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## **Internal Revenue Code Section 172(d)(4)(C)**

Net operating loss deduction.

(a) Deduction allowed.

There shall be allowed as a deduction for the taxable year an amount equal to the lesser of-

- (1) the aggregate of the net operating loss carryovers to such year, plus the net operating loss carrybacks to such year, or
- (2) 80 percent of taxable income computed without regard to the deduction allowable under this section.

For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

(b) Net operating loss carrybacks and carryovers.

(1) Years to which loss may be carried.

(A) General rule. Except as otherwise provided in this paragraph , a net operating loss for any taxable year-

- (i) except as otherwise provided in this paragraph, shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss, and
- (ii) shall be a net operating loss carryover to each taxable year following the taxable year of the loss.

(B) Farming losses.

(i) In general. In the case of any portion of a net operating loss for the taxable year which is a farming loss with respect to the taxpayer, such loss shall be a net operating loss carryback to each of the 2 taxable years preceding the taxable year of such loss.

(ii) Farming loss. For purposes of this section , the term "farming loss" means the lesser of-

(I) the amount which would be the net operating loss for the taxable year if only income and deductions attributable to farming businesses (as defined in section 263A(e)(4) ) are taken into account, or

(II) the amount of the net operating loss for such taxable year.

(iii) Coordination with paragraph (2). For purposes of applying paragraph (2) , a farming loss for any taxable year shall be treated as a separate net

operating loss for such taxable year to be taken into account after the remaining portion of the net operating loss for such taxable year.

(iv) Election. Any taxpayer entitled to a 2-year carryback under clause (i) from any loss year may elect not to have such clause apply to such loss year. Such election shall be made in such manner as prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(C) Insurance companies. In the case of an insurance company (as defined in section 816(a)) other than a life insurance company, the net operating loss for any taxable year-

(i) shall be a net operating loss carryback to each of the 2 taxable years preceding the taxable year of such loss, and

(ii) shall be a net operating loss carryover to each of the 20 taxable years following the taxable year of the loss.

(D) [Repealed.]

(E) [Repealed.]

(F) [Repealed.]

(H) [Repealed.]

(I) [Repealed.]

(J) [Repealed.]

(2) Amount of carrybacks and carryovers.

The entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the "loss year") shall be carried to the earliest of the taxable years to which (by reason of paragraph (1) ) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall-

(A) be computed with the modifications specified in subsection (d) other than paragraphs (1) , (4) , and (5) thereof, and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter,

(B) not be considered to be less than zero, and

(C) not exceed the amount determined under subsection (a)(2) for such prior taxable year.

(3) Election to waive carryback.

Any taxpayer entitled to a carryback period under paragraph (1) may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year. Such election shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be in effect. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(c) Net operating loss defined.

For purposes of this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income. Such excess shall be computed with the modifications specified in subsection (d).

(d) Modifications.

The modifications referred to in this section are as follows:

(1) Net operating loss deduction.

No net operating loss deduction shall be allowed.

(2) Capital gains and losses of taxpayers other than corporations.

In the case of a taxpayer other than a corporation-

(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

(B) the exclusion provided by section 1202 shall not be allowed.

(3) Deduction for personal exemptions.

No deduction shall be allowed under section 151 (relating to personal exemptions). No deduction in lieu of any such deduction shall be allowed.

(4) Nonbusiness deductions of taxpayers other than corporations.

In the case of a taxpayer other than a corporation, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business.

For purposes of the preceding sentence-

(A) any gain or loss from the sale or other disposition of-

(i) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or

(ii) real property used in the trade or business,

shall be treated as attributable to the trade or business;

(B) the modifications specified in paragraphs (1), (2)(B), and (3) shall be taken into account;

(C) any deduction for casualty or theft losses allowable under paragraph (2) or (3) of section 165(c) shall be treated as attributable to the trade or business; and



(D) any deduction allowed under section 404 to the extent attributable to contributions which are made on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall not be treated as attributable to the trade or business of such individual.

(5) Computation of deduction for dividends received.

The deductions allowed by section 243 (relating to dividends received by corporations) and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions).

(6) Modifications related to real estate investment trusts.

In the case of any taxable year for which part II of subchapter M (relating to real estate investment trusts) applies to the taxpayer-

(A) the net operating loss for such taxable year shall be computed by taking into account the adjustments described in section 857(b)(2) (other than the deduction for dividends paid described in section 857(b)(2)(B) );

(B) where such taxable year is a "prior taxable year" referred to in paragraph (2) of subsection (b) , the term "taxable income" in such paragraph shall mean "real estate investment trust taxable income" (as defined in section 857(b)(2) ); and

(C) subsection (a)(2) shall be applied by substituting "real estate investment trust taxable income (as defined in section 857(b)(2) but without regard to the deduction for dividends paid (as defined in section 561))" for "taxable income".

(7) Repealed.

(8) Qualified business income deduction.

The deduction under section 199A shall not be allowed.

(9) Deduction for foreign-derived intangible income.

The deduction under section 250 shall not be allowed.

(e) Law applicable to computations.

In determining the amount of any net operating loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year.

(f) Special rule for insurance companies.

In the case of an insurance company (as defined in section 816(a) ) other than a life insurance company-

(1) the amount of the deduction allowed under subsection (a) shall be the aggregate of the net operating loss carryovers to such year, plus the net operating loss carrybacks to such year, and

(2) subparagraph (C) of subsection (b)(2) shall not apply.

(g) Cross references.

(1) For treatment of net operating loss carryovers in certain corporate acquisitions, see section 381 .

(2) For special limitation on net operating loss carryovers in case of a corporate change of ownership, see section 382 .

(h) Repealed.