

Income/Franchise:

New Jersey Tax Court Holds that Auditor's NOL Carryforward Adjustments are Statutorily Time Barred

Docket No. 001323-2018, N.J. Tax Ct. (5/27/21). In a published opinion involving the New Jersey Division of Taxation's (Division) attempted elimination of a taxpayer's carried forward net operating losses (NOLs) from 2007 through 2011 as an audit adjustment for tax years 2012 through 2015 for state corporation business tax (CBT) purposes, the New Jersey Tax Court (Court) granted the taxpayer's motion for summary judgment, holding that such NOL adjustments are statutorily time barred. In doing so, the Court reasoned that permitting the Division to adjust the taxpayer's NOLs carried forward from closed years 2007 through 2011 "would be tantamount to an adjustment of the income reported in those years and thus constitutes an audit of closed years, which is impermissible under N.J.S.A. 54:49-6." Moreover, the Court explained that "any suggestion that an audit of the closed years would have resulted in the complete denial of any NOL and any NOL carryforward is irrelevant (as well as being without any legal or factual basis) since those years cannot be audited in juxtaposition with the audit of the open years 2012-2015." In the underlying case facts, a New Jersey auditor had determined that the taxpayer had underreported its income from certain intercompany leasing transactions for the audited years 2012 to 2015 under transfer pricing principles. Please contact us with any questions.

URL: <https://njcourts.gov/attorneys/assets/opinions/tax/1323-18opn.pdf>

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