

PA Personal Income Tax Notes

PROHIBITION OF LOSS CARRYOVERS BY S CORPORATION SHAREHOLDERS

CONSTITUTIONAL

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On November 18, 2010, a three-judge panel of the Commonwealth Court ruled, in *DelGaizo et al. v. Commonwealth*, Nos. 558 F.R. 2008 and 37 F.R. 2009, that Section 307.10(b) of the Tax Reform Code, 72 P.S. § 7307.10(b), does not violate the Uniformity Clause of the Pennsylvania Constitution. The taxpayers contended that Section 307.10(b) results in the non-uniform treatment of corporate shareholders because it prohibits the carryover of losses by shareholders of Pennsylvania S corporations while the carryover of losses by Pennsylvania C corporations is permitted under the Tax Reform Code.

The taxpayers argued that the statutory prohibition against the carryover of losses by shareholders of S corporations results in the taxation of nonexistent profits and that, since the payment of tax on non-existent profits is a burden only on S corporation shareholders, the statute violates the Uniformity Clause. In rejecting the taxpayers' arguments, the Court noted that there are legitimate distinctions between Pennsylvania S corporations and Pennsylvania C corporations and that S corporation shareholders cannot have the benefits of the S election (e.g., lower income tax rate) without the burdens. The Court also pointed out that the taxpayers had voluntarily chosen S corporation status for the corporation in which they have an ownership interest. The taxpayers filed Exceptions to the Court's panel decision on December 10, 2010.

Following are notes of other Personal Income Tax developments.

IRS Adjustments Provide Basis to Assess PA Tax

The Commonwealth Court has refused to strike assessments of Pennsylvania Personal Income Tax that were based on information from the IRS concerning adjustments to the taxpayer's federal returns. The additions to income determined by the IRS were not reported on the PA returns. State tax had been withheld for which no income had been reported to the state by the taxpayer. The taxpayer failed to offer any evidence to rebut the IRS adjustments or to explain why state tax had been withheld in error. *Basile v. Commonwealth*, Nos. 258, 259, 260 F.R. 2006 (September 20, 2010).

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