

Instructions for Form MI-461, Excess Business Loss

Federal Excess Business Loss

The federal 2017 Tax Cuts and Jobs Act (TCJA) enacted a limitation on federal business losses that are included in adjusted gross income (AGI). The limitation is computed by aggregating federal business income and federal business loss. If the computation results in a loss, the Internal Revenue Code (IRC) 461(l) limits such business loss in excess of business income. The limits are adjusted for inflation each year. For 2023, the limitation is \$289,000 for filers who are single or married filing separately or \$578,000 for joint filers. The limitation for fiduciary filers is \$289,000. The excess business loss that is excluded from AGI becomes a net operating loss (NOL) in the following tax year.

Michigan Excess Business Loss

The Michigan Department of Treasury (Treasury) will refer to the amount in excess of the limitation as “excess business loss” for the purpose of this form. Taxpayers who have a federal excess business loss limitation must file Form MI-461 to determine the Michigan portion of federal business income or loss included in AGI. Additionally, the form will determine the possible Michigan portion of the excess business loss that is treated as a Michigan NOL in the following tax year.

Michigan Taxation of Business Income

Michigan’s definition of business income differs from the federal definition of business income. Michigan defines business income as all income arising from transactions, activities, and sources in the regular course of the taxpayer’s trade or business. Michigan business income includes the distributive share of income from a flow-through entity, including portfolio income. Guaranteed payments to partners are not considered business income for Michigan purposes. Taxpayers may subtract from AGI any business income that is not allocated or apportioned to Michigan. Conversely, any loss not allocated or apportioned to Michigan must be added to AGI. Business income is apportioned by using a sales factor computed on a *Schedule of Apportionment* (Form MI-1040H). Due to the differences in the business income reported for federal purposes, the federal business income and loss reported on Form MI-461 may not include all business income or loss for Michigan purposes (e.g., interest and dividends). Business income or loss not reported on Form MI-461 that is not attributable to Michigan must be separately adjusted on Michigan Schedule 1 or Schedule NR.

How to Claim a Michigan NOL Created from a Michigan Excess Business Loss

The Michigan excess business loss becomes a Group 2 TCJA NOL (created in 2022 and future tax years) available to claim in the subsequent year. See Form 5674 and instructions for more information. For assistance in tracking the excess business loss NOL, refer to the “Michigan NOL Carryover Worksheet” available on Treasury’s Web site.

Required Supporting Documentation

Include a copy of the federal income tax return with applicable schedules and statements to substantiate the excess business loss:

- U.S. Form 1040
- U.S. Form 1040 Schedule(s) 1, B, C, D, E, F
- U.S. Form 461
- U.S. Form 4797
- U.S. Form 4835
- Schedule K-1(s)
- Any other applicable documentation

Provide a statement indicating the type and location (city and state) of the business activity for each source of income or loss. For assistance, refer to the “Business, Rental & Royalty Activity Worksheet” and its instructions available on Treasury’s Web site. If there is income or loss subject to apportionment, include a Form MI-1040H.

Line-by-Line Instructions

Lines 1 and 2: For individual income tax filers, enter the filer’s name and full nine-digit Social Security number at the top of the form. For fiduciary filers, enter the name of the estate or trust and full Federal Employer Identification Number (FEIN).

Allowable and Excess Business Loss Table: Report all amounts included in U.S. Form 461, line 14. Enter income as a positive number. Enter loss as a negative number. If you have more than 12 entries, continue those entries on the 2023 *Michigan Excess Business Loss Continuation Schedule* (Form 5606).

Columns A and B: Enter the business entity name and FEIN. Include all entities whose income or loss is included in U.S. Form 461, line 14. If the business entity is a sole proprietorship, enter the filer’s Social Security number.

Combine guaranteed payments that are included in U.S. Form 461, line 14, as one entry. In column A, enter the applicable description instead of a business name. In column B, enter the filer’s Social Security number. See Example 1.

Column C: Enter the apportionment percentage determined on Form MI-1040H, line 8 for each business subject to Michigan apportionment. For entities with business activity only in Michigan, enter 100%. For entities with no business activity in Michigan, enter 0%. Refer to Form MI-1040H instructions for assistance in determining whether business activity is within and/or outside Michigan.

For guaranteed payments that were entered on a separate line in column A, leave column C blank.

Column D: Enter federal business income or loss for each entity after applying passive loss limitation and before applying the federal excess business loss limitation. Report all income or loss included in U.S. Form 461, line 14. Do not enter any additional income or loss that is not included in U.S. Form 461, line 14.

For guaranteed payments that were reported on a separate line in column A, enter the total amount included in U.S. Form 461, line 14, in column D. Also report this amount as a negative number on line 6, column D.

Column E: Multiply the amount in column D by the percentage in column C.

Guaranteed payments received by a Michigan resident are taxable to the State of Michigan, no matter where they were earned.

Guaranteed payments received by a Michigan nonresident for services performed in Michigan are taxable to the State of Michigan, unless the taxpayer resides in a reciprocal state (Illinois, Indiana, Kentucky, Minnesota, Ohio and Wisconsin).

For guaranteed payments entered on a separate line in column A enter the portion that is sourced to Michigan in column E. Also report this amount as a negative number on line 6, column E.

Column F: Subtract the amount in column E from the amount in column D.

Michigan nonresidents only, for guaranteed payments entered on a separate line in column A, enter the portion that is not taxable to Michigan in column F. Also report this amount as a negative number on line 6, column F.

Line 3: Enter the total for columns D, E and F, including amounts from Form 5606, if applicable. If filing multiple Forms 5606 combine the amounts from all forms. The amount on line 3, column D **must match** U.S. Form 461, line 14.

Line 4: If the computed percentage is less than zero, enter zero. If the computed percentage is greater than 100, enter 100.

Line 5: Enter the federal allowable business loss as follows:

Column D: Enter the federal allowable business loss as a negative number: \$289,000 for filers who are single, married filing separately, or fiduciary filers; \$578,000 for joint filers.

Column E: Multiply the amount on line 5, column D by the percentage on line 4, column E. Enter the result on line 5, column E.

Column F: Multiply the amount on line 5, column D by the percentage on line 4, column F. Enter the result on line 5, column F.

Line 6: For guaranteed payments reported on a separate line in the table above, enter in their respective columns as a negative number. See Example 1.

Line 7: Subtotal each column as follows:

Column D: Add lines 5 and 6.

Column E: If line 3 is negative, add lines 5 and 6. If line 3 is positive, add lines 3 and 6.

Column F: If line 3 is negative, add lines 5 and 6. If line 3 is positive, add lines 3 and 6.

Lines 8 and 9: Determine the required adjustment, if any:

- For line 9, column D enter the amount from line 7
- If line 3, columns E and F are both negative or one is zero (see Example 1):
 - Step 1: Skip line 8 and enter the amounts from line 7 on line 9. Continue to instructions based on residency.
- If line 3, column E is positive (see Example 2):
 - Step 1: Skip line 8, column E
 - Step 2: For line 9, column E, enter line 7, column E
 - Step 3: For line 8, column F, enter line 3, column E as a negative number

- Step 4: For line 9, column F, enter the sum of lines 7 and 8, column F. Continue to instructions based on residency.
- If line 3, column F is positive (See Example 3):
 - Step 1: Skip line 8, column F
 - Step 2: For line 9, column F, enter line 7, column F
 - Step 3: For line 8, column E, enter line 3, column F as a negative number
 - Step 4: For line 9, column E, enter the sum of lines 7 and 8, column E. Continue to instructions based on residency.

Michigan Resident Instructions:

- If line 9, column F is a positive number, carry the amount to Schedule 1, line 13 and combine with other amounts reported on that line. Do not duplicate adjustments for the same income or loss on the Schedule 1.
- If line 9, column F is a negative number, carry this amount as a positive number to Schedule 1, line 4 and combine with other amounts reported on that line. Do not duplicate adjustments for the same income or loss on the Schedule 1.

Nonresident and Michigan Part-Year Resident Instructions:

Combine amounts carried to the Schedule NR with other amounts reported on those lines. Do not report the same income or loss more than once on the Schedule NR.

- Carry guaranteed payments included in the adjustment on line 6 to the appropriate columns on line 9 of the Schedule NR.
- Carry line 9, columns D, E, and F to the appropriate columns on line 11 of Schedule NR.

Michigan Resident Estate or Trust Instructions:

- If line 9, column F is a positive number, carry the amount to the *Michigan Fiduciary Income Tax Return* (Form MI-1041), line 38 and combine with other amounts reported on that line.
- If line 9, column F is a negative number, report the amount as a positive number on Form MI-1041, line 33 and combine with other amounts reported on that line.

Line 10: For either column E or F, if line 9 is negative, subtract lines 5 and 8 from line 3. If line 9, column E is positive, you do not have a Michigan excess business loss.

Column E: This amount is a Michigan excess business loss NOL. It becomes a Group 2 NOL in the following year when it becomes available to claim. See Form 5674 for more information. If zero or greater, you do not have a Michigan excess business loss NOL.

Column F: This amount is not attributable to Michigan and is not a Michigan NOL.

Nonresident Estate or Trust Instructions:

Carry the excess business loss from line 10, columns E and F as positive numbers to the appropriate columns on *Michigan Fiduciary Nonresident Schedule* (Form MI-1041 Schedule NR), line 8 and combine with other amounts reported on that line.

Examples

The taxpayers in these examples have a federal excess business loss limitation. These examples illustrate how the Michigan allowed and excess business losses are computed.

Example 1: Michigan resident, single filer with Michigan and non-Michigan losses

Heather, a Michigan resident, is a single filer with a business loss that exceeds her business income by more than the \$289,000 limitation for a single filer. Her business activity and guaranteed payments attributable to Michigan netted to a \$235,000 loss. Business activity in other states created a \$115,000 loss. The Michigan share of the allowable loss is \$244,035. The non-Michigan share of the allowable loss is \$94,965, which must be added back on Schedule 1. Heather creates a Michigan excess business loss NOL carryforward of \$40,965, which may be combined with other Group 2 NOLs available to be deducted on Form 5674 in the following year.

A Business Name	B Federal Employer Identification Number (FEIN or SSN)	C Apportionment Percentage from MI-1040H, line 8 (if applicable)		D Federal Income (Loss) (Amount included in U.S. Form 461, line 14)		E Michigan Income (Loss) (Amount in column D attributable to business activity in Michigan)		F Non-Michigan Income (Loss) (Amount in column D attributable to business activity outside of Michigan)	
Guaranteed payments	111-11-1111		%	50,000	00	50,000	00		00
Company A	22-2222222	77	%	(500,000)	00	(385,000)	00	(115,000)	00
Company B	33-3333333	100	%	100,000	00	100,000	00		00
3. TOTAL. Add columns D, E and F. Include amounts from <i>Excess Business Loss Continuation Schedule</i> , Form 5606 (if applicable)				(350,000)	00	(235,000)	00	(115,000)	00
4. Percentage of Total Loss. Divide the total of each column on line 3 by column D, line 3				100	%	67.14	%	32.86	%
5. Federal Allowable Business Loss				(289,000)	00	(194,035)	00	(94,965)	00
6. Guaranteed payments adjustment				(50,000)	00	(50,000)	00		00
7. Subtotal				(339,000)	00	(244,035)	00	(94,965)	00
8. Adjustment when either line 7, column E or line 7, column F is a positive number							00		00
9. Apportioned Allowable Business Loss as adjusted				(339,000)	00	(244,035)	00	(94,965)	00
10. Excess Business Loss						(40,965)	00	(20,035)	00

Example 2: Michigan resident, single filer with Michigan gains and non-Michigan losses

Joe, a Michigan resident, is a single filer with a business loss that exceeds his business income by more than the \$289,000 limitation for a single filer. His business activity in Michigan generated \$30,000 in income while his business activity in other states created a \$340,000 loss. The allowable loss is comprised of \$30,000 in Michigan income and a limited non-Michigan loss of \$289,000. The non-Michigan loss of \$319,000 must be added back on Schedule 1. Joe did not incur a Michigan excess business loss NOL.

A Business Name	B Federal Employer Identification Number (FEIN or SSN)	C Apportionment Percentage from MI-1040H, line 8 (if applicable)		D Federal Income (Loss) (Amount included in U.S. Form 461, line 14)		E Michigan Income (Loss) (Amount in column D attributable to business activity in Michigan)		F Non-Michigan Income (Loss) (Amount in column D attributable to business activity outside of Michigan)	
Company A	11-1111111	15	%	(400,000)	00	(60,000)	00	(340,000)	00
Evan's Consulting	222-22-2222	100	%	90,000	00	90,000	00		00
3. TOTAL. Add columns D, E and F. Include amounts from <i>Excess Business Loss Continuation Schedule</i> , Form 5606 (if applicable)				(310,000)	00	30,000	00	(340,000)	00
4. Percentage of Total Loss. Divide the total of each column on line 3 by column D, line 3				100	%	0.00	%	100.00	%
5. Federal Allowable Business Loss				(289,000)	00		00	(289,000)	00
6. Guaranteed payments adjustment							00		00
7. Subtotal				(289,000)	00	30,000	00	(289,000)	00
8. Adjustment when either line 7, column E or line 7, column F is a positive number							00	(30,000)	00
9. Apportioned Allowable Business Loss as adjusted				(289,000)	00	30,000	00	(319,000)	00
10. Excess Business Loss							00	(21,000)	00

Example 3: Michigan residents, joint filer with Michigan losses and non-Michigan gains

Robert and Kelli, Michigan residents, are joint filers with a business loss that exceeds their business income by more than the \$578,000 limitation for joint filers. Their business activity in Michigan created a loss of \$771,000 and income attributable to other states was \$49,000. The allowable loss is comprised of a limited Michigan loss of \$578,000 and non-Michigan income of \$49,000. The non-Michigan income of \$49,000 must be subtracted on Schedule 1. Robert and Kelli create a Michigan excess business loss NOL carryforward of \$144,000, which may be combined with other Group 2 NOLs available to be deducted on Form 5674 in the following year.

A Business Name	B Federal Employer Identification Number (FEIN or SSN)	C Apportionment Percentage from MI-1040H, line 8 (if applicable)	D Federal Income (Loss) (Amount included in U.S. Form 461, line 14)		E Michigan Income (Loss) (Amount in column D attributable to business activity in Michigan)		F Non-Michigan Income (Loss) (Amount in column D attributable to business activity outside of Michigan)	
Company A	11-1111111	85 %	(900,000)	00	(795,000)	00	(105,000)	00
Company B	22-2222222	0 %	82,000	00		00	82,000	00
Company C	33-3333333	25 %	96,000	00	24,000	00	72,000	00
3. TOTAL. Add columns D, E and F. Include amounts from <i>Excess Business Loss Continuation Schedule</i> , Form 5606 (if applicable)			(722,000)	00	(771,000)	00	49,000	00
4. Percentage of Total Loss. Divide the total of each column on line 3 by column D, line 3			100	%	100.00	%	0.00	%
5. Federal Allowable Business Loss			(578,000)	00	(578,000)	00		00
6. Guaranteed payments adjustment				00		00		00
7. Subtotal			(578,000)	00	(578,000)	00	49,000	00
8. Adjustment when either line 7, column E or line 7, column F is a positive number					(49,000)	00		00
9. Apportioned Allowable Business Loss as adjusted			(578,000)	00	(627,000)	00	49,000	00
10. Excess Business Loss					(144,000)	00		00