Overview

- New Jersey
- Pennsylvania
- California
- Illinois
- Massachusetts
- Ohio
- Texas
New Jersey

- For pre-2002 NOLs:
  - Use 11 years instead of 7
  - For 2002–2004 NOLs, get up to 3 more years

- For taxpayers with federal R + D credits
  - 17-year carryover period
  - NOLs generated in 1999–2001
### New Jersey

<table>
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<tr>
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<tbody>
<tr>
<td>2001</td>
<td>2008</td>
<td>2008</td>
<td>2012</td>
<td>2018</td>
</tr>
</tbody>
</table>
New Jersey
Dividend Absorbs NOL

- Dividend absorption:
  Dividends absorb NOLs

- Unitary business rules still apply:
  ✓ If payor isn’t unitary, then don’t absorb
  ✓ Foreign dividends often not unitary
  ✓ Test for unitary-ness when E&P generated not when dividend is paid
PA’s Net Loss Cap

Cap is the greater of:

- 2009: $3m or 15%
- 2010–2013: $3m or 20%
- 2014: $4m or 25%
- 2015: $5m or 30%

- Reed Smith: cap is unconstitutional
Amidon v. Kane

Different effective tax rates: unconstitutional

3.50% nominal flat rate

Taxpayer One: 1.77%
Taxpayer Two: 2.11%
Taxpayer Three: 3.01%
**PA’s Net Loss Cap**

**Different effective tax rates: unconstitutional**

<table>
<thead>
<tr>
<th></th>
<th>Taxpayer One</th>
<th>Taxpayer Two</th>
<th>Taxpayer Three</th>
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<tbody>
<tr>
<td>Taxable Income</td>
<td>5,000,000</td>
<td>10,000,000</td>
<td>15,000,000</td>
</tr>
<tr>
<td>Exemption</td>
<td>(3,000,000)</td>
<td>(3,000,000)</td>
<td>(3,000,000)</td>
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<tr>
<td>PA Taxable Income</td>
<td>2,000,000</td>
<td>7,000,000</td>
<td>12,000,000</td>
</tr>
<tr>
<td>Nominal Tax Rate</td>
<td>9.99%</td>
<td>9.99%</td>
<td>9.99%</td>
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<tr>
<td>Tax</td>
<td>199,800</td>
<td>699,300</td>
<td>1,198,800</td>
</tr>
<tr>
<td>Effective Rate</td>
<td>4.00%</td>
<td>6.99%</td>
<td>7.99%</td>
</tr>
</tbody>
</table>
Refund Claim

- Three-year statute of limitations:
  - ✓ 2013
  - ✓ 2012
  - ✓ 2011 (± “April 15 v. extended filing” issue)
  - ✓ + unfavorable RARs
  - ✓ + any open PA audits

- What to expect?
California
(general rules; calendar years)

- Loss years 2000–2007:
  - No carryback
  - Carryforward = 10 years
  - 1987–2003 carryforward limited to a percentage of total NOL

- Loss years 2008–2012
  - No carryback
  - Carryforward = 20 years

- Loss years post-2012
  - 2-year carryback (subject to percentage limitations in 2013 and 2014)
  - Carryforward = 20 years

- Suspension of deductibility
  - 2002–2003
  - 2008–2011
  - Carryforward period extended for deductions disallowed
California NOL Extensions

- Six more years!

- Legal Ruling 2011-04
  - ✔ Ruling: extension requires income in suspension year
  - ✔ That requirement is not in the statute
Illinois

- NOL suspension 2011–2014
  - No deduction = y/e after 12/31/10 and prior to 12/31/12
  - $100k cap = y/e on or after 12/31/12 and prior to 12/31/14
# Illinois

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<tr>
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<tbody>
<tr>
<td>Calendar Y/E Taxpayer NOL Suspension</td>
<td>Full Suspension</td>
<td>Partial Suspension</td>
<td>Partial Suspension</td>
<td>No Suspension</td>
</tr>
<tr>
<td>Fiscal Y/E Taxpayer NOL Suspension</td>
<td>Full Suspension</td>
<td>Full Suspension</td>
<td>Partial Suspension</td>
<td>Partial Suspension</td>
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<tr>
<td>Tax Years from which NOLs may be carried forward</td>
<td>Pre-2003 NOLs may be carried forward &amp; used without limitation in 2011–2014</td>
<td></td>
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</tbody>
</table>

## Issues:
- Fiscal-year taxpayers treated worse
- Suspension applies only to NOLs generated after 2002
- $100k cap unconstitutional
Massachusetts
“Years” Means “Years”

- Pre-2010 NOLs
  - Statute: NOLs carryforward 5 “years”
  - Regulation: NOLs carryforward 5 “taxable years”

- Reed Smith: “years” has ordinary meaning —12 months
  - “Taxable years” is a defined term
  - Legislature didn’t use it
Massachusetts
Short Period Taxpayers

<table>
<thead>
<tr>
<th>Tax Period of Loss</th>
<th>Department's Rule: NOL Expires After</th>
<th>Statutory Rule: NOL Expires After</th>
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<tbody>
<tr>
<td>1/1 - 6/30, 2008</td>
<td>2010</td>
<td>2013</td>
</tr>
<tr>
<td>7/1 - 12/31, 2008</td>
<td>2011</td>
<td>2013</td>
</tr>
<tr>
<td>1/1 - 4/30, 2009</td>
<td>2012</td>
<td>2014</td>
</tr>
<tr>
<td>5/1 - 8/31, 2009</td>
<td>2013</td>
<td>2014</td>
</tr>
<tr>
<td>9/1 - 12/31, 2009</td>
<td>2014</td>
<td>2014</td>
</tr>
</tbody>
</table>
NOLs Useless?  
Reduce gain instead

- Taxpayers who should be interested:
  - Recognize gain in NOL suspension years
  - Recognize gain on property depreciated during restricted NOL carryover years
  - Recognize gain on property placed in service before earliest loss year

- Solution:
  - Increase basis for prior-period deductions that did not produce tax benefit
  - Authority: *Boeddeker* (CA), *Toyota* (NJ)
Ohio—The CAT Credit

- **Problem** = NOLs booked as DTAs, but the franchise tax was going away

- **Solution** = Credit based on value of DTAs
  - Only TPs with ≥ $50MM unused NOLs
  - Must report “amortizable amount” by 6/30/06
  - Credit spread over 20 years (2010–2030)
  - Subsequent changes to NOLs, DTAs?
    - *Dana Corp. case*
Texas—Business Loss Credit

- Credit = unused losses as of 1/1/08 x 4.5%
- 2.25%/yr. for 10 yrs.; then 7.75%/yr. for 10 yrs.
- Elect credit each year?
  - Statute v. Regulation
  - Original or extended due date?
  - Required to pay by EFT?
- Changes to combined group may jeopardize credits
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