) into account. Form N-11 or N-40 and instructions for the applicable year will be helpful in making this recomputation.

Figure the amount of decrease, attributable to the carryback, in tax previously determined for each tax year before the tax year of the NOL. The tax previously determined will be the tax shown on the return as filed, increased by any amounts assessed (or collected without assessment) as deficiencies before the date of the filing of the application, and decreased by any amounts abated, credited, and otherwise repaid prior to that date.

After figuring the tax previously determined, figure the decrease in tax previously determined attributable to the carryback and any related adjustments on the basis of the items of tax taken into account in computing the tax previously determined. In determining any decrease attributable to the carryback or any related adjustment, items must be taken into account only to the extent that they were reported on the return, or were reflected in amounts assessed (or collected without assessment) as deficiencies, or in amounts

abated, credited, refunded, or otherwise repaid, before the date of filing the application.

Deductions (except the charitable contributions deduction) which are limited, for example, by taxable income or adjusted gross income, are to be recomputed after carryback of the NOL.

If the amount of any tax for any taxable year is unpaid, including any installment not yet due, at the date of filing the application, enter the unpaid amount of such tax in the appropriate column.

**Note:** As provided by statute, adjustment to refundable tax credits, except the credit for child and dependent care expenses, must be claimed on or before the end of the year following the year for which the credits are claimed.

**D. ALLOWANCE OF ADJUSTMENT.**—The Director of Taxation will act on this application within 90 days from whichever of the following two dates is later:

1. The date on which this application is filed;  
or

2. The last day of the month in which falls the last date prescribed by law (including any extension of time granted) for filing the return for the taxable year of the NOL from which the carryback results.

**E. DISALLOWANCE OF APPLICATION.**—Any application which contains material omissions or computation errors which the Director of Taxation deems cannot be corrected within the 90-day period may be disallowed. This application for a tentative carryback adjustment does not constitute a claim for credit or refund. If this application is disallowed in whole or in part, no suit based thereon may be maintained in any court for the recovery of the tax. The taxpayer may, however, file a regular claim for credit or refund on an amended return at any time before the expiration of the applicable period of limitation, as further explained in Item G.

**F. EXCESS ALLOWANCES.**—Any amount applied, credited, or refunded on the basis of this application which is later determined by the Department of Taxation to be excessive may be assessed as a deficiency as if it were due to a mathematical or clerical error appearing on the return.

**G. AMENDED RETURN.**—An individual, estate, trust, or fiduciary may obtain a refund by filing an amended return. A separate amended return must be filed for each year that a refund is requested. Generally, the amended return must be filed within 3 years after the due date of the return for the tax year of the NOL.

If you are an individual, fill in the amended return oval and the NOL Carryback oval at the top of Form N-11 or Form N-15. Complete your amended return with all of the correct information. Attach Schedule AMD, Explanation of Changes on Amended Return, to the income tax return. Also attach all forms and statements required to file a complete return. If you are claiming any tax credits, remember to attach the required forms, such as Schedule CR and Schedule X, even if

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you claimed the credits on the original return. A copy of your original federal income tax return for the loss year must also be attached.

**H. YEARS TO WHICH YOU MAY CARRY AN NOL.**— For NOLs arising in tax years ending after December 31, 2017, NOL carrybacks are eliminated (except for farming NOLs which are permitted a two-year carryback), and unused NOLs may be carried forward indefinitely.

Any amount of the loss not used to offset 80% of the taxable income (adjusted, as explained in Item K) for the second preceding year is carried to the first preceding year. Where the loss is not entirely used to offset 80% of the taxable income (adjusted) in the 2 preceding years, the balance may be carried forward indefinitely.

**I. NOL DEDUCTION.**—The sum of your NOL carrybacks and carryovers is your NOL deduction for the tax year to which carried. Before you can figure your NOL deduction for the year, you must first determine what part of any NOLs for any earlier or later tax years represents carryovers or carrybacks to the tax year under consideration. When you have more than one NOL to be carried to the same tax year, apply the loss from the earliest year first.

**J. COMPUTATION WHEN THE NOL IS FULLY ABSORBED IN THE EARLIEST PRECEDING TAX YEAR.**—In refiguring your tax liability for the year to which the NOL is carried and fully absorbed, the deduction for charitable contributions is determined without regard to any NOL carryback. Any other deductions claimed, based on or limited to a percentage of your adjusted gross income (such as medical expenses) must be refigured on the basis of your adjusted gross income, determined after application of the NOL carryback. Also, any credits based on or limited by the tax may be figured on the tax liability as determined after application of the NOL carryback.

**K. COMPUTATION WHEN THE NOL IS NOT FULLY ABSORBED IN PRECEDING TAX YEAR(S).**—The amount of an NOL which you may carry to the next year, after applying it to a prior year or years, is the excess, if any, of the

NOL carryback over 80% of the taxable income of such prior year(s) figured with the following modifications:

(1) Your deduction for capital losses must not be more than the capital gains included in gross income.

(2) You are not permitted any deduction for the excess of a net long-term capital gain over a net short-term capital loss.

(3) Your taxable income for the prior tax year(s) is determined without taking into account the NOL carryback from the loss year or any later tax year. NOLs, otherwise allowable as carrybacks or carryovers, occurring in tax years before such loss year, are taken into account in figuring the taxable income for the prior tax year.

(4) You may not claim any personal exemptions.

(5) Any deductions claimed, except charitable contributions, which are based on or limited to a percentage of adjusted gross income (such as medical expenses) must be refigured on the basis of the adjusted gross income after application of adjustments (1), (2), and (3) above. The deduction for charitable contributions is determined using the same adjustments except that you do not take into account any NOLs being carried back.

The taxable income as modified is to be considered not less than zero.

**L. ATTACHMENTS.**—Attach a copy of your original federal income tax return for the loss year to Form N-109. If a copy of your federal return is not attached, the processing of your return and refund may be delayed.

### Line-By-Line Instructions For Form N-109

Enter in columns (a) and (c), your tax for the applicable carryback year as shown on your original or amended return. If the return was examined, enter the amounts that were determined as a result of the examination.

**Line 2. Amount of net operating loss.** — Enter the lesser of (1) the amount which would

be the NOL for the taxable year if only income and deductions attributable to farming businesses are taken into account, or (2) the amount of the NOL on page 2, Schedule A, line 10.

**Line 7. Net operating loss deduction resulting from carryback.** — Your NOL deduction is limited to 80% of taxable income.

**Line 9. Deductions.** — Individuals — Enter the amount of your itemized deductions, after any limitations, or the standard deduction amount if you did not itemize your deductions.

If your Hawaii adjusted gross income was more than \$83,400, and you were not able to deduct all of your itemized deductions, enter the amount you were able to deduct as calculated on the Total Itemized Deductions Worksheet in your Form N-11 instruction booklet.

The standard deduction amounts are \$2,200 for single or married filing separately filers; \$3,212 for head of household filers; and \$4,400 for married filing jointly or qualifying widow(er) filers.

**Line 11. Exemptions.** — Individuals — Enter \$1,144 times the number of exemptions claimed.

Those qualifying for the disability exemption use the appropriate amounts instead of the above.

**Line 13. Income Tax.** — Refigure your tax after the carryback to determine the tax decrease. Include in the tax before carryback, amounts shown on your original or amended return, and later adjusted, based on an examination of your return.

Attach a detailed computation of the new tax liability shown on line 13, columns (b) and (d). The tax form and instructions for the applicable year will be helpful in making this computation. Include in the amount on line 13 any tax from Forms N-2, N-103, N-152, N-312, N-338, N-344, N-348, N-405, N-586, or N-814.

**Line 16. Nonrefundable tax credits.** — Enter the total of your nonrefundable tax credits. Do not enter an amount that is more than the amount of your adjusted income tax liability on line 15. If line 15 is zero or less, enter zero on line 16.