

SUNBELT RENTALS, INC.

Petitioner

v.

COMPTROLLER OF MARYLAND

Respondent

* IN THE
* MARYLAND TAX COURT
*
* Case No. 18-IN-00-0241
*
*
*
*

MEMORANDUM AND ORDER

In the present case, the Petitioner, Sunbelt Rentals, Inc. (“Sunbelt” or “Petitioner”), has filed an appeal from a Notice of Final Determination assessing additional corporate income tax by the Respondent, Comptroller of Maryland (“Comptroller” or “Respondent”). Petitioner has filed a Motion for a Ruling on Question of Law, and Respondent has filed a Cross-Motion for Summary Judgment. For the reasons set forth below, Respondent’s Cross-Motion will be denied, and Petitioner’s Motion will be granted.

Petitioner and Respondent assert that there is no genuine dispute as to any material facts. Petitioner challenges the Comptroller’s position of denying Sunbelt’s federal net operating losses for Maryland corporate income tax purposes. Comptroller disallowed net operating losses acquired from companies that had merged into Sunbelt because those companies had not filed Maryland corporate income tax returns for tax years 2001 through 2013. The actual net operating losses had been incurred by NationsRent USA, Inc. and NationsRent, Inc. (collectively,

“NationsRent”), the merged entities, in tax years 2003 through 2006. NationsRent merged into Sunbelt at the end of 2006.

In tax years 2005 through 2013, Sunbelt was required to and did file Maryland income tax returns. Sunbelt claimed normal operating loss (“NOL”) deductions on its Maryland income tax returns in tax years 2007 through 2013 which included NOL deductions from NationsRent. Comptroller allowed Sunbelt’s NOL deductions in the tax years prior to 2011, which included NOL deductions partially attributable to the acquisition and merger of NationsRent. However, with respect to Sunbelt’s 2011, 2012 and 2013 returns, Comptroller disallowed Sunbelt’s NOL deductions to the extent they were based on the carry forward of the NOL deductions from NationsRent, the merged companies.

On October 12, 2007, the Comptroller administratively, without a specific statutory modification, amended the Code of Maryland Regulations: “If a liquidated or acquired corporation was not subject to Maryland income tax law when its net operating loss was generated; then the acquiring corporation which is subject to Maryland income tax law may not use the net operating loss of the liquidated or acquired corporation as a deduction to offset Maryland income.”

Sunbelt contends that the Comptroller’s denial of its federal net operating losses should be reversed for the following reasons as a matter of law:

- (1) The amended regulation is contrary to the Maryland statutory scheme;
- (2) The amended regulation cannot apply to net operating losses generated and acquired before the effective date of the announced regulation; and
- (3) The amended regulation impermissibly discriminates against interstate commerce in violation of the Commerce Clause.

The Comptroller argues that he is authorized to adopt reasonable regulations to administer the Maryland income tax laws, Tax-General §2-103. Sunbelt relies principally on its understanding of Tax-General §10-304 which provides that Maryland modified income is equal to federal taxable income of each corporation. The Comptroller suggests that Sunbelt's singular focus on federal taxable income as the starting point for Maryland corporate income tax avoids consideration of the statutory scheme in Tax-General §§10-205, 10-301 through 10-310, and 10-602.

In support of its contention, Comptroller relies on the term "taxable year" as defined in the Tax-General article as "the period for which Maryland taxable income is computed...". However, the term "taxable year" appears nowhere in the regulations and is not in one of the statutes authorizing a modification. Comptroller further suggests that because NationsRent had no taxable year, it follows that the net operating losses of NationsRent had no "nexus" with Maryland. Maryland law permits modification to federal taxable income in a few limited and specifically identified statutes, Maryland Annotated Code, Tax-General §§10-304 through 10-308. Comptroller's efforts to create a modification through the use of definitions out of context is not permissible without the authority of the Maryland legislature.

The net operating loss deduction is allowed for federal income tax purposes under the Internal Revenue Code. The only permitted modifications to federal taxable income are those expressly set forth by statutes, duly enacted by the General Assembly. The Comptroller's attempt to limit a federal net operating loss in the present case is contrary to the Maryland statutory scheme and therefore invalid.

Therefore, it is this 9th day of September, 2019, hereby ORDERED, by the Maryland Tax Court, that the Respondent's denial of Petitioner's federal net operating losses for tax years 2011, 2012 and 2013 is reversed.

CC: James W. Dawson Jr., Esq.
Kay Miller Hobart, Esq.
Jennifer J. Coyne, Esq.
Brian L. Oliner, Esq.

CERTIFIED TRUE COPY.

TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.