Revenue Ruling No. 06-008
May 31, 2006
Corporate Income Tax

Limitation on Net Operating Losses following Corporate Ownership Change

Purpose

The purpose of this Revenue Ruling is to provide guidance to Revenue employees and taxpayers in determining to what extent Louisiana will limit a net operating loss (NOL) carryover from an acquired corporation with a net operating loss to the surviving acquiring corporation in a merger.

Background/Analysis

Revised Statute 47:287.86(I) states that the acquiring corporation in an ownership change will succeed to the aggregate net operating loss carryovers of the distributors or transferor corporation subject to federal law and the limitations provided therein. Internal Revenue Code (IRC) Section 382 explains the federal limitation on NOL carryovers after a corporate ownership change. This limitation is necessary to avoid the buying and selling of companies solely for their tax attributes.

After determining that a NOL carryover is allowed for a taxable year, IRC § 382 limits the amount of the carryover for any post-change year to the value of the loss corporation multiplied by the long-term tax-exempt rate. The federal statute defines the value of the loss corporation as the value of the stock of the loss corporation immediately before the ownership change. The long-term tax-exempt rate is defined in the statute as the highest of the adjusted federal long-term rates in effect for any month in the three-month period ending with the calendar month in which the change date occurs. The acquiring corporation can use up to this amount of § 382 NOL carryover each year for the remainder of the transferor corporation's 20-year NOL carryover period.

For Louisiana income tax purposes, taxpayers are bound by the federal limitation found in IRC § 382. A corporation that acquires a loss corporation will be limited in the amount of Louisiana NOL carryover from that loss corporation that it will be allowed to use each year. Similar to the federal provisions, Louisiana taxpayers will be allowed each year to use the state limited NOL carryover from the transferor corporation for the remainder of the transferor's 15-year NOL carryover period.

For federal purposes the limitation on the amount of NOL from an acquired corporation that can be taken in a year is:

(value of the acquired corporation) x (long-term tax-exempt rate)

On a state basis the limitation would be:

(value of the acquired corporation within the state) x (long-term tax-exempt rate)

The difficulty is in determining the value of the acquired corporation within the state. The statute provided no guidance on this question, and there is no obviously superior method for determining the value within the state. Therefore, the taxpayer will be allowed to choose the method that most accurately reflects the value.

Ruling

Corporations that acquire a loss corporation are generally required to limit the allowed Louisiana NOL carryover from an acquired corporation using one of the following three methods:

1. The NOL from the transferor corporation that the acquiring corporation is allowed to deduct each year is limited to (value of the loss corporation X LA apportionment ratio) X long-term tax-exempt rate,

2. The NOL from the transferor corporation that the acquiring corporation is allowed to deduct each year is limited to [the value of the loss corporation X (LA income/federal income from all sources on a LA basis)] X long-term tax-exempt rate, or

3. The NOL from the transferor corporation that the acquiring corporation is allowed to deduct each year is limited to LA NOL available from the acquired corporation for the year X (NOL from the transferor corporation allowed for federal purposes/federal NOL available from the transferor corporation for the year)

Each individual taxpayer is allowed to choose the method from above that most accurately achieves the purpose of the limitation. If taxpayers believe that another method more accurately reflects their Louisiana income, they can petition the Secretary of the Department of Revenue to use that method in place of one of the three listed above. The Secretary of the Department of Revenue will make those determinations on a case-by-case basis.

Cynthia Bridges
Secretary

A Revenue Ruling is issued under the authority of LAC 61III.101.C. A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is a written statement issued to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.