Instructions for 2011 Form 4CL: Net Capital Loss Adjustments for Combined Group Members

Who Should File Form 4CL

Form 4CL is only for corporations that are combined group members. File Form 4CL only if either A. or B. below is true:

A. The corporation has unused capital loss carryovers incurred in taxable years beginning before January 1, 2009 (or other non-sharable capital losses) **and** the combined group reports a net capital gain on line 18 of Form 4R, *Federal Taxable Income Reconciliation for Wisconsin Combined Groups*, or

B. The corporation has capital gain/loss items to report on Form 4N, *Wisconsin Nonapportionable and Separately Apportioned Income*, for the taxable year **and** the combined group computes a suspended net capital loss on line 18 of Form 4R **and** part of that suspended net capital loss is attributable to the corporation.

NOTE: If neither A. nor B. above is true in its entirety, do not file Form 4CL for the corporation. Also, Form 4CL does not apply to corporations that are not combined group members, even if they are filing a Form 4N with the combined return.

Purpose of Form 4CL

Under section 1211 of the Internal Revenue Code, capital losses may only be used to offset capital gains. Under sec. 71.255(4)(i) and (11), Wis. Stats., and s. Tax 2.61(6)(c), Wisconsin Administrative Code, the capital loss limitation is determined on an aggregate basis for the combined group, similarly to how it is determined for a consolidated group for federal purposes under Treas. Regs. §1.1502-22 and 1.1502-23.

However, not all capital losses may be included in the aggregate computation for the combined group. The aggregate computation cannot include non-sharable capital loss carryovers or capital gain/loss items that members must report on a separate entity basis on Form 4N.

The purpose of Form 4CL is to allow a combined group member to:

- Use the non-sharable capital loss carryovers it could not include in the group's aggregate computation, and
- Apply all of its available capital losses, including its current year net capital loss from the group's aggregate computation, to capital gains that are reportable on a separate entity basis on Form 4N.

A non-sharable capital loss is one which originated:

- In a taxable year beginning before January 1, 2009, or
- In the combined unitary income of another combined group, or
- In transactions reportable on a separate entity basis on Form 4N.

As an alternative to completing 2011 Form 4CL, a combined group member with non-sharable capital loss carryovers may choose to carry them back to a taxable year beginning before 2009, to the extent allowed under section 1212 of the Internal Revenue Code. Also, see s. Tax 2.61(6)(c), Wisconsin Administrative Code, for further details regarding elections a corporation may make regarding its capital loss carryovers.

Line-by-Line Instructions

These instructions are presented in the order the lines appear on Form 4CL:

Part I: Net Capital Loss Adjustments

■ **Line 1. Net Capital Gain Included in Combined Unitary Income –** Enter the amount of net capital gain from Form 4R, line 18, but only if that amount was greater than $0. This is the net capital gain you computed on an aggregate basis for the combined group as a whole.

■ **Line 2. Current Year Net Capital Loss Attributable to This Member –** Complete this line only if Form 4R, line 18 was $0 **and** the corporation's capital gain and loss items that were included in the aggregate computation would have been a net capital loss if they were netted on a separate entity basis. On line 2, you will enter the corporation's share of the group's aggregate net capital loss.

To compute the amount on line 2, you'll need to allocate a share of the group's aggregate net capital loss to each member that would have had a net capital loss if its items included in the aggregate computation were netted on a separate entity basis. The example below illustrates:

Example for Line 2:

Combined Group STU consists of Member S, Member T, and Member U. In the taxable year 2011, S, T, and U have the following capital gain/loss items includable in the group's aggregate computation:

	S	T	U
Long term capital gain			$5,000
Short term capital loss	($12,000)	($6,000)	
Section 1231 gain/loss	($500)	$2,000	$1,500

When S, T, and U aggregate each class of capital gains and losses and section 1231 gains and losses, Group STU has a suspended net capital loss of ($10,000) and therefore enters $0 on Form 4R, line 18.

However, if S, T, and U's capital gains and losses and section 1231 gains and losses are netted for each member separately, S would have a net capital loss of ($12,000) (its section 1231 loss would be treated as ordinary under section 1231(a)(2) of the Internal Revenue Code), T would have a net capital loss of ($4,000), and U would have a net capital gain of $6,500.

Since only S and T would have a net capital loss if their capital gain/loss items included in the aggregation were netted on a separate entity basis, only S and T complete line 2 of Form 4CL.

Of Group STU's ($10,000) suspended net capital loss, you would allocate ($7,500) to S (= ($10,000) x ($12,000)/($16,000)) and ($2,500) to T (= ($10,000) x ($4,000)/($16,000)).

Therefore, on line 2 of Member S's Form 4CL, you would enter $7,500, and on line 2 of Member T's Form 4CL, you would enter $2,500. Note that these loss amounts should be entered as positive numbers.

■ **Lines 3 and 4. Current Year Net Capital Gain or Loss from Separate Entity Items –** If the corporation has capital gain/loss items that are reportable on Form 4N (and thus couldn't be included in the aggregate computation on Form 4R, line 18), net those amounts separately, without regard to capital loss carryovers. The capital loss carryovers will be accounted for later on lines 8 and 9.

If the result is a net capital gain, enter the amount of that net capital gain on line 3. If the result is a net capital loss, enter the amount of that net capital loss on line 4 as a positive number.

■ **Lines 5 through 7. Available Capital Loss Carryovers –** Compute the available non-sharable and sharable capital loss carryovers using the worksheets in Parts II, III, and IV. See the instructions for Parts II, III, and IV.

■ **Line 8. Net Capital Gain from Separate Entity Items –** The amount on line 8 represents the total net capital gain you must include on Form 4N on the appropriate line or lines corresponding to the type of income. If the net capital gain is attributable to more than one type of income on Form 4N, allocate the net capital gain to the types of income which generated the net capital gain, in proportion to the total capital gain attributable to each type of income.

NOTE: If the net capital gain on line 8 is attributable to amounts reportable in Part II of Form 4N, include the net capital gain in the pre-apportioned amount.

If you have an amount on line 8, note the following ordering rules regarding your capital loss carryovers:

- The current year net capital loss reported on line 2 is considered used before the capital loss carryovers reported on line 7.
- If capital loss carryovers from line 7 were used, they are considered used in the order incurred. If both sharable and non-sharable carryovers were incurred in the same taxable year, the amount used from each type is determined on a pro rata basis according to each type available from that year.

■ **Line 9a. Available Carryovers After Applying Capital Gain from Separate Entity Items –** If you reported current year net capital gain from separate entity items on line 3, subtract that amount from the available capital loss carryovers you reported on line 7. Line 9a represents the total remaining capital loss carryovers after applying them against current year net capital gains from separate entity items.

■ **Line 9b. Available Carryovers After Applying Capital Loss from Separate Entity Items –** If you reported current year net capital loss from separate entity items on line 4, add that amount to the available capital loss carryovers you reported in line 7. Line 9b represents the total available capital loss carryovers, including current year net capital losses from separate entity items.

■ **Line 9c. Additional Capital Loss Applied –** The lesser of line 9a and line 1 represents the total amount of non-sharable and sharable capital loss amounts to be applied against the corporation's share of the combined group's net capital gain. If this amount includes both current year net capital loss from line 4 and non-sharable/sharable capital loss carryovers from line 7, the current year net capital loss is considered used before the capital loss carryovers. The amount reported on line 9c should be used when updating your non-sharable and sharable capital loss carry forward tables since this is the amount of capital loss carry forwards being used up.

■ **Line 9d. Member's Share of Net Capital Gain Included in Combined Unitary Income –** On line 9d, you will enter the percentage of the group's aggregate net capital gain from Form 4R, line 18 that represents the amount included in the corporation's Wisconsin income. For corporations that are members of groups that use apportionment, this is the percentage reported in Form 4A, Part II, column c.

For corporations that are in groups that do business only in Wisconsin ("100% Wisconsin groups"), you will need to compute this percentage based on the corporations' relative shares of combined unitary income. For members of 100% Wisconsin groups, the corporation's share of combined unitary income is the sum of the amounts on lines L1 and L2 of Form 4M, *Wisconsin Combined Group Member-Level Data*. The following example illustrates this computation:

Example for Members of 100% Wisconsin Groups: Combined Group JKLM consists of Member J, Member K, Member L, and Member M. The members' amounts on Form 4M, lines L1 (Share of Combined Unitary Income) and L2 (Adjustment for Current Year Loss Offset) are as follows:

	J	K	L	M
Line L1	20,000	30,000	-8,000	-17,000
Line L2	-10,000	-15,000	8,000	17,000
	$10,000	$15,000	$0	$0

Assume that on Form 4R, line 18, the combined group computed an aggregate net capital gain of $5,000, and that Member J and Member K both have non-sharable capital loss carryovers.

The percentage that Member J enters on line 9d of Form 4CL is 40% (= $10,000/$25,000)). The percentage that Member K enters on line 9d is 60% (= $15,000/$25,000). Members L and M do not complete Form 4CL since they do not have a share of the group's combined unitary income and thus do not have a share of the aggregate net capital gain.

Parts II, III, and IV: Carryovers Available

Part II determines the amount you enter in Part I, line 5. Parts III and IV determine the amount you enter in Part I, line 6.

■ **Part II. Non-Sharable Capital Loss Carryovers –** Complete columns a through d as instructed on the form, and enter the total from column d on Part I, line 5.

■ **Part III. Sharable Capital Loss Carryovers –** Complete columns a through d of Part III as instructed on the form. In order to complete column e, you will need to complete Part IV to ensure that sharable loss carryovers are not double-counted. In column f, subtract the column e amounts from the column d amounts as instructed. Enter the total from column f on Part I, line 6.

■ **Part IV. Sharable Capital Loss Carryovers –** Do not complete Part IV unless you have completed columns a through d of Part III. The purpose of Part IV is to compute the amount of sharable loss carryovers the corporation already used in the combined group's aggregate computation for the taxable year, so that this amount is not used again in computing additional loss allowable on Form 4CL.

Complete lines 1 through 5 of Part IV as instructed on the form and apply the total from line 5 to the available sharable carryovers in Part III, column d, using the oldest carryovers first. In Part III, column e, enter the amounts you applied from line 5 on the lines corresponding to the appropriate years.

Additional Information and Assistance

Web Resources. The Department of Revenue has a web page dedicated to combined reporting issues, including:

- Frequently asked questions
- Training materials
- Links to Administrative Code sections that relate to combined reporting
- Articles on combined reporting

Access the combined reporting web page at: http://www.revenue.wi.gov/combrept/index.html

For questions that do not relate to combined reporting, the web page also has a library of frequently asked questions on general business tax topics, available at: http://www.revenue.wi.gov/faqs/index.html

Contact Information. If you cannot find the answer to your question in the resources available on the Department of Revenue's web page, contact the Department using any of the following methods:

- E-mail your question to corp@revenue.wi.gov
- Call (608) 266-2772
  (Telephone help is also available using TTY equipment. Call the Wisconsin Telecommunications Relay System at 711 or, if no answer, (800) 947-3529. These numbers are to be used only when calling with TTY equipment.)
- Send a fax to (608) 267-0834
- Write to the Audit Bureau, Wisconsin Department of Revenue, Mail Stop 5-144, PO Box 8906, Madison, WI 53708-8906