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Eleventh Circuit: NOL carrybacks not allowed; properties not abandoned or worthless

The U.S. Court of Appeals for the Eleventh Circuit today affirmed a decision of the U.S. Tax Court that the taxpayer was not entitled to claim net operating loss (NOL) carrybacks because the evidence did not show that the subject real estate was abandoned or became worthless during 2008.

The case is: *Tucker v. Commissioner,* No. 16-11042 (11th Cir. November 21, 2016). Read the Eleventh Circuit's **opinion** [PDF 135 KB]

Summary

The taxpayer (an individual) was a developer of residential real estate in Florida. Because of the sharp decline in the real estate market in 2007 and 2008, the taxpayer's solely owned S corporation made a substantial "write down" of the value of the properties. The S corporation reported a loss of approximately $10.8 million on its income tax return for 2008—of which about $8.9 million was attributable to the write down of the real estate inventory to current market value as of December 31, 2008.

The taxpayer then claimed a flow-through of loss of about $6.78 million on his individual income tax return and a net operating loss (NOL) of more than $6.7 million. The taxpayer elected to carry back the 2008 NOL to prior years, and filed for a refund of almost $2 million based on the NOL carrybacks.

On audit, the IRS determined that the S corporation's allowable loss for 2008 was only $1.5 million, and thus disallowed the taxpayer's claimed NOL carrybacks. A notice of deficiency was issued, and the taxpayer filed a petition with the Tax Court challenging the deficiency notice. The Tax Court issued a memorandum opinion in 2015, denying the taxpayer's claim that the properties were abandoned or became worthless in 2008.

The Eleventh Circuit today affirmed. The appeals court did not find that the S corporation had abandoned the properties in 2008, nor did the record reveal that the properties become worthless to the S corporation in 2008.

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