

150-317.013

Capital Losses—Carrybacks and Carryovers

(1) The Oregon modification for capital losses has been repealed for tax years beginning on or after January 1, 1986. Therefore, federal law applies to capital losses occurring in tax years beginning on or after January 1, 1986.

(a) Capital losses can be deducted to the extent of capital gains in the same tax year.

(b) Capital losses in excess of capital gains can be carried back three tax years, even into tax years beginning prior to January 1, 1986, and forward five tax years.

(c) Capital loss carrybacks and carryovers shall be used only to reduce capital gains in the tax years to which they are carried.

(d) A capital loss carryback cannot be used to create or increase a net loss in the tax year to which it is carried.

(2) Oregon provisions, such as the requirement that corporations be unitary to be included in the consolidated Oregon return and the apportionment provisions, may result in differences between the Oregon and federal capital loss deductions and carryovers.

(a) Capital losses in excess of capital gains in tax years beginning prior to January 1, 1986 cannot be carried forward since those losses were deductible in full in the tax year they occurred.

(b) When a corporation or consolidated group of corporations is taxable within and without this state, its Oregon net capital loss carryback and carryover must be computed using the apportionment provisions. The Oregon capital loss is computed using the apportionment factor for the tax year of the loss. The capital loss is applied to the Oregon capital gains for the year of carryback or carryover. Oregon capital gains are computed using the apportionment factor for the tax year of the gain.

Example 1: Corporation X has a federal net capital loss of \$3,000 for 2002. X's apportionment factor for 2002 is 40 percent. In 1999, X had a federal net capital gain of \$1,000 and its Oregon apportionment factor was 50 percent. X has a \$1,200 ($\3000×40 percent) Oregon net capital loss available for carryback to 1999. X will deduct \$500 ($\1000×50 percent) on the 1999 return and must carry the remaining \$700 of loss forward to other tax years. (c) Oregon net capital losses that are attributed to corporations that continue to be included in the same consolidated Oregon return may be deducted fully against the Oregon consolidated net capital gain of the tax years to which such losses are carried.

Example 2: Corporations X and Y filed a consolidated Oregon return in 2002 reporting a net capital loss of \$5,000 that is attributable to Y. The consolidated apportionment factor for 2002 is 40 percent. In 1999, X and Y filed a consolidated Oregon return reporting a net capital gain of \$10,000 attributable to X. The consolidated Oregon apportionment factor in 1999 was 25 percent. The Oregon capital loss carryback of \$2,000 ($\$5,000 \times 40$ percent) from 2002 is fully deductible in 1999 because it does not exceed the Oregon consolidated net capital gain of \$2,500 ($\$10,000 \times 25$ percent).

(3) If a corporation is included in a combined return, separate return or in a different consolidated return in the year of the capital loss and the capital loss is carried into a year when a consolidated Oregon return is filed, the Oregon capital loss carryover may be subject to the federal separate return limitation year (SRLY) limitations in Treas. Regs. 1.1502-22.

(a) If a net capital loss is reported on a separate Oregon return by a corporation doing business only in Oregon, the SRLY limitation applies if the loss is carried to a tax year in which a consolidated return is filed, apportionment is not required, and the corporation with the loss (the limited member) is not the parent corporation. To compute the Oregon SRLY limitation, first recompute the consolidated net capital gain by excluding the capital gains and losses and the IRC section 1231 gains and losses of the limited member. Then subtract the recomputed consolidated net capital gain from the total consolidated net capital gain (computed without regard to any net capital loss carryover or carrybacks).

Example 3: Corporation R filed a separate Oregon return for 2001 reflecting an Oregon net capital loss of \$3,000. Corporation R did not have net capital gains in any of the prior three years. For 2002, Corporation

R was included in a consolidated Oregon return with Corporations S and T. The consolidated group was not subject to the apportionment provisions.

	Example 1	Example 2	Example 3
2002 net capital gains or losses:			
Corporation R	\$8,000	\$2,000	\$3,000
Corporation S	(6,000)	(6,000)	(4,000)
Corporation T	<u>3,000</u>	<u>5,000</u>	<u>5,000</u>
Consolidated	<u>\$5,000</u>	<u>\$1,000</u>	<u>\$4,000</u>
R's SRLY limitation:			
Consolidated net capital gain	\$5,000	\$1,000	\$4,000
Less recomputed consolidated net capital gain without R*	<u>0</u>	<u>0</u>	<u>(1,000)</u>
R's SRLY limitation	<u>\$5,000</u>	<u>\$1,000</u>	<u>\$3,000</u>

* If the remaining corporations have a consolidated net capital loss after excluding the gains and losses of the limited member, the consolidated net capital gain should be reduced by zero.

(b) If a corporation is included in a consolidated Oregon return in the year of the consolidated net capital loss and files a separate Oregon return or is included in a different consolidated Oregon return in the year to which the net capital loss is carried, the Oregon consolidated net capital loss is attributed to the corporations with net capital losses for purposes of determining the allowable net capital loss carryover. The portion of an Oregon consolidated net capital loss attributable to a member of a consolidated group is an amount equal to such Oregon consolidated net capital loss multiplied by a fraction, the numerator of which is the net capital loss of such member and the denominator of which is the sum of the net capital losses of those members of the consolidated group having net capital losses.

Example 4: X Corp. and unitary subsidiaries Y and Z filed a consolidated Oregon return for 2001, their first year in business. X had a \$3,000 capital loss, Y had a \$2,000 capital gain and Z had a \$1,000 capital loss (consolidated net capital loss of \$2,000). The 2001 Oregon apportionment factor for the consolidated group is 75 percent. On December 31, 2001, X Corp. sold 100 percent of Z's stock to an outside investor. The capital loss that can be carried forward to the 2002 consolidated return of X and Y is computed as follows:

Tax Year 2001:

X's net capital loss	(\$3,000)	
Y's net capital gain	2,000	
Z's net capital loss	<u>(1,000)</u>	
Consolidated net capital loss	<u>(\$ 2,000)</u>	
Oregon apportionment factor for consolidated group	.75	
Oregon consolidated net capital loss		<u>(\$ 1,500)</u>
X's share of Oregon consolidated net capital loss carryover available for 2002:		
$3,000/4,000 = .75 \times 1,500$		(\$ 1,125)
Y's share of Oregon consolidated net capital loss carryover available for 2002:		
$0/4,000 = .00 \times 1,500$		<u>(\$ 0)</u>
Total carryover available for consolidated return for X and Y for 2002		\$1,125
Z's share of Oregon consolidated net capital loss carryover available for 2002:		

$$1,000/4,000 = .25 \times 1,500$$

(\\$ 375)

(c) If corporations carry their net capital losses to a tax year in which separate tax returns are filed, the net capital losses can be deducted by each corporation only if a net capital gain is shown on the separate tax return. The net capital loss deduction is further limited by the amount of the net capital gain attributable to Oregon based on the Oregon apportionment factor.

Example 5: Assume the same facts as in the prior example. The 2002 separate Oregon return of Z shows a net capital gain of \$200 with an Oregon apportionment factor of 50 percent. The net capital loss deduction allowed is \$100 (\$200 x 50 percent). Z has a net capital loss carryover to 2003 of \$275.

(d) If a group of unitary corporations, taxable within and without this state, filed a consolidated return for the year of the net capital loss and carries the net capital loss after apportionment back to a year in which a combined return is filed, the net capital loss must be allocated among the corporations as provided under the SRLY limitations in Treas. Reg. 1.1502-22. The net capital gain of the unitary group in the combined year must be apportioned among the corporations based on each corporation's Oregon apportionment percentage.

Example 6: Corporations X, Y, and Z file a consolidated Oregon return for 1987, showing a net capital loss. The loss is carried back to 1984, in which the same three corporations filed a combined return. The computation of the 1987 net capital loss carried back and absorbed in 1984 is as follows:

1987—Oregon Net Capital Loss:

	Capital Gain/Loss	SRLY Limitation	Oregon Net Capital Loss
Corporation X	(\$6,000)	$6,000/10,000 = 60\% \times 3,750 =$	(\$2,250)
Y	5,000	$0/10,000 = 0\% \times 3,750 =$	-0-
Z	(4,000)	$4,000/10,000 = 40\% \times 3,750 =$	(1,500)
	<hr/>		<hr/>
Net Capital Loss	(\$5,000)		
Oregon Apportionment Percentage	<u>75%</u>		
Oregon net capital loss	(\$3,750)		(\$3,750)

1984—Combined Net Capital Loss absorbed:

	Net Capital Gain/loss	Oregon Capital Gain		Oregon Net Apportionment Percentage	=	Oregon Net Capital Gain	Oregon Net Capital Loss Absorbed
Corporation X	\$ 500	\$3,500	x	25%	=	\$ 875	(\$ 875)
Y	10,000	3,500	x	30%	=	1,050	(-0-)
Z	(7,000)	3,500	x	20%	=	700	(700)
	<hr/>					<hr/>	<hr/>
Totals	\$3,500					\$2,625	(\$1,575)

The balance of 1987 capital loss (\$1,375 for Corporation X and \$800 for Corporation Z) must be carried to 1985 and 1986. If the remaining loss is carried to 1986, a consolidated year, it must be applied against the net capital gain of the consolidated unitary group.

(4) If a corporation, taxable within and without this state, filed a separate return or was included in a different consolidated return for the year of the net capital loss and carries the net capital loss after apportionment to a year in which a consolidated return is filed, the net capital loss can be deducted only to the extent that the same corporation has a net capital gain which is attributed to Oregon. If the consolidated group in the carryover year is subject to the apportionment provisions, the net capital gain of the member must be attributed to Oregon based on the consolidated Oregon apportionment factor.

Example 7: In its first tax year 2001, B Corporation had a net capital loss of \$6,000. Because of its 50 percent Oregon apportionment factor, \$3,000 of the loss is apportioned to Oregon. On January 1, 2002, 100 percent of B's stock was purchased by P Corporation. Because they were unitary, P and B file a 2002 consolidated Oregon return that includes B's net capital gain of \$1,000 and P's net capital gain of \$3,000. The consolidated return apportionment factor is 35 percent. On the 2002 consolidated return, only \$350 of B's \$3,000 net capital loss carryover can be deducted (the lesser of \$1,000 x .35 or \$4,000 x .35).

[**Publications:** The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.013

Hist: Filed 9/22/86 and Eff. 12/31/86; Amended and Renumbered from OAR 150-317.013 to OAR 150-317.013-(A), 12/31/87; Amended and Renumbered from OAR 150-317.013-(A) to OAR 150-317.013, 12/31/88; Amended 12/31/90, 12/31/92, 7/31/04.

150-317.154

Research Tax Credit: Alternative Computation

(1) The research credit based on Oregon sales is the lesser of the following:

- (a) Five percent of the amount by which the qualified research expenses exceed 10 percent of Oregon sales,
- (b) \$10,000 times the number of percentage points by which the qualifying research expenses exceed 10 percent of Oregon sales; or
- (c) The taxpayer's liability after other credits.

(2) For tax years beginning on or after January 1, 2006, the credit may not exceed \$2,000,000. The limit applies to the consolidated group when a consolidated Oregon return is filed.

(3) For tax years beginning on or after January 1, 1995 and before January 1, 2006, the credit may not exceed \$500,000. The limit applies to the consolidated group when a consolidated Oregon return is filed.

(4) For tax years beginning before January 1, 1995, the credit may not exceed \$50,000 or one-third of the excise tax liability of the taxpayer before credits, whichever is less. These limits apply to the consolidated group when a consolidated Oregon return is filed.

(5) Credits otherwise allowable for tax years beginning before January 1, 1995 and not used in such years may not be carried forward. Credits otherwise allowable for tax years beginning on or after January 1, 1995 and not used in such years may be carried forward for up to 5 years.

Example: A corporation has 1994 Oregon sales of \$40,000,000, qualified research expenses of \$4,900,000 and Oregon excise tax of \$264,000 before credits. The allowable 1994 credit is calculated as follows:

Credit before limitations:

Qualified research expenses		\$4,900,000	
Less: Oregon sales	\$40,000,000		
	x <u> .10</u>		
10% of Oregon sales		<u>(4,000,000)</u>	
Excess		\$ 900,000	
		x <u> .05</u>	
Credit before limitations			\$45,000

Limitations:

Qualified research expenses in excess of 10% of Oregon sales	\$ 900,000		
Divide by Oregon sales	÷ <u>40,000,000</u>		
Excess percentage points			2.25

Multiply by \$10,000

x \$10,000

Maximum credit amount	\$22,500
One-third of excise tax liability before credits (\$264,000 ÷ 3)	\$50,000
The credit allowed is \$22,500.	\$88,000

[**Publications:** The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.154

Hist: Amended and transferred some material from OAR 150-317.152 to OAR 150-317.154, 12/31/93, 12/31/95, 12/31/01, Amended 7/31/06

150-317.259-(A)

Bad Debt Reserve of Financial Institutions Not Qualifying as Large Banks That Have Differences in Reserves for Federal and Oregon Tax Purposes

(1) For tax years beginning on or after January 1, 1987, Oregon has adopted the federal provisions for treatment of bad debts of financial institutions provided in Sections 585(a) and 585(b) of the Internal Revenue Code (IRC). These provisions apply to financial institutions not considered large banks, as defined in IRC 585(c) (2).

(2) For Oregon tax purposes, the allowable addition to the reserve for bad debts shall be computed using the method provided in IRC 585(b), starting with the ending balance in the bad debt reserve calculated for Oregon tax purposes for the 1986 tax year.

(a) For 1987 tax years, the federal law provides that the addition to reserve for bad debts shall be the greater of the amounts computed using the percentage method in IRC 585(b) (2) or the experience method in IRC 585(b) (3), as revised in 1986.

(b) For tax years beginning on or after January 1, 1988, federal law provides that the addition to reserve for bad debts shall be no greater than the amount computed using the experience method in IRC 585(b) (2).

(c) An Oregon addition modification shall be made if the federal addition exceeds the Oregon addition to the reserve for bad debts for the tax year. An Oregon subtraction modification shall be made if the Oregon addition exceeds the federal addition to the reserve for bad debts for the tax year.

Example: Small Bank, Inc., must calculate its 1991 addition to its reserve for bad debts based on the following information:

Base Year—1987

Federal reserve balance, 12/31/87—\$600

Oregon reserve balance, 12/31/87—\$400

Bad debts charged against Oregon and federal reserves during 1991—\$500

Federal reserve balance, 12/31/91—\$300

Oregon reserve balance, 12/31/91—\$200

Total bad debts, after recoveries, sustained in current and 5 preceding years—\$2,500

Outstanding loans, 12/31/87—\$150,000

Outstanding loans, 12/31/91—\$180,000

Sum of loans outstanding at end of current and 5 preceding years—\$960,000

Using the experience method, the addition to the reserves for bad debts for 1991 is computed as follows:

The addition to reserve for bad debts is the amount necessary to increase the balance of the reserve (at the close of the current year) to the greater of:

	Federal	Oregon State	Modification
(a) The six-year moving average (\$2,500/\$960,000) x \$180,000	\$469	\$469	
or			
(b) The base year amount	600	400	

Greater of (a) or (b) above	600	469		
Less: 12/31/91 reserve balance before addition	<u><300></u>	<u><200></u>		
Addition to reserve for bad debts	\$300	– \$269	=	\$31

The difference of \$31 is an Oregon addition modification.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Hist: Filed 9/20/88 and Eff. 12/31/88; Amended 12/31/92

150-317.310(2)

Bad Debt Reserve of Financial Institutions That Have Changed From Reserve Method to Specific Charge-off Method

(1) For tax years beginning on or after January 1, 1987, Oregon has adopted the federal provisions for treatment of bad debts of financial institutions provided in Section 585(c) of the Internal Revenue Code (IRC). Financial institutions considered large banks, defined in IRC 585(c) (2), must recapture the balance in their reserve for bad debts over a four-year period unless they elect the federal “cut-off” method.

(a) The recapture provisions of IRC 585(c) (3) shall be applied to the ending reserve balance calculated for Oregon tax purposes for the 1986 tax year.

(b) For each of the four recapture years, an Oregon addition modification shall be made if the Oregon reserve recaptured exceeds the federal reserve recaptured. An Oregon subtraction modification shall be made if the federal reserve recaptured exceeds the Oregon reserve recaptured.

Example: Lending Corp., a calendar year filer, has a bad debt reserve of \$5,000,000 for federal and \$3,000,000 for Oregon tax purposes on December 31, 1986. Lending Corp. qualifies as a large bank. It elects to recapture 10 percent of the bad debt reserve as income on its 1987 federal return. An Oregon subtraction modification of \$200,000 is calculated as follows:

	Oregon	Federal	Oregon Modification
Bad debt reserve			
balance, 12-31-86	\$3,000,000	\$5,000,000	
Recapture percentage	<u>x .10</u>	<u>x .10</u>	
Income to recapture	300,000	– 500,000	= <\$200,000>

(c) Financially troubled banks don’t have to recapture existing bad debt reserves as long as their nonperforming loans exceed seventy-five percent of the average of their equity capital for the year.

(2) Oregon also adopted the cut-off method provided under IRC 585(c) (4) for tax years beginning on or after January 1, 1987. If the financial institution elects the cut-off method, the ending balance of the reserve for bad debts for the 1986 tax year shall not be recaptured. Instead, bad debts in tax years after 1986 shall be charged to the reserve rather than deducted from income. When the entire reserve has been depleted, bad debts shall be deducted as they occur.

(a) The provisions in IRC 585(c) (4) shall be applied to the ending reserve balance calculated for Oregon tax purposes for the 1986 tax year.

(b) The ending balance of the reserve for bad debts as of December 31, 1986, may be greater for federal purposes than it is for Oregon. If so, the Oregon reserve will be depleted before the federal reserve. An Oregon subtraction modification shall be made when the Oregon deduction for bad debts exceeds the federal deduction for the tax year.

Example: Large Bank, Inc., elected the cut-off method of treating its reserve for bad debts, starting in 1987. The reserve balance on January 1, 1991, was \$100,000 for federal purposes and \$50,000 for Oregon purposes. During 1991, \$150,000 of bad debts were written off. An Oregon subtraction modification of \$50,000 is calculated as follows:

Oregon

	Oregon	Federal		Modification
January 1, 1991, reserve balance	\$ 50,000	\$100,000		
Bad debts charged off in 1991	<u><150,000></u>	<u><150,000></u>		
Deductible bad debt expense	<100,000>	- <50,000>	=	<\$50,000>

(c) The ending balance of the reserve for bad debts as of December 31, 1986, may be greater for Oregon purposes than it is for federal. If so, the federal reserve will be depleted before the Oregon reserve. An Oregon addition modification shall be made when the federal deduction for bad debts exceeds the Oregon deduction for the tax year.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Hist: Filed 9/20/88 and Eff. 12/31/88; Amended 12/31/92

150-317.476(4)

Limitation on Oregon Net Loss Deduction

(1) The Oregon net loss which is deductible in any year is the Oregon net loss of a prior year reduced by taxable income, if any, in the intervening tax year or years between the year of loss and the succeeding tax year in which the Oregon net loss deduction is claimed. Net losses occurring in tax years beginning prior to January 1, 1987, can be carried forward five tax years. Net losses occurring in tax years beginning on or after January 1, 1987, can be carried forward fifteen tax years. See the limitation on "apportioned" taxpayers in ORS 314.675. In computing the taxable income which will reduce the Oregon net loss which is carried forward, any refund of an expense used in computing the Oregon net loss which is excluded from gross income shall be added to and included in the taxable income of an intervening tax year.

(2) If a consolidated Oregon return is filed in tax years beginning on or after January 1, 1986, the separate return limitation year (SRLY) rules as defined in Treasury Regulation §1.1502-1, shall be followed. Oregon net losses incurred in tax years beginning prior to January 1, 1986, shall be considered losses from a separate return limitation year. Therefore, the Oregon net losses from those years can be deducted in tax years beginning on or after January 1, 1986, only to the extent the same corporation that incurred the loss has Oregon net income on a separate basis. This limitation does not apply to a corporation that qualifies as a common parent. The provisions of this paragraph are demonstrated by the following examples:

Example (1)

	Parent Corp.	Subsidiary Corp.	Consolidated
1985 Oregon net income or (loss)	\$ 5,000	\$(15,000)	N/A
1986 Oregon net income or (loss)	6,000	9,000	\$ 15,000
1986 Net loss deduction	-0-	(9,000)	<u>(9,000)</u>
Oregon taxable income			6,000
Net Loss carryover to 1987 from 1985		<u>\$ (6,000)*</u>	

Example (2)

1985 Oregon net income or (loss)	\$(15,000)	\$ 5,000	
1986 Oregon net income or (loss)	6,000	9,000	\$ 15,000
1986 Net loss deduction	(15,000)		<u>(15,000)</u>
Oregon taxable income			-0-
Net Loss carryover to 1987 from 1985	<u>-0-</u>		

Example (3)

1985 Oregon net income or (loss)	\$(15,000)	\$ (7,000)	
1986 Oregon net income or (loss)	6,000	3,000	\$ 9,000
1986 Net loss deduction:			
Parent Corp			
(15,000/18,000** x 9,000)	(7,500)		(7,500)
Subsidiary Corp			
(3,000/18,000** x 9,000)		(1,500)	<u>(1,500)</u>

Oregon Taxable Income	-0-	
Net Loss carryover to 1987 from 1985	\$ (7,500)	\$ (5,500)*
* subject to SRLY limitation in 1987		
** \$15,000 loss applicable by parent plus \$3,000 loss limitation on \$7,000 loss of subsidiary		

[**Publications:** The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Hist: Eff. 1/69; Amended and Renumbered from OAR 150-317.297(4) to OAR 150-317.476(4), 12/31/83, 12/31/86, 12/31/87, 12/31/92

150-317.713

Limitations on Deduction of Group Losses

(1) Oregon has adopted the provisions of IRC Section 1503(f) that apply to corporations filing consolidated returns and limit the use of group losses to offset income of a subsidiary paying dividends on preferred stock.

(2) The new limitations apply in tax years ending after November 17, 1989.

(3) Only the income or losses of those corporations included in the Oregon consolidated return will be included in the computation of the "group losses" and "separately computed taxable income."

(4) Oregon modifications that apply should be made prior to computing "group losses," and "separately computed taxable income."

(5) The following examples demonstrate the application of the limitation for Oregon:

Example 1

An affiliated group filing a consolidated federal return consists of Corporation P (the parent corporation) and Corporations R and S (subsidiaries of P). All three corporations are unitary and the consolidated Oregon apportionment percentage is 50 percent. Corporation S issues IRC Section 1504(a)(4) preferred stock. In 1991, Corporation P has federal income of \$900 and an Oregon addition modification of \$100. Corporation R has a federal loss of \$1,500 with no Oregon modifications. Corporation S has federal "separately computed taxable income" of \$1,000, no Oregon modifications, and pays a dividend of \$900 on the preferred stock. For both federal and Oregon purposes, R's loss is a group loss. It can be offset against P's Oregon net income of \$1,000 leaving a balance of \$500. The \$500 balance of R's loss can be offset against S's net income to the extent it was not distributed to preferred stockholders (\$100). The remaining \$400 cannot be deducted in 1991. Therefore, the Oregon consolidated taxable income of the group is computed as follows:

Federal net income or (loss) of each corporation

Corporation P	\$ 900
Corporation R	(1,500)
Corporation S	<u>1,000</u>
Federal net income prior to limitation	\$ 400
Oregon modification	100
Nondeductible portion of R's loss	<u>400</u>
Apportionable net income	\$ 900
Oregon apportionment percentage	<u>50%</u>
Oregon taxable income	\$ 450

The remaining \$400 of Corporation R's loss can be carried forward and deducted in future years subject to the same limitation.

Example 2

Assume the same facts as in Example 1, except that corporations R and S are unitary but P is not. Without corporation P in the consolidated Oregon return, the Oregon apportionment percentage increases to 75 percent. In this case, R's loss cannot be offset against P's income since they are not unitary. Corporation R's loss can only be offset against S's net income to the extent it was not distributed to preferred stockholders (\$100). Therefore, \$1,400 of the loss cannot be deducted in 1991 and the Oregon consolidated taxable income of the group would be computed as follows:

Federal net income or (loss) of each unitary corporation

Corporation R	\$ (1,500)
Corporation S	<u>1,000</u>

Federal net income prior to limitation	(500)
Nondeductible portion of R's loss	1,400
Apportionable net income	\$ <u>900</u>
Oregon apportionment percentage	<u>75%</u>
Oregon taxable income	\$ 675

The remaining \$1,400 of Corporation R's loss can be carried forward and deducted in future years subject to the same limitation.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Hist: Filed 9/13/91 and Eff. 12/31/91; Amended 12/31/92

150-317.720

Computation of Taxable Income; Excess Loss Accounts

An Oregon subtraction is allowed for the amount of excess loss account included in federal taxable income under the provisions of Treasury Regulation subsection 1.1502-19 if:

- (1) The losses did not offset unitary income in the year incurred, or
- (2) The excess losses were attributable to losses incurred in tax years beginning prior to January 1, 1986.

Example (1): Corporation P purchased 100 percent of the stock of Corporation S for \$1,000 on January 1, 1986. P and S were not unitary and S had negative earning and profits (E&P) of \$1,000 in the tax year ending December 31, 1986. They filed a consolidated federal and separate Oregon returns in 1986. P and S were unitary and filed consolidated federal and Oregon returns in 1987. During 1987, S realized another negative E&P of \$1,000. P sold S to an unrelated buyer for \$1,000 on January 1, 1988.

P's federal adjusted basis in S:

Cost of S stock January 1, 1986	\$1,000
1986 negative E&P of S	<u>(1,000)</u>
Adjusted basis December 31, 1986	\$ 0

The 1987 negative E&P of S (\$1,000) is charged to S's excess loss account since its basis was previously reduced to 0.

Sale of S in 1988:

Sales price January 1, 1988	\$1,000
Less adjusted basis	<u>0</u>
Gain on sale	\$1,000
Plus excess loss account	<u>1,000</u>
Federal gain	\$2,000

For Oregon, the federal addition of \$1,000, due to the excess loss account, can be subtracted since it is attributable to a loss that S claimed in 1986 that did not offset unitary income.

Example (2): Same facts as *Example (1)*, except that all events took place two years earlier. The 1986 Oregon return would show a subtraction of \$2,000,000 because both losses, even the 1985 loss which did offset unitary income, were incurred in tax years beginning before January 1, 1986.

Hist: Filed 10/15/93 and Eff. 12/31/93