



This Week in State Tax (TWIST)

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New Mexico: Once it is closed, it is closed, AHO holds

The New Mexico Administrative Hearing Office (AHO) recently addressed whether a taxpayer may, through a timely amended return for an open year, revise prior year net operating loss (NOL) attributes and apportionment factors for years that were closed by the statute of limitations. The taxpayer in this case became subject to New Mexico corporate income tax through its ownership interest in a pass-through entity which held New Mexico real property and reported New Mexico net losses on its original 2016, 2017, 2018, and 2020 returns. Due to complications in determining the amount of income and loss that should have passed through to the taxpayer, combined with errors by the original return preparer, the taxpayer reported incorrect apportionment of income and related NOL computations to New Mexico. The taxpayer did not file amended returns for 2016–2018 or 2020, and those years became closed under the New Mexico statute of limitations. For 2021, the taxpayer originally claimed an NOL deduction based on those prior-year losses, then timely filed an amended 2021 return that recomputed the New Mexico apportionment factors (effectively recalculating the NOLs for 2016–2018 and 2020 as if the apportionment had been correctly determined) and used the recomputed amounts to increase the 2021 NOL deduction. The Department of Taxation and Revenue did not accept the revised NOL computations and issued an assessment for additional 2021 tax plus statutory interest, using the NOL amounts as originally reported. The taxpayer protested.

In its analysis, the AHO reasoned that the period described in the New Mexico statute of limitations applied equally to assessments, refunds, and amended returns. As a result, adjustments to tax years once the period has expired are foreclosed except in narrow, statutorily prescribed circumstances. In the eyes of the AHO, to permit recomputing closed-year apportionment factors and NOL amounts in a later-year filing would effectively nullify the statute of limitations by allowing permanent reopening of loss years whenever their attributes affected an open year. The AHO decision explains that, for carryforward purposes, the corporate income tax NOL is based on the New Mexico net loss determined under applicable statutes and regulations and must be “properly reported” on a legally effective return for the loss year as finally determined within the applicable time limits. As a result, once the limitation period expires, loss-year attributes (including apportionment factors and NOL amounts) are fixed, and subsequent years must use those fixed attributes absent explicit statutory authorization. The Department’s 2021 NOL deduction calculation relying on the original closed-year NOL amounts was sustained. In addition, the Department has no general equitable authority to waive or abate interest absent explicit statutory authorization. Please contact [Nick Palmos](#), [Sai Gorugantula](#), and [Tia BuChans](#) with questions on [Columbia Assoc’s, Inc. v. N.M. Tax’n & Revenue Dept., N.M. Admin. Hearing Office Decision & Order No. 26-002](#).

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