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Emerging Valuation Issues in Bankruptcy and Beyond

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Recent Case Law Developments in Tax Disputes Between the FDIC and Bank Holding Companies

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Background

- Since 2008, there have been over 500 bank failures resulting in the appointment of the FDIC as a receiver.
- The parent company of the failed bank is often left with worthless stock or claims against an essentially defunct entity.
- The parent company, however, has its own creditors and, usually, insufficient assets to satisfy the creditors' claims.
- One available asset is often the tax refund generated by the carry-back of net operating losses ("NOLs").

NOLs and Consolidated Tax Group

- NOLs usually result from operating losses generated by the failed bank, such that if the bank filed its own tax returns, the bank would be entitled to direct payment of the refund.
- Generally, the parent holding company (“HoldCo”) and the failed bank are parties to tax sharing agreements (“TSA”) and file consolidated tax returns.
- Under the tax sharing agreements, the parent company files the tax returns and any tax refunds are paid to the parent company.

Title search: Bankruptcies in Financial Services and Bank Holding Company Defaults

Also available as part of the eCourse
Bankruptcies in Financial Services and Bank Holding Company Defaults

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