

Income/Franchise:

South Carolina Appellate Court Affirms that NOL Carryforward Deduction is Not Permitted for Bank Tax Purposes

Case No. 2020-000999, S.C. Ct. App. (7/31/24). In a case involving a taxpayer filing South Carolina bank tax returns that attempted to claim net operating loss (NOL) carryforward deductions that are permitted for federal corporate income tax purposes, the South Carolina Court of Appeals (Court) affirmed that a bank is not allowed to use the NOL carryforward when calculating its entire net income for South Carolina bank tax purposes and must, instead, rely on Generally Accepted Accounting Principles (“GAAP”) to calculate its bank tax liability. Construing any ambiguities in a tax deduction statute against the taxpayer, the Court explained that the taxpayer’s claim that the statutory term “entire net income” necessarily includes the NOL carryforward deduction is *not* supported by South Carolina’s historical application of the state bank tax or by the “long-established understanding” that South Carolina’s bank tax is a “franchise tax” rather than an “income tax.” Moreover, the Court concluded that the taxpayer’s assertion that the South Carolina General Assembly intended the state bank tax to “parallel and conform to the federal income tax regime” is not faithful to the text of the relevant legislation. Addressing the taxpayer’s claim involving accounting principles, the Court held that the taxpayer’s “own use of GAAP defeats its challenge” to the South Carolina Administrative Law Court’s decision requiring it to use GAAP in calculating its bank tax liability. Please contact us with any questions.

URL: <https://www.sccourts.org/opinions/HTMLFiles/COA/6076.pdf>

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