TaxNewsFlash

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Fifth Circuit: Taxpayer not a "bank" and thus not allowed to deduct certain losses

The U.S. Court of Appeals for the Fifth Circuit affirmed the findings of the U.S Tax Court that the taxpayer was not a "bank" (as defined by section 581) and thus could not deduct losses it incurred in writing off mortgage-backed securities.

The case is *MoneyGram International, Inc. v. Commissioner,* No. 20-60146 (5th Cir. June 1, 2021). Read the Fifth Circuit's **decision** [PDF 177 KB]

Summary

- The taxpayer—a "global payment services company"—claimed "bank" status on its tax returns and deducted losses against ordinary income.

- Nonbanks are only able to deduct losses on securities to the extent they offset capital gains, which the taxpayer did not have during the relevant years.

- The IRS disagreed with the deductions claimed by the taxpayer; determined that the taxpayer was not a bank; and assessed a deficiency of almost $40 million.

- The taxpayer challenged the IRS's decision in the Tax Court (which upheld the deficiency determination). The taxpayer appealed to the Fifth Circuit, which rejected certain aspects of the Tax Court's definitions of two key terms—"deposit" and "loan."

- On remand, the Tax Court again concluded that the taxpayer was not a bank, on a finding that the taxpayer did not accept deposits because "[n]either the financial institutions that purchase [taxpayer's] official check services nor the consumers who purchase its money orders transfer funds to [the taxpayer] for the purpose of safekeeping." The Tax Court also held that the taxpayer did not make loans.

- The taxpayer again appealed, and this time the Fifth Circuit affirmed the Tax Court's opinion noting that:

> *Examining the substance of [the taxpayer's] business thus confirms how the company has long described itself on its tax returns: as a 'nondepository' institution. And without deposits, [the taxpayer] cannot be a bank.*