

## *Ruling 94-02*

Vermont Department of Taxes

Date: February 7, 1994

Written By: Mary L. Bachman, Attorney for the Department

Approved By: Joyce H. Errecart, Commissioner of Taxes

On behalf of your client, [Corporation A] you have requested a formal ruling on the application of Vermont's corporate income tax law. This ruling relies on the information contained in the undated letter of [Name] of [Company] as supplemented by our conversation of February 3, 1994.

Facts: [Corporation A] a new corporation plans to incorporate and do business in Vermont. It will be a wholly owned subsidiary of [Corporation B], a [State] corporation which has its principal office in [Town], Vermont. [Corporation B] currently has one subsidiary and files consolidated federal and Vermont income tax returns.

[Corporation B] will continue to file as a consolidated entity, and intends to include Corporation A] as part of the consolidated group.

[Corporation A] expects to generate taxable income in its initial year of operations. Because of substantial net operating loss carry-forwards, [Corporation B] will not pay any federal or Vermont income tax in the near future (except for the minimum Vermont franchise tax). For federal purposes, [Corporation A's] profits will be offset by [Corporation B's] net operating loss carry-forwards.

Issue: Whether, for Vermont corporate tax purposes, [Corporation B's] net operating loss carryforwards may be used to offset [Corporation A's] profits.

Ruling: Vermont allows consideration of net operating loss carry-forwards in determining the Vermont tax to the extent that a federal net operating loss carryforward exists. "The amount of any net operating loss, or net operating loss carryback or carryforward, which is available to a taxpayer under the laws of the United States, shall be available to a taxpayer in the determination of his Vermont tax, provided, however, that the amount of any refund due to a net operating loss carryback shall not exceed (\$0) for any taxable year. Such amount shall not be adjusted in any manner, for any reason, and particularly shall not be increased in any amount on account of the fact that the taxpayer's income under the laws of the United States included amounts of income which are not subject to taxation by the states." 32 V.S.A. § 5888(4)(B). Vermont does not limit its allowance of net operating losses to losses which arose when the loss corporation was located in Vermont.

If [Corporation A] is permitted to offset its profits by [Corporation B's] loss carryforwards through the filing of a federal consolidated return, the same benefit will be available on the Vermont level as long as [Corporation A] and [Corporation B] qualify to file a Vermont consolidated return.

Vermont allows the filing of consolidated returns by certain corporations: "Taxable corporations which received any income allocated or apportioned to this state under the provisions of section 5833 of this title for the taxable year and which under the laws of the United States constitute an affiliated group of corporations may file a consolidated return in lieu of separate returns if such corporations qualify and elect to file a consolidated federal income tax return for that taxable year." 32 V.S.A. § 5862. Thus, in addition to meeting the federal requirements for consolidated filing, the corporations must have nexus with Vermont. Based on your representations that [Corporation B] and [Corporation A] will qualify and elect to file a federal consolidated return, that [Corporation B] has its principal office in [Town], Vermont and that [Corporation A] will organize as a Vermont corporation and do business in Vermont, these requirements would be met.

This ruling is issued solely to your firm and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.