

# CNF-139

## WEST VIRGINIA CORPORATION APPLICATION FOR REFUND FROM CARRYBACK OF NET OPERATING LOSS INSTRUCTIONS

### GENERAL INSTRUCTIONS

Use Form CNF-139 to claim a refund resulting from the carryback of a net operating loss to previous years. Losses arising from taxable years beginning after August 5, 1997 can be carried back two years and carried forward 20 years. West Virginia losses for taxable years beginning before August 5, 1997 can still be carried back three years and carried forward 15 years. A corporation may elect to carry forward a net operating loss instead of first carrying it back by attaching a statement to this effect on a timely filed return (including any extensions) for the year of the loss. Once you make such an election, it is irrevocable for that tax year.

### LIMITATION ON NET OPERATING LOSS CARRYBACKS

Legislative changes made during 1993 (Senate Bill 463) limits the amount of net operating loss that can be carried back from any taxable year beginning after December 31, 1992. For taxable years beginning after December 31, 1992, taxpayers can carry back to the preceding taxable years no more than \$300,000.00 of net operating loss. Any amount remaining after the carryback may be carried forward.

**ILLUSTRATION:** XYZ corporation is a calendar year taxpayer. For 2007, it incurs a \$5 million West Virginia net operating loss. In each of its preceding 2 taxable years, XYZ corporation reported West Virginia taxable income of \$1 million. Under prior law, XYZ corporation would have been allowed to carry back \$3 million of its 2007 West Virginia net operating loss, thereby reducing its West Virginia taxable income in 2005 and 2006 to zero, and obtaining a refund of taxes paid. The rest of the loss, \$2 million, would have been available to carry forward to tax years after 2007. Under Senate Bill 463, only \$300,000.00 of the loss may be carried back to 2005. None of the loss may be carried back to 2006. The rest of the loss, \$4,700,000.00, is available to be carried forward to tax years that begin after December 31, 2007, until used or the applicable loss carryforward period (15 years) expires, whichever occurs first.

### STATUTORY LIMITATION FOR FILING A CLAIM

Your claim for refund must be filed within 3 years from the unextended due date of the West Virginia Corporate Income Tax Return for the period in which the net operating loss occurred.

### INTEREST PAYABLE ON REFUND CLAIMS WV CODE §11-10-17(E)(2)

Interest is not payable when a corporation net income tax refund check has been requested by the tax commissioner within 6 months of the date a claim for refund is filed.

### SUPPORTING FORMS REQUIRED

To speed up the processing of your claim for refund, attach a signed copy of your West Virginia combined Corporation Net Income Tax Return (Form CNF-120) for the loss year. Do not attach the original return and do not attach Form CNF-139 to your original return for

the year of the loss. This will delay the processing of your claim for refund.

### CHANGES DUE TO FEDERAL AUDIT ADJUSTMENTS

If you are filing this claim to adjust a previous net operating loss carryback that has now changed due to federal audit adjustments for either the year of the loss or the year to which the loss has been carried back, you must provide detailed information about the federal audit changes and how it affects the loss carryback.

### WEST VIRGINIA CAPITAL LOSS CARRYBACKS

West Virginia law does not provide for a West Virginia capital loss carryback; however, West Virginia does allow federal adjustments to arrive at adjusted West Virginia taxable income and one of those adjustments would be a federal capital loss carryback. Therefore, West Virginia would allow the capital loss carryback at the federal level to arrive at adjusted federal taxable income. This method is different than the West Virginia net operating loss carryback which is computed separately for West Virginia. You should compute the capital loss carryback on Form CNF-120 marked amended.

### NET OPERATING LOSS DEDUCTION WV CODE §11-24-6(D)

West Virginia Corporation Net Income Tax law allows as a deduction for the taxable year an amount equal to the aggregate of (1) the West Virginia net operating loss carryovers to such year plus (2) the net operating loss carryback to such year. A "West Virginia net operating loss deduction" is calculated in accordance with the provisions of Section 172 of the Internal Revenue Code of 1986, as amended. For treatment of net operating loss carryovers in certain corporate acquisitions and for special limitation on net operating loss carryovers in case of a corporate change of ownership, Sections 381 and 382 of the Internal Revenue Code of 1986, as amended, apply.

For a multi-state corporation, the net operating loss deduction shall be made after they have allocated and apportioned their net income to West Virginia. The carryback shall be West Virginia net operating loss carried back to West Virginia taxable income.

For Taxable Years Ending Prior to June 30, 1988 a net operating loss deduction could be claimed by a corporation entitled to claim a net operating loss deduction on its federal income tax return. The amount of the federal net operating loss deduction had to be adjusted to determine the amount of the allowable West Virginia net operating loss deduction.

For Taxable Years Ending After June 30, 1988 West Virginia Corporation Net Income Tax law was revised to provide for a West Virginia net operating loss deduction to be used to reduce West Virginia taxable income of a corporation. The revision is effective for all taxable years ending after June 30, 1988 and applied to all loss carryovers from taxable years ending on or before June 30, 1988.

Taxpayers now have a West Virginia election as to the carryback

or carryforward of the West Virginia net operating loss deduction. The carryback period is 2 years and the carryforward is 20 years. If the election is made to not carry back any part of the loss, the carryforward period is 20 years.

The West Virginia net operating loss deduction is limited to net operating losses incurred by a corporation which did business in West Virginia and filed combined Corporation Net Income Tax Returns in prior taxable years.

The amount of net operating loss deduction available to an affiliated group which elects for the first time to file a consolidated West Virginia Corporation Net Income Tax Return, for a taxable year ending after July 1, 1988, is limited to the net operating losses incurred by members of the affiliated group which did business in West Virginia and filed separate West Virginia returns in prior years.

A West Virginia net operating loss deduction will not be allowed for net operating losses of those members of the affiliated group which did no business in West Virginia in prior taxable years and were not required to file West Virginia Combined Corporation Net Income Tax Returns.

For tax years beginning on or after January 1, 2009, any taxpayer engaged in a unitary business with one or more other corporations shall file a combined report which includes the income, allocation and apportionment of income of all corporations that are members of the unitary group. West Virginia computes net operating loss on a post-apportionment basis. NOL's can only be carried backwards to be applied against the West Virginia source income of the combined group member to which it is attributable. NOL's that were incurred by an entity in a period in which the entity filed separately, cannot be used by other members of the combined group. There is an exception for NOL's earned when the taxpayer was filing on a consolidated basis. Those NOL's can be carried over and applied against the income of any former member of the consolidated group.

SRLY Rules. The separate return limitation rules set forth in Treasury Regulation §1 1502 apply in determining the allowable West Virginia net operating loss deduction.

When the SRLY rules apply, a member of an affiliated group's net operating loss carried forward from its separate return year can only offset that portion of the taxable income attributable to that member of the group.

### SPECIFIC INSTRUCTIONS

- Line 1** Enter the year of the net operating loss.
- Line 2** Enter the amount of West Virginia net operating loss for the loss year
- Line 3** \$300,000 00

**Line 4** Loss eligible for carryback.

Columns (a) and (b). Enter the appropriate figures for all lines after the loss carryback.

**Line 5(a) and (b)** Enter the Net Taxable Income as appropriate.

**Line 7(a) and (b)** Subtract Line 6 from Line 5

**Line 8(a) and (b)** To calculate your net income tax after the net operating loss carryback, you must refer to the original tax return. Recalculate the net income tax using the tax computation schedule included with your original return Attach your recalculation of the net income tax to this form.

**Line 9(a) and (b)** If you still have net income tax due after the loss carryback and you are entitled to claim tax credits, you cannot use this form (CNF-139) to claim a refund. **You must file an amended return** in order to claim a carryback refund. You must recalculate the tax credit that you are eligible to claim after the loss carryback by using the appropriate tax credit schedule. Attach copies of both your original and amended tax credit schedules to your amended return. Please note on the amended return that it is being amended in order to claim a refund as a result of carrying back a Net Operating Loss.

**Line 11(a) and (b)** Enter on this line the net payments made This is the sum of the total previous payments made for the taxable year less total previous refunds and carry forward credits (which cannot be changed).

**Line 12(a) and (b)** If line 11(a) or (b) is larger than line 10(a) or (b), enter that difference on line 12.

**Line 13** Add lines 12(a) and 12(b).

Mail to West Virginia State Tax Department  
Tax Account Administration Division  
P.O. Box 1202  
Charleston, WV 25324-1202

If you have any questions about the West Virginia Corporation Net Income Tax or net operating loss deductions, please contact our Taxpayer Services Division at one of the following numbers:

Telephone: (304) 558-3333 or  
Toll free within West Virginia (800) 982-8297  
TDD service for the hearing impaired 1-800-282-9833