



TaxNewsFlash

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Second Circuit: Consolidated group's NOL, reduced under section 108

The U.S. Court of Appeals for the Second Circuit today affirmed a U.S. Tax Court opinion providing that the taxpayer's consolidated group must reduce its consolidated net operating loss (CNOL) under section 108(b)(2)(A) by the total amount of the group's previously excluded cancellation of indebtedness income under a "single entity" approach.

The case is: *Marvel Entertainment LLC v. Commissioner*, No. 15-3335-ag (2d Cir. September 7, 2016).

The Second Circuit stated that it "...affirmed for substantially the reasons stated by the Tax Court in its complete and well-reasoned opinion...." Read the Second Circuit's [decision](#) [PDF 115 KB]

Background

The July 2015 decision by the U.S. Tax Court was a case of "first impression" with respect to identifying the appropriate net operating loss (NOL) in the consolidated return context.

Specifically, the issue before the Tax Court was whether, as a matter of law, a consolidated group's NOL subject to reduction under section 108(b)(2)(A) for its short tax year ending October 1, 1998, was: (1) the entire CNOL of the consolidated group; or (2) a portion of the CNOL allocable to each member of the consolidated group.

The Tax Court held that when a member of a consolidated group has excluded COD income during a consolidated return year before the adoption of Reg. section 1.1502-28T (March 2004), the NOL subject to reduction pursuant to section 108(b)(2)(A) was the entire CNOL of the consolidated group. Read [TaxNewsFlash-United States](#)

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