

Income/Franchise:

Pennsylvania Court Upholds DOR Policy that 2017 NOL Cap Ruling Doesn't Apply to Earlier Years

Case No. 803 F.R. 2017, Pa. Commw. Ct. (9/13/21). In a case involving application of the percentage cap for “net loss carryover” (NLC) deductions contained under Pennsylvania law for the 2014 tax year at issue following the Pennsylvania Supreme Court’s 2017 decision concerning the NLC deduction – which held that the fixed-dollar statutory cap of \$3 million on Pennsylvania’s net operating loss carryover deduction, as applied to that taxpayer and year at issue, violated the Uniformity Clause of the Pennsylvania Constitution [see previously issued Multistate Tax Alert for more details on this 2017 decision] – a Pennsylvania Commonwealth Court (Court) effectively affirmed the Pennsylvania Department of Revenue (Department) policy implementing the 2017 decision prospectively by removing the flat-dollar deduction beginning in 2017 and thereafter [see “Corporation Tax Bulletin 2018-02 – Net Operating Loss Deduction (NOL)” for more details on this Department policy, which generally allows taxpayers to claim the greater of the flat dollar cap or the percentage cap as authorized by statute before the Pennsylvania Supreme Court’s 2017 decision]. The taxpayer in this case argued for an unlimited NLC deduction, claiming that the prospective-only application of the 2017 case unconstitutionally subjected only large corporate taxpayers to the percentage cap and excluded application to small corporate taxpayers for tax years beginning prior to January 1, 2017.

URL: https://www.pacourts.us/assets/opinions/Commonwealth/out/803FR17_9-13-21.pdf

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/pa-supreme-court-affirms-that-fixed-dollar-cap-on-net-loss-deduction-is-unconstitutional-but-holds-that-percentage-cap-is-valid.html?id=us:2em:3na:stm:awa:tax:091721&sfid=7015Y000003WdGMQA0>

URL: https://www.revenue.pa.gov/TaxLawPoliciesBulletinsNotices/TaxBulletins/CT/Documents/ct_bulletin_2018-02.pdf

Agreeing that the Pennsylvania Supreme Court’s 2017 decision should be applied on a prospective-only basis as it did not meet the US Supreme Court’s retroactivity test under the circumstances, the Court reasoned that the taxpayer in this case:

1. Cannot “avoid application of the percentage cap altogether in order to equalize the tax positions between the two classes and reduce its tax liability to \$0;”
2. Correctly paid state corporate net income taxes for the 2014 tax year by utilizing the percentage cap under the 2014 NLC deduction provision; and
3. Thus is not entitled to a state corporate net income tax refund.

The Court also held that the taxpayer is *not* entitled to a tax refund remedy pursuant to the Due Process or Equal Protection Clauses of the US Constitution or the Remedies Clause of the Pennsylvania Constitution. Please contact us with any questions.

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