

CITY NOL STUDY COMMITTEE TO DELAY EFFORT

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In the last days of the 130th General Assembly, House Bill 5 was passed after years of diligent work to reform Ohio's municipal tax system. As part of that legislation, a committee was formed to evaluate and quantify the potential fiscal impact of the bill's mandatory five year net operating loss (NOL) provision on municipalities that did not have an NOL provision under the prior law. The Municipal Income Tax Net Operating Loss Review Committee (NOL Committee) is chaired by Ohio Tax Commissioner Joe Testa and includes a mix of legislators and community members.

The NOL Committee was charged with prescribing a method that municipal corporations shall use to estimate the difference between a.) the municipal corporation's actual or projected income tax revenue in 2012 through 2018, and b.) the actual or projected municipal income tax revenue that would have resulted in each of those years if the municipal corporation allowed net operating loss to be carried forward for five years for losses incurred in 2011 through 2013. The Committee was to issue a written report to the General Assembly reporting its findings and the estimated revenue impact of the NOL provision. The report was also to contain recommendations to address resulting municipal revenue shortfalls. The report was due to the General Assembly by May 1, 2017, enough time for the General Assembly to consider incorporating the committee's recommendations, if any, into the state's biennial budget.

The NOL Committee received significant push-back from municipalities related to the difficulty of estimating the revenue impact of the NOL provisions. Even though

the municipalities had no trouble rendering staggering estimates of revenue losses during the legislative process, they argued that it would be too difficult to provide timely data to the NOL Committee for purposes of evaluating the revenue impacts of the mandatory NOL carryforward provision. As a result, the municipalities have pressured the NOL Committee to delay its efforts.

With support from the Ohio Municipal League, the NOL Committee recently met and agreed to support legislation to extend the deadline for reporting its findings. The legislation, to be sponsored by Rep. Kirk Schuring, a member of the NOL Committee, would extend the deadline for submissions of municipal tax data to the Ohio Tax Department until August 31, 2021 and the NOL Committee will be required to issue its written report by May 1, 2022.

It is expected that during the upcoming lame duck session, the proposed legislative language will be adopted by the General Assembly. If that goes smoothly, it is expected that the NOL Committee will not meet again for quite some time. In the meantime, the mandatory 5 year NOL carryforward provision will continue to be phased in. Fifty percent of losses first incurred in tax years beginning in or after 2017 may be used to offset income generated in tax years beginning in 2018 through 2022. For tax years beginning in or after 2023, 100% of NOL carryforwards may be used to offset income.

If you have any questions about Income Tax Net Operating Loss or the carryforward provision, please contact Charlotte B Hickcox or any of the other professionals at Zaino Hall & Farrin LLC.

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