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# Pennsylvania Provides Clarification on Application of Nextel Decision

STATE AND LOCAL TAX TAX

BY ALLEN WASSEL

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The Pennsylvania Department of Revenue recently released Corporation Tax Bulletin 2018-02 to clarify its position on the application of the decision issued on October 18, 2017 in the case of *Nextel Communications of the Mid-Atlantic, Inc. v. Commonwealth of Pennsylvania*.

Prior to *Nextel*, Pennsylvania corporate taxpayers were able to use the greater of a flat dollar cap or a percentage cap when calculating the amount of net operating loss (NOL) carried forward from prior tax years that could offset current year income.

In summary, the *Nextel* decision found that the flat dollar cap on the NOL violated the Uniformity Clause of the Pennsylvania Constitution and the percentage cap was left in place. In response, the Department issued [Corporation Tax Bulletin 2017-01](#) which explained that the flat dollar cap would not be available for taxable years beginning in 2017 and thereafter. The Bulletin was silent, however, as to potential retroactive application of the decision to tax years that remained open for reassessment.

[Corporation Tax Bulletin 2018-02](#) addressed this issue and clarified that the Department would not apply the *Nextel* decision to taxable years beginning prior to January 1, 2017.

If you have any questions as to how the *Nextel* decision may impact your company's Pennsylvania corporate net income tax liability, please contact a member of our [SALT team](#).

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