

UPDATE ON AUDIT ISSUES

General Corporation Tax

NOL Deduction

June 2008

I. ISSUE

May a corporation carry forward or carry back an NOL deduction for losses sustained in a period in which the corporation was not a taxpayer for NYC purposes?

II. CITE

The New York City net operating loss deduction is presumably the same as that allowed for Federal tax purposes, subject to three limitations ... One of these limitations is that no deduction is allowable for a loss sustained during any taxable year in which the taxpayer was not subject to tax under Subchapter 2 of Chapter 6 of Title 11.

19 RCNY § 11-28(a) & (b).

...any carry-back or carry-over from a year in which a combined report was filed (for New York City General Corporation Tax purposes) must be based upon the combined net operating loss of the group of corporations filing such report. The portion of such combined loss attributable to any member of the group which files a separate report for a preceding or succeeding taxable year will be an amount bearing the same relation to the combined loss as the net operating loss of such corporation bears to the total net operating losses of all members of the group having such losses, to the extent that they were taken into account in computing the combined loss as the net operating loss.

19 RCNY § 11-28(f)(2)

III. RECOMMENDATIONS

Net operating losses of a corporation in any given year are generally deductible against the corporation's income in other years, and the ability to offset future earning against losses is a fair and practical benefit to taxpayers. If the taxpayer was a non-filer for NYC purposes when the NOL was sustained, it would be unfair to allow such an offset, and taxpayers must be reminded that the offset is not permitted.