

Income/Franchise:

Delaware: New Law Codifies Practice of Limiting NOLs to Amounts Claimed on Federal Return

H.B. 171, signed by gov. 7/30/21. New law codifies a Delaware Division of Revenue (Division) practice of limiting a Delaware corporate taxpayer's net operating loss deductions to those deductions that were claimed on its federal income tax return. Under the new law, any net operating loss that exceeds the amount claimed on a corporate taxpayer's federal income tax return is not permitted in the calculation of its Delaware corporate income tax.

URL: <https://legis.delaware.gov/BillDetail?legislationId=68653>

Note that there is pending litigation concerning the validity of the Division's net operating loss limitation policy as it applies to certain entities filing separate-company Delaware corporate income tax returns but which file as part of a consolidated corporate income tax return for federal income tax purposes [see *Case No. N19C-08-093 JRJ*, Del. Super. Ct. (12/17/20) for details on a lower court's summary judgment in favor of a taxpayer that challenged the validity of this Division policy]. Please contact us with any questions.

URL: <https://courts.delaware.gov/Opinions/Download.aspx?id=314620>

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