

Income/Franchise:

New Hampshire: Water's Edge Combined Group Allowed to Offset Capital Gains with Member's Capital Loss Carryback

Docket No. 217-2023-CV-282, N.H. Superior Ct, Merrimack County (2/21/25). In a New Hampshire business profits tax (BPT) case involving a water's edge combined group and use of a member's capital loss carryback, a New Hampshire superior court (Court) held that because the taxpayer is taxed as one business organization, it may apply a long-term capital loss carryback generated by one member of the group to the water's edge group's capital gains. In doing so, the Court concluded that the New Hampshire Department of Revenue Administration's (Department) regulations generally requiring member companies of a water's edge group to first silo capital loss and gains prior to combining group members' net incomes "improperly add to and modify the enabling statute." According to the Court, the plain language of the Department's rules improperly permits it to "determine gross business profits for each member of a water's edge group separate and apart from the other members, as if they were not affiliated with the other members." Please contact us with any questions.

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