

**Internal Revenue Service, Treasury**

**§ 1.172-7**

Taxable income for 1962 (computed without the deduction of the carryover from 1958) .....	17,000	
		147,000
Carryover .....		3,000

and carrybacks computed under paragraphs (b) and (c) of this section are used as a basis for the computation of the net operating loss deduction in the following manner:

(d) *Determination of net operating loss deduction for each year.* The carryovers

Taxable year	Carryover		Carryback		Net operating loss deduction
	From 1956	From 1958	From 1956	From 1958	
1954 .....	\$0	\$0	\$75,000	\$0	\$75,000
1955 .....	0	0	60,000	150,000	210,000
1957 .....	30,000	0	0	150,000	180,000
1959 .....	10,000	150,000	0	0	160,000
1960 .....	0	130,000	0	0	130,000
1961 .....	0	95,000	0	0	95,000
1962 .....	0	20,000	0	0	20,000
1963 .....	0	3,000	0	0	3,000

**§ 1.172-7 Joint return by husband and wife.**

(a) *In general.* This section prescribes additional rules for computing the net operating loss carrybacks and carryovers of a husband and wife making a joint return for one or more of the taxable years involved in the computation of the net operating loss deduction.

(b) *From separate to joint return.* If a husband and wife, making a joint return for any taxable year, did not make a joint return for any of the taxable years involved in the computation of a net operating loss carryover or a net operating loss carryback to the taxable year for which the joint return is made, such separate net operating loss carryover or separate net operating loss carryback is a joint net operating loss carryover or joint net operating loss carryback to such taxable year.

(c) *Continuous use of joint return.* If a husband and wife making a joint return for a taxable year made a joint return for each of the taxable years involved in the computation of a net operating loss carryover or net operating loss carryback to such taxable year, the joint net operating loss carryover or joint net operating loss carryback to such taxable year is computed in the same manner as the net operating loss carryover or net operating loss carryback of an individual under § 1.172-4 but upon the basis of the joint

net operating losses and the combined taxable income of both spouses.

(d) *From joint to separate return.* If a husband and wife making separate returns for a taxable year made a joint return for any, or all, of the taxable years involved in the computation of a net operating loss carryover or net operating loss carryback to such taxable year, the separate net operating loss carryover or separate net operating loss carryback of each spouse to the taxable year is computed in the manner set forth in § 1.172-4 but with the following modifications:

(1) *Net operating loss.* The net operating loss of each spouse for a taxable year for which a joint return was made shall be deemed to be that portion of the joint net operating loss (computed in accordance with paragraph (d) of § 1.172-3) which is attributable to the gross income and deductions of such spouse, gross income and deductions being taken into account to the same extent that they are taken into account in computing the joint net operating loss.

(2) *Taxable income to be subtracted—(i) Net operating loss of other spouse.* The taxable income of a particular spouse for any taxable year which is subtracted from the net operating loss of such spouse for another taxable year in order to determine the amount of such loss which may be carried back or carried over to still another taxable year is deemed to be, in a case in which such

taxable income was reported in a joint return, the sum of the following:

(a) That portion of the combined taxable income of both spouses for such year for which the joint return was made which is attributable to the gross income and deductions of the particular spouse, gross income and deductions being taken into account to the same extent that they are taken into account in computing such combined taxable income, and

(b) That portion of such combined taxable income which is attributable to the other spouse; but, if such other spouse sustained a net operating loss in a taxable year beginning on the same date as the taxable year in which the particular spouse sustained the net operating loss from which the taxable income is subtracted, then such portion shall first be reduced by such net operating loss of such other spouse.

(ii) *Modifications.* For purposes of this subparagraph, the combined taxable income shall be computed as though the combined income and deductions of both spouses were those of one individual. The provisions of § 1.172-5 shall apply in computing the combined taxable income for such purposes except that the net operating loss deduction shall be determined without taking into account any separate net operating loss of either spouse, or any joint net operating loss of both spouses, which was sustained in a taxable year beginning on or after the date of the beginning of the taxable year in which the particular spouse sustained the net operating loss from which the taxable income is subtracted.

(e) *Recurrent use of joint return.* If a husband and wife making a joint return for any taxable year made a joint return for one or more, but not all, of the taxable years involved in the computation of a net operating loss carryover or net operating loss carryback to such taxable year, such net operating loss carryover or net operating loss carryback to the taxable year is computed in the manner set forth in paragraph (d) of this section. Such net operating loss carryover or net operating loss carryback is considered a joint net operating loss carryover or joint net operating loss carryback to such taxable year.

(f) *Joint carryovers and carrybacks.* The joint net operating loss carryovers and the joint net operating loss carrybacks to any taxable year for which a joint return is made are all the net operating loss carryovers and net operating loss carrybacks of both spouses to such taxable year. For example, a husband and wife file a joint return for the calendar year 1956, having a joint taxable income for such year. The wife filed a separate return for the calendar years 1954 and 1955, in which years she sustained net operating losses. The husband filed separate returns for his fiscal year ending June 30, 1955, and, having received permission to change his accounting period to a calendar year basis, for the 6-month period ending December 31, 1955. The husband sustained net operating losses in both such taxable years. Since the husband and wife did not file a joint return for any taxable year involved in the computation of the net operating loss carryovers to 1956 from 1954 and 1955, the joint net operating loss carryovers to 1956 are the separate net operating loss carryovers of the wife from the calendar years 1954 and 1955 and the separate net operating loss carryovers of the husband from the fiscal year ending June 30, 1955, and from the short taxable year ending December 31, 1955. If the husband and wife also file joint returns for the calendar years 1957, 1958, and 1959, having joint taxable income in 1957 and 1958 and a joint net operating loss in 1959, the joint net operating loss carrybacks to 1956, 1957, and 1958 from 1959 are computed on the basis of the joint net operating loss for 1959, since separate returns were not made for any taxable year involved in the computation of such carrybacks.

(g) *Illustration of principles.* In the following examples, which illustrate the application of this section, it is assumed that there are no items of adjustment under section 172(b)(2)(A) and that the taxable income or loss in each case is the taxable income or loss determined without any net operating loss deduction. The taxpayers in each example, H, a husband, and W, his wife, report their income on the calendar-year basis.

*Example 1.* H and W filed joint returns for 1954 and 1955. They sustained a joint net operating loss of \$1,000 for 1954 and a joint net operating loss of \$2,000 for 1955. For 1954 the deductions of H exceeded his gross income by \$700, and the deductions of W exceeded her gross income by \$300, the total of such amounts being \$1,000. Therefore, \$700 of the \$1,000 joint net operating loss for 1954 is considered the net operating loss of H for 1954, and \$300 of such joint net operating loss is considered the net operating loss of W for 1954. For 1955 the gross income of H exceeded his deductions, so that his separate taxable income would be \$1,500, and the deductions of W exceeded her gross income by \$3,500. Therefore, all of the \$2,000 joint net operating loss for 1955 is considered the separate net operating loss of W for 1955.

*Example 2.* (i) H and W filed joint returns for 1954 and 1956, and separate returns for 1955 and 1957. For the years 1954, 1955, 1956, and 1957 they had taxable incomes and net operating losses as follows, losses being indicated in parentheses:

	1954	1955	1956	1957
H .....	(\$5,000)	(\$2,500)	\$6,500	(\$4,000)
W .....	(3,000)	2,000	3,000	(1,500)
Total .....	(8,000)	.....	9,500	.....

(ii) The net operating loss carryover of H from 1957 to 1958 is \$4,000, that is, his \$4,000 net operating loss for 1957 which is not reduced by any part of the taxable income for 1956, since none of such taxable income is attributable to H and the portion attributable to W is entirely offset by her separate net operating loss for her taxable year 1957, which taxable year begins on the same date as H's taxable year 1957. H's \$4,000 net operating loss for 1957 likewise is not reduced by reference to 1955 since H sustained a loss in 1955. The \$0 taxable income for 1956 which reduces H's net operating loss for 1957 is computed as follows:

(iii) The combined taxable income of \$9,500 for 1956 is reduced to \$1,000 by the net operating loss deduction for such year of \$8,500. This net operating loss deduction is computed without taking into account any net operating loss of either H or W sustained in a taxable year beginning on or after January 1, 1957, the date of the beginning of the taxable year in which H sustained the net operating loss from which the taxable income is subtracted. This \$8,500 is composed of H's carryovers of \$5,000 from 1954 and \$2,500 from 1955, and of W's carryover of \$1,000 from 1954 (the excess of W's \$3,000 loss for 1954 over her \$2,000 income for 1955). None of the \$1,000 combined taxable income for 1956 (computed with the net operating loss deduction described above) is attributable to H since it is caused by W's income (computed after deducting her separate carryover) offsetting

H's loss (computed by deducting from his income his separate carryovers). No part of the \$1,000 combined taxable income for 1956 which is attributable to W is used to reduce H's net operating loss for 1957 since such taxable income attributable to W must first be reduced by W's \$1,500 net operating loss for 1957, her taxable year beginning on the same date as the taxable year of H in which he sustained the net operating loss from which the taxable income is subtracted.

(iv) The net operating loss carryover of W from 1957 to 1958 is \$500, her \$1,500 loss reduced by the sum of her \$0 taxable income for 1955 (computed by taking into account her \$3,000 carryover from 1954) and her \$1,000 taxable income for 1956, that is, the portion of the combined taxable income for 1956 which is attributable to her.

*Example 3.* (i) Assume the same facts as in *Example 2* except that for 1957 the net operating loss of W is \$200 instead of \$1,500.

(ii) The net operating loss carryover of H from 1957 to 1958 is \$3,200, that is, his \$4,000 net operating loss for 1957 reduced by the sum of his \$0 taxable income for 1955 (a year in which he sustained a loss) and his \$800 taxable income for 1956. Such \$800 is computed as follows:

(iii) The combined taxable income for 1956, computed with the net operating loss deduction in the manner described in *Example 2*, remains \$1,000, no part of which is attributable to H. To the \$0 taxable income attributable to H for 1956 there is added \$800, the excess of the \$1,000 taxable income for such year attributable to W over her \$200 net operating loss sustained in 1957, a taxable year beginning on the same date as the taxable year of H in which he sustained the \$4,000 net operating loss from which the taxable income is subtracted.

(iv) W has no net operating loss carryover from 1957 to 1958 since her net operating loss of \$200 for 1957 does not exceed the \$1,000 taxable income for 1956 attributable to her.

*Example 4.* (i) Assume the same facts as in *Example 2*, except that W changes her accounting period in 1957 to a fiscal year ending on January 31, and has neither income nor losses for the taxable year January 1, 1957, to January 31, 1957, or for the fiscal year February 1, 1957, to January 31, 1958, but has a net operating loss of \$200 for the fiscal year February 1, 1958, to January 31, 1959.

(ii) The net operating loss carryover of H from 1957 to 1958 is \$3,000, that is, his net operating loss of \$4,000 for 1957 reduced by the sum of his \$0 taxable income for 1955 (a year in which he sustained a loss) and his \$1,000 taxable income for 1956. Such \$1,000 is computed as follows:

(iii) The combined taxable income for 1956, computed with the net operating loss deduction in the manner described in *Example 2*,

remains \$1,000, no part of which is attributable to H. To the \$0 taxable income attributable to H for 1956 there is added the \$1,000 taxable income attributable to W for such year. The taxable income attributable to W is not reduced by any amount since she does not have a net operating loss for her taxable year beginning on January 1, 1957, the date of the beginning of the taxable year of H in which he sustained the \$4,000 net operating loss from which his taxable income is subtracted.

(iv) The net operating loss carryover of W from the fiscal year beginning February 1, 1958, to her next fiscal year is \$200, that is, her net operating loss of \$200 for the fiscal year beginning February 1, 1958, reduced by the sum of her \$0 taxable income for 1956, her \$0 taxable income for the taxable year January 1, 1957, to January 31, 1957 (a year in which she had neither income nor loss), and her \$0 taxable income for the fiscal year February 1, 1957, to January 31, 1958 (also a year in which she had neither income nor loss). The \$0 taxable income for 1956 is computed as follows:

(v) The combined taxable income of \$9,500 for 1956 is reduced to \$0 amount by the net operating loss deduction for such year of \$12,500. This net operating loss deduction is computed by taking into account the net operating loss of H for 1957 since it was sustained in a taxable year beginning before February 1, 1958, the date of the beginning of the taxable year of W in which she sustained the \$200 net operating loss from which her taxable income is subtracted. This \$12,500 is composed of H's carryovers of \$5,000 from 1954 and \$2,500 from 1955 and of his carryback of \$4,000 from 1957, plus W's carryover of \$1,000 from 1954 (the excess of W's \$3,000 loss for 1954 over her \$2,000 income for 1955). Since there is no combined taxable income for 1956, there is no taxable income attributable to W for such year.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 8107, 51 FR 43346, Dec. 2, 1986]

**§ 1.172-8 Net operating loss carryovers for regulated transportation corporations.**

(a) *In general.* A net operating loss sustained in a taxable year ending before January 1, 1976, shall be a carryover to the 7 succeeding taxable years if the taxpayer is a regulated transportation corporation (as defined in paragraph (b) of this section) for the loss year and for the 6th and 7th succeeding taxable years. If, however, the taxpayer is a regulated transportation corporation for the loss year and for the 6th succeeding taxable year, but

not for the 7th succeeding taxable year, then the loss shall be a carryover to the 6 succeeding taxable years. If the taxpayer is not a regulated transportation corporation for the 6th succeeding taxable year then this section shall not apply. A net operating loss sustained in a taxable year ending after December 31, 1975, shall be a carryover to the 15 succeeding taxable years.

(b) *Regulated transportation corporations.* A corporation is a *regulated transportation corporation* for a taxable year if it is included within one or more of the following categories:

(1) Eighty percent or more of the corporation's gross income (computed without regard to dividends and capital gains and losses) for such taxable year is income from transportation sources described in paragraph (c) of this section.

(2) The corporation is a railroad corporation, subject to Part I of the Interstate Commerce Act, which is either a lessor railroad corporation described in section 7701(a)(33)(G) or a common parent railroad corporation described in section 7701(a)(33)(H).

(3) The corporation is a member of a regulated transportation system for the taxable year. For purposes of this section, a member of a regulated transportation system for a taxable year means a member of an affiliated group of corporations making a consolidated return for such year, if 80 percent or more of the sum of the gross incomes of the members of the affiliated group for such year (computed without regard to dividends, capital gains and losses, or eliminations for intercompany transactions) is derived from transportation sources described in paragraph (c) of this section. For purposes of this subparagraph, income derived by a corporation described in subparagraph (2) of this paragraph from leases described in section 7701(a)(33)(G) shall be considered as income from transportation sources described in paragraph (c) of this section.

(c) *Transportation sources.* For purposes of this section, income from "transportation sources" means income received directly in consideration for transportation services, and income from the furnishing or sale of essential