

CORPORATION TAX BULLETIN 2018-02

ISSUED: May 10, 2018

NET OPERATING LOSS DEDUCTION (NOL)

APPLICATION OF *NEXTEL COMMUNICATIONS v. COMMONWEALTH*

On October 18, 2017, the Pennsylvania Supreme Court issued without dissent a decision in *Nextel Communications of the Mid-Atlantic, Inc., v. Commonwealth of Pennsylvania* (6 EAP 2016). The decision found that the \$3 million cap on the net operating loss deduction (“NOL”) violated the Uniformity Clause of the Pennsylvania Constitution, while leaving in place the limitation on the deduction at 12.5% of taxable income. On January 4, 2018, the Application for Reargument was denied by the Court.

On November 16, 2017, the Department issued Corporation Tax Bulletin 2017-01 which announced that the flat-dollar cap on the NOL is not available for taxable years beginning in 2017 and thereafter. The Tax Bulletin left open the application of the *Nextel* decision to years beginning prior to January 1, 2017, pending a final decision of the Pennsylvania Supreme Court.

In order to provide greater clarity for corporate taxpayers, the Department hereby announces that it will not apply the *Nextel* decision to taxable years beginning prior to January 1, 2017. The Department will determine the corporate net income tax liability of taxpayers for taxable years beginning after December 31, 2006 through December 31, 2016, by allowing taxpayers the greater of the flat dollar cap or the percentage cap as authorized by statute prior to the issuance of the decision in *Nextel*. For taxable years beginning prior to January 1, 2007, the Department will determine the corporate net income tax liability of taxpayers by applying the flat dollar cap as authorized by statute prior to the issuance of the decision in *Nextel*.