



Senate

General Assembly

File No. 576

February Session, 2024

Substitute Senate Bill No. 443

Senate, April 22, 2024

The Committee on Finance, Revenue and Bonding reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE ACCRUAL OF INTEREST ON CERTAIN TAX UNDERPAYMENTS AND THE BUSINESS OPERATING LOSS CARRY-OVER PERIOD.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (*Effective July 1, 2025*) Sections 12-204c, 12-242d, 12-699a
2 and 12-722 of the general statutes shall not apply with respect to the
3 accrual of any interest, in the case of any underpayment of tax by a
4 taxpayer under chapter 208, 228z or 229 of the general statutes, to the
5 extent such underpayment was due to the filing of an amended return
6 necessitated by the guidance in Notice 2021-20, issued by the Internal
7 Revenue Service, concerning the federal employee retention credit
8 program. If such interest has already been paid to the Department of
9 Revenue Services, the Commissioner of Revenue Services shall treat
10 such payment as an overpayment and shall refund the amount of such
11 payment, without interest, to the taxpayer.

12 Sec. 2. Subdivision (4) of subsection (a) of section 12-217 of the 2024

13 supplement to the general statutes is repealed and the following is
14 substituted in lieu thereof (*Effective from passage*):

15 (4) Notwithstanding any provision of this section:

16 (A) Any excess of the deductions provided in this section for any
17 income year commencing on or after January 1, 1973, over the gross
18 income for such year or the amount of such excess apportioned to this
19 state under the provisions of this chapter, shall be an operating loss of
20 such income year and shall be deductible as an operating loss carry-over
21 for operating losses incurred prior to income years commencing January
22 1, 2000, in each of the five income years following such loss year; [, and]
23 for operating losses incurred in income years commencing on or after
24 January 1, 2000, and prior to January 1, 2025, in each of the twenty
25 income years following such loss year; [,] and for operating losses
26 incurred in income years commencing on or after January 1, 2025, in
27 each of the thirty income years following such loss; except that:

28 (i) For income years commencing prior to January 1, 2015, the portion
29 of such operating loss that may be deducted as an operating loss carry-
30 over in any income year following such loss year shall be limited to the
31 lesser of (I) any net income greater than zero of such income year
32 following such loss year, or in the case of a company entitled to
33 apportion its net income under the provisions of this chapter, the
34 amount of such net income that is apportioned to this state pursuant
35 thereto, or (II) the excess, if any, of such operating loss over the total of
36 such net income for each of any prior income years following such loss
37 year, such net income of each of such prior income years following such
38 loss year for such purposes being computed without regard to any
39 operating loss carry-over from such loss year allowed under this
40 subparagraph and being regarded as not less than zero, and provided
41 further the operating loss of any income year shall be deducted in any
42 subsequent year, to the extent available for such deduction, before the
43 operating loss of any subsequent income year is deducted;

44 (ii) For income years commencing on or after January 1, 2015, the
45 portion of such operating loss that may be deducted as an operating loss

46 carry-over in any income year following such loss year shall be limited
47 to the lesser of (I) fifty per cent of net income of such income year
48 following such loss year, or in the case of a company entitled to
49 apportion its net income under the provisions of this chapter, fifty per
50 cent of such net income that is apportioned to this state pursuant
51 thereto, or (II) the excess, if any, of such operating loss over the
52 operating loss deductions allowable with respect to such operating loss
53 under this subparagraph for each of any prior income years following
54 such loss year, such net income of each of such prior income years
55 following such loss year for such purposes being computed without
56 regard to any operating loss carry-over from such loss year allowed
57 under this subparagraph and being regarded as not less than zero, and
58 provided further the operating loss of any income year shall be
59 deducted in any subsequent year, to the extent available for such
60 deduction, before the operating loss of any subsequent income year is
61 deducted; and

62 (iii) If a combined group so elects, the combined group shall
63 relinquish fifty per cent of its unused operating losses incurred prior to
64 the income year commencing on or after January 1, 2015, and before
65 January 1, 2016, and may utilize the remaining operating loss carry-over
66 without regard to the limitations prescribed in subparagraph (A)(ii) of
67 this subdivision. The portion of such operating loss carry-over that may
68 be deducted shall be limited to the amount required to reduce a
69 combined group's tax under this chapter, prior to surtax and prior to the
70 application of credits, to two million five hundred thousand dollars in
71 any income year commencing on or after January 1, 2015. Only after the
72 combined group's remaining operating loss carry-over for operating
73 losses incurred prior to income years commencing January 1, 2015, has
74 been fully utilized, will the limitations prescribed in subparagraph
75 (A)(ii) of this subdivision apply. The combined group, or any member
76 thereof, shall make such election on its return for the income year
77 beginning on or after January 1, 2015, and before January 1, 2016, by the
78 due date for such return, including any extensions. Only combined
79 groups with unused operating losses in excess of six billion dollars from
80 income years beginning prior to January 1, 2013, may make the election

81 prescribed in this clause; and

82 (B) Any net capital loss, as defined in the Internal Revenue Code
83 effective and in force on the last day of the income year, for any income
84 year commencing on or after January 1, 1973, shall be allowed as a
85 capital loss carry-over to reduce, but not below zero, any net capital
86 gain, as so defined, in each of the five following income years, in order
87 of sequence, to the extent not exhausted by the net capital gain of any of
88 the preceding of such five following income years; and

89 (C) Any net capital losses allowed and carried forward from prior
90 years to income years beginning on or after January 1, 1973, for federal
91 income tax purposes by companies entitled to a deduction for dividends
92 paid under the Internal Revenue Code other than companies subject to
93 the gross earnings taxes imposed under chapters 211 and 212, shall be
94 allowed as a capital loss carry-over.

This act shall take effect as follows and shall amend the following sections:		
Section	<i>July 1, 2025</i>	New section
Sec. 2	<i>from passage</i>	12-217(a)(4)

FIN *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 25 \$	FY 26 \$
Revenue Serv., Dept.	GF - Revenue Loss	None	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which extends by 10 years the period when corporations may carry forward a net operating loss (NOL) deduction for corporation business tax purposes, results in a General Fund revenue loss estimated at \$2.8 million in FY 46 and \$4.7 million in FY 47 and annually thereafter.

The bill also exempts taxpayers from paying interest on underpayments of corporation business, pass-through entity, and personal income taxes if the underpayment was due to an amended return filing necessitated by Internal Revenue Service (IRS) guidance on the federal employee retention credit (IRS Notice 2021-20). This results in a minimal General Fund revenue loss as early as FY 26.

The Out Years

The impact of the bill's NOL provision is limited to FY 46 and later as the carryforward period is extended from 20 to 30 years applicable to NOLs incurred in income years starting on or after January 1, 2025.

No out year impact is anticipated from the provision of the bill exempting interest related to underpayments due to IRS Notice 2021-20.

OLR Bill Analysis**sSB 443*****AN ACT CONCERNING THE ACCRUAL OF INTEREST ON CERTAIN TAX UNDERPAYMENTS AND THE BUSINESS OPERATING LOSS CARRY-OVER PERIOD.*****SUMMARY**

This bill exempts taxpayers from paying interest on underpayments of corporation business, pass-through entity, and personal income taxes if the underpayment was due to an amended return filing necessitated by Internal Revenue Service (IRS) guidance on the federal employee retention credit (IRS Notice 2021-20). It requires the Department of Revenue Services to treat any interest already paid on these underpayments as an overpayment and refund it to taxpayers without interest.

The bill also extends, from 20 to 30 income years, the period when corporations may carry forward a net operating loss (NOL) deduction for corporation business tax purposes. (NOL is the amount by which a corporation's total allowable deductions exceed its gross income.) The bill's extended carry forward period applies to NOLs incurred in income years starting on or after January 1, 2025.

EFFECTIVE DATE: Upon passage for the NOL provision and July 1, 2025, for the underpayments provision.

BACKGROUND***Federal Employee Retention Credit***

The federal employee retention credit is a refundable credit against employment taxes designed for eligible businesses that continued paying employees during the COVID-19 pandemic. Eligible employers were allowed to claim the credit on an original or amended employment tax return for qualified wages paid between March 13, 2020, and

December 31, 2021. In September 2023, the IRS ordered a moratorium on processing new credit claims due to its concerns that a substantial share of new claims were fraudulent. It subsequently implemented stricter compliance reviews, a voluntary disclosure program that allows taxpayers to pay back a credit they received but were not entitled to, and a special withdrawal program for taxpayers with pending claims who realize they may have filed an inaccurate tax return.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 51 Nay 0 (04/03/2024)