

## Income/Franchise:

### Pennsylvania Supreme Court Rules on Remedy Stemming from NOL Statutory Cap Invalidation Decision

*Case No. 12 MAP 2020, Pa. (12/22/21).* In a case involving whether a taxpayer could claim unlimited net operating loss (NOL) carryovers against its Pennsylvania corporate net income tax (CNIT) for a prior tax year (*i.e.*, a pre-2017 tax year) in light of a Pennsylvania Supreme Court ruling from 2017 – which held that the fixed-dollar statutory cap on Pennsylvania’s NOL carryover deduction as applied to that taxpayer and year at issue violated the Uniformity Clause of the Pennsylvania Constitution – the Pennsylvania Supreme Court (Court) affirmed the Pennsylvania Commonwealth Court’s 2019 ruling to the extent it deemed the 2017 decision to apply retroactively to control the case at issue (*i.e.*, for a tax year when there was only a fixed-dollar statutory cap and no percentage cap on Pennsylvania NOLs). However, the Court reversed the Pennsylvania Commonwealth Court to the extent it remedied the Pennsylvania Constitution Uniformity Clause violation by severing the \$2 million NOL carryover deduction cap, concluding instead that the “proper remedy” is to sever the NOL carryover deduction provision in its entirety for the 2001 tax year at issue. The Court ultimately did affirm the Pennsylvania Commonwealth Court’s 2019 order to the extent it remands to the Pennsylvania Finance and Review Board to recalculate the taxpayer’s CNIT without capping its NOL carryover deduction and to issue a refund based upon that recalculation – which the Court concluded “is required to remedy the due process violation” of the taxpayer’s rights to meaningful relief to remedy the discriminatory effect. Two dissenting opinions follow (see *Saylor* and *Wecht* dissenting opinions). Please contact us with any questions.

**URL:** <https://www.pacourts.us/assets/opinions/Supreme/out/j-9-2021mo%20-%20104992588155213511.pdf>

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