Deloitte.

State Tax Matters
The power of knowing.
May 7, 2021

Income/Franchise:
Arkansas: ALJ Addresses Acquiring Entity's NOL Computation in Post-Merger Context

Docket No. 21-070, Ark. Dep't of Fin. & Admin. (4/27/21). In a case involving computation of net operating losses (NOLs) from an acquired corporation post-merger, an administrative law judge held that pursuant to Ark. Code Ann. section 26-51-427(3) as in effect for the prior tax years at issue, the acquiring corporation must compute "total income" as delineated in Arkansas Corporate Income Tax Rule 1.26-51-427(3)(C) – which provides that the amount of NOL that may be claimed is computed by multiplying the ratio of the acquired corporation's assets to all assets by "total income" – based on its total income apportioned to Arkansas rather than its total multistate income. In doing so, the judge reasoned that applying the taxpayer's proposed methodology to utilize "total multistate income" in this calculation "would use the total income apportioned to Arkansas earned by all the assets of the succeeding corporation (including those not located within Arkansas), not just the apportioned income associated with the preceding company's Arkansas assets" in seeming contradiction to applicable Arkansas statutes and rules. Accordingly, the judge sustained the Arkansas Department of Finance and Administration's underlying tax assessment, noting that the taxpayer failed to meet its burden of proving entitlement to the total amount of its claimed NOL deduction by a preponderance of the evidence. Please contact us with any questions.
URL: https://www.ark.org/dfa-act896/index.php/api/document/download/21-070.pdf

— Scott Bedunah (Dallas)
Senior Manager
Deloitte Tax LLP
scbedunah@deloitte.com

Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

John Paek (Atlanta)
Principal
Deloitte Tax LLP
jpaek@deloitte.com

John Volk (Dallas)
Manager
Deloitte Tax LLP
jovolk@deloitte.com