



# This Week in State Tax (TWIST)

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## New Hampshire: Member's Capital Loss Carryback Available to Others in Combined Group

A New Hampshire Superior Court judge recently ruled that a capital loss carryback generated by one member of a combined group could be used to offset capital gains earned by a different group member. One member of the taxpayer's combined group reported a net capital gain on the group's original 2017 New Hampshire Business Profits tax return. After a different member showed a capital loss on a subsequent return, the taxpayer amended the 2017 return to use the loss carryback to offset the reported gain. The Department of Revenue Administration (DRA) denied the resulting refund, and the taxpayer appealed.

New Hampshire law requires certain taxpayers to file a combined return "containing the combined net income of the water's edge combined group ... as though the entire combined net income of the water's edge combined group was that of one business organization or ... in such other manner as the commissioner shall determine to be equitable ...." A DRA regulation interprets this statute to require each group member to compute its net income separately, with the net income of all group members summed to reach the combined group's total. The taxpayer offered numerous arguments, most notably that this approach contradicted the plain meaning of the statute (because it did not tax the combined group "as though [it was] one business organization") as well as certain state and federal constitutional provisions.

The court found that the text of the statute was ambiguous, but that the clear underlying purpose of the statute was to treat the combined group as one business organization. Accordingly, it agreed with the taxpayer that the statute authorized the sharing of capital loss carrybacks between members of the combined group. Under this understanding, the DRA regulation was invalid because it treats combined group members as separate entities until the final summation. Having found for the taxpayer on the state law question, the court declined to consider the state and federal constitutional challenges. Please contact [Jennifer Bates](#) with questions about *Hologic, Inc. v. Stepp* [[Docket No. 217-2023-CV-282](#)].

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