

Income/Franchise:

Pennsylvania Commonwealth Court Reverses Ruling on Invalid NOL Cap and Remedy to Hold Refunds are Due

Case No. 803 F.R. 2017, Pa. Commw. Ct. (12/28/22). 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 deeming the NLC deduction unconstitutional [see *Case No. 6 EAP 2016*, Pa (10/18/17) for more details on this 2017 decision, 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], and the Pennsylvania Supreme Court’s 2021 decision holding that the appropriate underlying remedy is to sever the entire NLC deduction provision for 2001 [see *Case No. 12 MAP 2020*, Pa. (12/22/21) and *State Tax Matters*, Issue 2022-1, for more details on this 2021 ruling], an *en banc* Pennsylvania Commonwealth Court (Court) sustained the taxpayer’s exceptions to the Court’s earlier panel decision from 2021 [see *Case No. 803 F.R. 2017*, Pa. Commw. Ct. (9/13/21) and *State Tax Matters*, Issue 2021-37, for more details on this earlier ruling] and remanded the case to the Pennsylvania Finance and Review Board for issuance of a state corporate net income tax refund. In doing so, the Court held that the Pennsylvania Supreme Court’s 2017 decision applies retroactively in corporate net income tax matters concerning NLC deductions. To remedy the Pennsylvania Constitution Uniformity Clause violation and equalize the actual tax positions between favored and disfavored corporate taxpayers under the statutory scheme, the Court further held that due process principles require that either the “favored taxpayers be assessed additional taxes or the unfavored taxpayer be refunded the taxes it paid.” Accordingly, because a retroactive reassessment of favored taxpayers’ tax liability in the case at hand is “foreclosed under the statute of limitations, replete with inequities,” the Court concluded that the only remedy available is to issue the taxpayer a refund. In this respect, the taxpayer was eligible for a state corporate net income tax refund based on the retroactive application of the Pennsylvania Supreme Court’s 2017 decision. Please contact us with any questions.

URL: https://www.pacourts.us/assets/opinions/Commonwealth/out/803FR17_12-28-22.pdf

URL: <https://www.pacourts.us/assets/opinions/SUPREME/out/MAJORITY%20OPINION%20-%20AFFIRMED-REVERSED%20-%2010328389825654782.pdf>

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URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220107_13.html

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

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