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# Income/Franchise:
# Maine: State High Court Rejects Claim that Disallowed Loss Carryover Lead to Invalid Taxation

*Case No. BCD-20-59*, Me. (rev. 6/10/21). In a revised opinion [see *State Tax Matters*, Issue 2021-18, for details on the original opinion in this case], the Maine Supreme Judicial Court (Court) continues to affirm the Maine Tax Assessor's disallowance of a telecommunications company's claimed unitary business loss carryover and underlying income tax refund request for the 2013 taxable year at issue and, in doing so, rejected the company's assertion that such application of Maine corporate income tax law resulted in an unconstitutional indirect tax on extraterritorial "nonunitary" income that was not subject to taxation in Maine. Under the facts, the unitary group was unable to take a net operating loss carryforward deduction on its 2013 amended Maine corporate income tax return because in 2012, certain members of the unitary business group received substantial amounts in nonunitary income that more than offset the group's unitary net operating loss for that tax year and thereby caused the group's 2012 federal tax return to reflect net taxable income rather than a net operating loss.
**URL:** https://www.courts.maine.gov/courts/sjc/lawcourt/2021/21me026re.pdf
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210507_8.html

In denying the telecom's unitary business loss carryover claim in Maine for the 2013 tax year, the Court concluded that Maine's taxation scheme does not violate the dormant Commerce Clause, and reasoned that in applying the US Supreme Court's "internal consistency test" – which "requires us to assume that every state has adopted Maine's taxation scheme" – in neither 2012 nor 2013 would the members of the unitary group have been subjected to duplicate taxation of income derived from another state. Rather, "if each state applied Maine's law in each tax year, all nonunitary income derived from out-of-state sources would be excluded from each state's taxable income, and the unitary income would be apportioned according to Maine's apportionment formula." The Court explained that the company erroneously sought "to create a new deduction in Maine that was not authorized by statute and is not required by the Constitution." Accordingly, because Maine statutes do not provide for a carryover of the 2012 net operating loss to Maine's 2013 tax year, and because no such carryover is constitutionally required, the Court upheld the lower court's ruling and denied the taxpayer's underlying refund claim. A revised dissenting opinion follows. Please contact us with any questions.

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