

**FORM N-309**  
(REV. 2008)

**CORPORATION APPLICATION FOR TENTATIVE REFUND FROM CARRYBACK OF NET OPERATING LOSS**

**This Application Must be Filed Separately from Your Income Tax Return to Insure Proper Processing**

Name	Federal Employer I.D. No.	1. Enter the loss year and amount of net operating loss.
Number and Street	Check method of accounting: (1) Cash <input type="checkbox"/> (2) Accrual <input type="checkbox"/> (3) Other (explain below) <input type="checkbox"/>	Year Ended .....
City or town, State and Postal/ZIP Code		Amount \$..... Decrease in Tax \$..... (Line 28 below)

2. Date the return was filed for the year of the net operating loss.....  
District Office with which filed .....

3. Was a consolidated return filed for the taxable year specified in item 1? Yes  No

**For tax years beginning after 8/5/97, NOL's may generally only be carried back 2 years.**

4. (a) Preceding taxable year ended (years affected by the carryback)	<b>Can your loss be carried back more than 2 years? SEE GENERAL INSTRUCTIONS</b>	(b) Amount of any unpaid taxes (Specify type)	(c) Name shown on original return	(d) Was a consolidated return filed?	
				Yes	No
3rd					
2nd					
1st					

5. Was an extension of time granted for filing the return for the year of the net operating loss? If "Yes," give date to which extension granted. Yes  No

6. If there has been a change in your accounting period, give date permission to change was granted. \_\_\_\_\_

7. Date of incorporation \_\_\_\_\_

8. If this is an application of a dissolved corporation, give date of dissolution. \_\_\_\_\_

9. Have you filed an appeal in the Tax Appeal Court for the year or years to which the loss is to be applied? Yes  No

10a. Does the carryback include a specified liability loss that is attributable to a product liability? Yes  No

10b. Does the carryback include a specified liability loss that is attributable to a federal or state law or to a tort other than product liability? Yes  No

If the answer to question 10a or 10b is "Yes," see the instructions for federal Form 1139 and attach a statement.

<b>COMPUTATION OF DECREASE IN TAX</b>	_____ preceding taxable year ended		_____ preceding taxable year ended		_____ preceding taxable year ended	
	(a) Before carryback	(b) After carryback	(c) Before carryback	(d) After carryback	(e) Before carryback	(f) After carryback
11. Taxable income before deducting line 12 ....						
12. Net operating loss deduction resulting from carryback (see Instr.).....						
13. Line 11 minus line 12.....						
14. Net capital gain .....						
15. Line 13 minus line 14.....						
16. Tax on line 14 (see Instr. H) .....						
17. Tax on line 15 (see Instr. H) .....						
18. Line 16 plus line 17.....						
19. Tax on line 13 (see Instr. H) .....						
20. Income tax (enter lesser of line 18 or line 19) ...						
21. Non-refundable tax credit(s) .....						
22. Line 20 minus line 21, but not less than zero						
23. Recapture of tax credit(s) .....						
24. Line 22 plus line 23.....						
25. Refundable tax credit(s) .....						
26. Balance of tax liability (or overpayment) (difference between lines 24 and 25) .....						
27. Enter amounts from line 26, columns (b), (d), and (f).....						
28. Decrease in tax (line 26 minus line 27) .....						

I declare, under penalties set forth in section 231-36, HRS, that I have examined this application, including any accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete.

Signature of Officer or Agent \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

## INSTRUCTIONS

**ATTENTION: Hawaii has not adopted the change in the carryback period for net operating losses to five years.**

### GENERAL INSTRUCTIONS

NOLs that occur in tax years beginning after August 5, 1997, are carried back 2 years and then carried forward to each of the next 20 years following the year of the loss. Farming losses in tax years beginning after 1997 are carried back 5 years. Any portion of an NOL that is a specified liability loss is carried back 10 years. Certain corporations that qualify as "small business" or that are engaged in the trade or business of farming may use a 3-year carryback period for losses attributable to Presidentially declared disasters. These rules do not apply to excess interest losses or NOLs of real estate investment trusts. See IRC section 172(b)(1) for rules for those losses.

Additional Forms N-309 may be needed if the corporation is carrying back an NOL to more than 3 preceding tax years. On the additional forms, complete lines 11 through 27 for each additional year.

**REQUIRED ATTACHMENTS** — Attach to this form copies of the first 2 pages of the corporation's federal return for the loss year, any forms or schedules from which the carryback results, and forms or schedules for items refigured in the carryback years.

**ELECTION NOT TO CARRYBACK:** 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. The carry forward is limited to 20 years for losses occurring during taxable years beginning after August 5, 1997 (15 years for losses occurring during taxable years beginning after December 31, 1981, and before August 6, 1997) whether or not a carryback is used first. Do not attach Form N-309 to your income tax return.

**A. WHO MUST FILE AN APPLICATION.**—An application for a tentative carryback adjustment may be filed on this form by any corporation which desires a quick refund of taxes which are affected by the carryback of a net operating loss. This does not apply to an S corporation which elects the tax treatment provided by IRC section 1372(a).

With respect to a net operating loss, the taxpayer has an option on whether or not to carry a loss back first before carrying it forward. *This form should only be used by those taxpayers choosing to carry their losses back.*

**B. TIME AND PLACE FOR FILING.**—This form must be filed with the Hawaii Department of Taxation at P.O. Box 3559, Honolulu, HI 96811-3559, and must be filed on or after the date of filing of the return for the taxable year of the net operating loss and within 12 months from the end of such taxable year. **Do not attach this form to your income tax return.** Form N-309 attached to an income tax return cannot be processed and will not be considered timely filed even if submitted with the return within 12 months from the end of the taxable year in which the net operating loss occurred.

IF YOU FAIL TO MEET THE FOREGOING LIMITATION, YOU MAY FILE AN AMENDED RETURN WITHIN THREE YEARS OF THE DUE DATE PRESCRIBED FOR FILING THE RETURN, INCLUDING EXTENSIONS, FOR THE NET OPERATING LOSS YEAR OR THE PERIOD AGREED TO UNDER A WRITTEN EXTENSION OF TIME, WHICHEVER IS LATER.

**C. NET OPERATING LOSS DEDUCTION.**—Generally, a net operating loss must be carried back to each of the 2 tax years before the year of the loss. Special rules apply for any part of a net operating loss attributable to a foreign expropriation loss, a product liability loss, and certain other losses. (See IRC section 172(b) and related regulations for details.)

All adjustments required to compute a net operating loss that may be carried back to any year must be shown on a separate schedule. A copy of pages 1 and 2 of Form N-30 for the loss year may be attached instead. Hawaii Tax Law does not allow the carryback of net capital losses. Identify the part of the NOL, if any, that qualifies as a specified liability loss. Also identify the part of the specified liability loss that is attributable to: (1) product liability; and (2) a federal or state law or tort (other than product liability). For each of these parts of the specified liability loss, separately identify the types of deductions that generate that part of the loss. For any part of a specified liability loss that is attributable to a federal or state law or a tort (other than product liability) describe the act or actions (or failures to act) giving rise to each deduction that occurred at least 3 years before the loss year. For special rules for specified liability losses, see IRC section 172(f).

The term "net operating loss" means the excess of allowable deductions over gross income, computed with the following modifications: (1) no net operating loss deduction is allowed; (2) the special deductions allowed certain corporations under section 235-7(c), HRS, shall be computed without regard to IRC section 246(b)(1) if the spe-

cial deductions under IRC section 243 are allowed for federal purposes by reason of IRC section 246(b)(2); and (3) there shall be included in gross income the amount of interest which is excluded from gross income by section 235-7(a), HRS, decreased by the amount of interest paid or accrued which is disallowed as a deduction by section 235-7(e), HRS. All adjustments required to compute a net operating loss which may be carried back to any year must be shown on a separate schedule.

**D. ALLOWANCE OF ADJUSTMENT.**—The director will act on this application within a period of 90 days from whichever of the following two dates is the later:

- (1) the date on which the application is filed; or
- (2) the last day of the month in which falls the last date prescribed by law (including any extension of time granted) for filing the return for the taxable year of the net operating loss from which the carryback results.

**E. DISALLOWANCE OF APPLICATION.**—Any application which contains material omissions or computation errors which the director deems cannot be corrected within a 90-day period may be disallowed. This application for a tentative carryback adjustment does not constitute a claim for credit or refund. If this application is disallowed in whole or in part, no suit based thereon may be maintained in any court for the recovery of any tax. The taxpayer may, however, file a regular claim for credit or refund on Form N-30X (corporation amended return) at any time before the expiration of the applicable period of limitation.

**F. EXCESS ALLOWANCES.**—Any amount applied, credited, or refunded on the basis of this application which is later determined by the Department to be excessive may be assessed as a deficiency as if it were due to mathematical or clerical error appearing on the return.

**G. LINE 4, COLUMN (b).**—If the amount of any tax for any taxable year specified in column (a) of line 4 is unpaid, including any installment not yet due, at the date of filing the application, enter the unpaid amount of such tax and specify the kind of tax or taxes.

**H. RECOMPUTATION OF TAX LIABILITY.**—**Line 11.**—Enter in columns (a), (c), and (e) the amount for the applicable carryback year, starting with the earliest carryback year, as shown on the original or amended return or as previously adjusted. Enter the ordinal number of years the loss is being carried back and the date the carryback year ends in the spaces above columns (a) and (b), (c) and (d), or (e) and (f). If the return was examined, enter amounts that were determined as a result of the examination. If carrying back to more than 3 years, attach additional Forms N-309.

To arrive at the decrease in the tax previously determined, recompute the tax after taking the carryback(s) into account. Form N-30 and instructions for the applicable year will be helpful in making this recomputation. Attach a detailed computation of the new tax liability shown on lines 16, 17, and 19.

Deductions that are limited by taxable income are to be recomputed after carryback of a net operating loss. The deduction for charitable contributions, however, is computed without regard to any carryback. Attach a schedule showing the recomputation. Also, credits based on or limited by the tax must be recomputed on the basis of the tax liability after application of the carrybacks.

**I. LINE 12.**—For accrual basis taxpayers, a reduction of the net operating loss deduction representing the tax benefit derived from the original state income tax expense deduction is required. Attach a separate schedule showing your computation.

**J. LINE 21.**—The nonrefundable tax credits are the carryover of the energy conservation tax credit, enterprise zone tax credit, low-income housing tax credit, the credit for employment of vocational rehabilitation referrals, the high technology business investment tax credit, carryover of the individual development account contribution tax credit, technology infrastructure renovation tax credit, the credit for school repair and maintenance, the carryover of the hotel construction and remodeling tax credit, the carryover of the residential construction and remodeling tax credit, the renewable energy technologies income tax credit, and the Ko Olina resort and marina attractions and educational facilities tax credit.

**K. LINE 23.**—Enter any recapture of the capital goods excise tax credit, the low-income housing tax credit, the high technology business investment tax credit, and the tax credit for flood victims.

**L. LINE 25.**—The refundable tax credits are the capital goods excise tax credit, the fuel tax credit for commercial fishers, the tax credit for research activities, the ethanol facility tax credit, and the motion picture, digital media, and film production income tax credit.