



CITY OF PHILADELPHIA

FRANCES R. BECKLEY
Chief Revenue Counsel
Department of Revenue
Law Revenue Bureau
Municipal Services Building
1401 JFK Boulevard – Room 580
Philadelphia, PA 19102-1595
215-686-0515 (Office)
215-686-0588 (Fax)
Frances.Beckley@phila.gov

September 16, 2024

~~XXXXXXXXXX~~
~~COHEN & COMPANY, LTD~~
~~1825 Market Street, Suite 810~~
~~Philadelphia, PA 19103~~

Re: Request for Private Letter Ruling – Net Operating Loss Carryforward and Equitable Relief

~~Dear Mr. David:~~

This ruling is issued by the Tax Unit of the Law Department and the Technical Staff of the Revenue Department in response to your request concerning the carryforward of net operating losses (NOLs) for Philadelphia Business Income and Receipts Tax (BIRT) purposes.

Question Presented

1. Whether the City of Philadelphia has discretion to permit your client to carry forward net operating losses incurred from 2017 through 2022 to the tax year ending 2024, despite the recent amendments to the Philadelphia Code which provide a twenty-year carryforward period only for losses incurred on or after the 2022 effective date of Bill No. 180909, while maintaining the three-year carryforward limit for losses incurred prior to this date?

Conclusion

After reviewing the relevant provisions and the facts presented, we must deny your request for the following reasons:

1. **Net Operating Loss Carryforward:** Bill No. 180909 exclusively extends the carryforward period to twenty years for NOLs incurred on or after its effective date, tax year 2022. Similarly, Section 411(c) of the Philadelphia BIRT regulations clearly states that this extension applies "only to losses incurred on or after the date that the ordinance enacting this clause becomes effective." NOLs incurred prior to this date are still subject to the three-year carryforward limitation. The term "only" reinforces that the extended carryforward period does not apply to prior NOLs, including those from 2017 through 2022.
2. **Equitable Relief:** Both the Philadelphia City Council and the Pennsylvania General Assembly specifically limited the extended carryforward period to the date of statutory enactment in 2022. No statutory language provides for relief from the differing enactment dates between the Federal statute and Philadelphia statute, despite both Commonwealth and City legislator awareness of the discrepancy. Revenue has no legal discretion to offer equitable relief under the above facts.

Facts

This ruling is based on the following facts as outlined in your correspondence dated August 18, 2024. Parent Corporation, ~~Xpennaco~~, Inc, intends to write off a loan to a partnership subsidiary, ~~Ampry~~ LLC, and claim a bad debt expense.

- The cancellation of debt income passed through from ~~Ampry~~ LLC to ~~Xpennaco~~, Inc and the bad debt expense recognized by ~~Xpennaco~~, Inc. will offset each other for federal income tax purposes.
- For Philadelphia BIRT purposes, ~~Ampry~~ LLC and ~~Xpennaco~~, Inc. are taxed separately.

Consequently, for Philadelphia tax purposes, the bad debt expense will be incurred by ~~Xpennaco~~, Inc., and the cancellation of debt income will be recognized by ~~Ampry~~ LLC.

Therefore, ~~Ampry~~ LLC will recognize income equal to the cancelled debt but will not benefit from the bad debt expense incurred by ~~Xpennaco~~, Inc.

- Philadelphia's NOL carryforward period prior to 2022 was three years. As a result, ~~Ampry~~ LLC cannot use multiple years of pre-2022 NOLs to offset its cancellation of debt income.
- Your client's tax losses from inception in 2017 through the tax year 2022 are summarized as follows:

Tax Year	Total
2017	(1,109,130)
2018	(1,820,329)
2019	(1,786,296)
2020	(1,515,578)
2021	(840,513)
2022	(524,922)

- Your client is requesting equitable relief.
- Philadelphia Code §19-2601 was amended by Bill No. 180909, extending the carryforward period for NOLs incurred on or after the effective date of the ordinance to twenty years. NOLs incurred before this effective date remain subject to a three-year carryforward limitation.
- The Pennsylvania General Assembly authorized the extension of the NOL carryforward period under H.B. 324 (2022), which was signed by the governor on 11/3/2022, making 2022 the effective date of the legislation.
- Section 411(C) of the Philadelphia BIRT regulations specifies:

“For net operating losses incurred in a tax year reported on Business Income and Receipts Tax Returns for years prior to 2022, the amount of any apportioned net operating loss may be carried forward to subsequent tax years but may not be carried forward past the third tax year following the tax year for which it was first reported.

For net operating losses incurred in a tax year reported on Business Income and Receipts Tax Returns for years 2022 and thereafter, the amount of any apportioned net operating loss may be carried forward to subsequent tax years but may not be carried forward past the twentieth tax year following the tax year for which it was first reported.”

Discussion

Philadelphia Code §19-2601, as amended by Bill No. 180909, defines "Net Operating Loss" with the following provisions: "Net operating losses incurred in another tax period may be carried over for twenty (20) tax years following the year in which they were incurred, provided that this authorization applies only to losses incurred on or after the date that the ordinance enacting this clause becomes effective. Net operating losses incurred prior to such effective date may be carried over for three (3) tax years following the year in which they were incurred. The earliest net loss shall be carried over to the earliest taxable year to which it may be carried." The word "only" indicates a clear legislative intent to limit the extended carryforward period to losses incurred on or after the effective date of the ordinance.

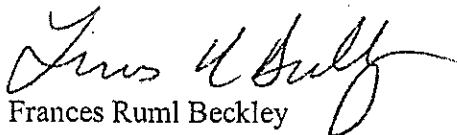
Section 411(c) of the Philadelphia BIRT regulations aligns with this amendment, specifying that NOLs incurred in tax years prior to 2022 are subject to the original three-year carryforward limit. This ensures that the twenty-year carryforward period applies solely to NOLs incurred from 2022 onward, excluding pre-2022 losses from this benefit.

Given that legal authority, Revenue has no discretion to grant equitable relief. Revenue must adhere to the statutes as enacted by both Philadelphia City Government and the Pennsylvania General Assembly. Revenue is constrained by the specific terms of the amended Philadelphia Code and regulations, which do not support extending the carryforward period to NOLs incurred before the effective date of the ordinance. The three-year limit for earlier losses must be observed.

This ruling was prepared based on the facts presented and can only be relied upon by the taxpayer named in it. It is not to be treated as a precedent in any other context. The ruling will remain in effect as long as the facts presented remain unchanged, until a change in the law dictates a different treatment, or until the Revenue Department or the Law Department informs the taxpayer in writing that the ruling is no longer applicable.

Please contact our office if you have any further questions or require additional clarification.

Sincerely,



Frances Ruml Beckley
Chief Counsel to the Department of Revenue