

Income/Franchise:

Utah: Former Unitary Group Member Can't Claim Portion of NOL Carryover Belonging to its Prior Unitary Group

Appeal No. 23-1208, Utah State Tax Commission (1/14/25). An administrative law judge (ALJ) with the Utah State Tax Commission held that a former member (*i.e.*, the taxpayer in this case) of a Utah unitary group including its former parent could *not* claim a portion of the group's net operating loss (NOL) carryovers on its own 2021 Utah corporation franchise tax return after a spin-off transaction, because the taxpayer failed to provide a legal basis allowing it to claim a Utah NOL carryforward deduction belonging to a different Utah taxpayer (*i.e.*, belonging to its prior unitary group). Under the facts, the losses were reported by the prior unitary group as a collective "Utah taxpayer" on their 2019 and short year period 2020 Utah tax returns while the taxpayer in this case was still part of that unitary group. The taxpayer in this case unsuccessfully claimed that a portion this NOL carryover had resulted from its operations in Utah while it was still a member of the Utah unitary group that first claimed the loss, and it provided some underlying calculations to support its partial deduction claim on its own 2021 Utah corporation franchise tax return. The ALJ concluded that the taxpayer in this case could *not* claim a portion of the NOL carryforward deduction, because it was not the same taxpayer that identified the Utah NOLs on the Utah returns and the losses still belonged to the unitary group. The ALJ also stated that federal tax law provisions should *not* be used in determining whether the taxpayer in this case may claim a Utah NOL carryforward deduction given that "Utah law is *not* silent on this issue and Utah Admin. Code R865-6F-14(3)(f) states that loss carry-overs are a major item that requires different treatment under the state and federal statutes." Please contact us with any questions.

URL: <https://tax.utah.gov/commission/decision/23-1208.pdf>

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