

## Income/Franchise:

### Pennsylvania Supreme Court Reverses Ruling on Invalid NOL Cap by Rejecting Retroactive Refunds

*Case No. 8 MAP 2023*, Pa. (11/20/24). In a case involving the statutory limitations for “net loss carryover” (NLC) deductions contained under Pennsylvania law for the 2014 tax year at issue following i) 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 ii) 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], the Pennsylvania Supreme Court (Court) reversed a Pennsylvania Commonwealth Court *en banc* decision from 2022 [see *State Tax Matters*, Issue 2023-1, for more details on this 2022 ruling] to hold that its 2017 decision deeming the NLC deduction unconstitutional “should be given prospective effect only,” and that due process does not require Pennsylvania to refund the Pennsylvania corporate net income taxes that the taxpayer paid in 2014. In doing so, the Court explained that its earlier 2021 decision – holding that the 2017 decision applies retroactively to taxes that were collected before that decision – was erroneous. Concurring and dissenting opinions follow. Please contact us with any questions.

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**URL:** <https://www.pacourts.us/assets/opinions/SUPREME/out/MAJORITY%20OPINION%20-%20AFFIRMED-REVERSED%20-%201010328389825654782.pdf>

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