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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III, Chief Administrative Law Judge

Case No. 2017-ALJ-17-0418-CC
Appellate Case No. 2020-000999

Opinion No. 6076 (S.C. Ct. App. Filed July 31, 2024)

Synovus BankPetitioner,

v.

South Carolina Department of Revenue,Respondent.

**SOUTH CAROLINA DEPARTMENT OF REVENUE’S RETURN TO PETITION FOR
WRIT OF CERTIORARI**

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INTRODUCTION

The issue in this appeal is whether, for South Carolina bank tax purposes, Synovus Bank (Synovus) can carryforward net losses incurred in one year to reduce its reported net income in future years. Financial accounting principles prohibit this, because net income (i.e. book income) reflects an entity's income less expenses during each annual accounting period, without regard to gains or losses in prior years. By contrast, some tax codes permit this, because the legislature (or Congress) authorized it. But this tax concept—a net operating loss (NOL) carryforward deduction—is like any deduction (e.g. charitable donations, mortgage interest payments): it exists only by virtue of express statutory authorization. There is no NOL carryforward deduction statute in the South Carolina bank tax.

In 1937, the General Assembly removed banks from the corporate income tax and created a separate and distinct bank tax. To this day, the two taxes are in different chapters of Title 12. The bank tax has remained largely unaltered. Meanwhile, the General Assembly has regularly amended, even repealed and replaced, the corporate income tax statutes. On three occasions (1955, 1980, and 1985), it amended the corporate income tax statutes to authorize an NOL deduction. In 1985, it overhauled the entire corporate income tax; now, a corporation's taxable income is computed through conformity with the Internal Revenue Code (IRC), including the federal NOL deduction in 26 U.S.C. § 172. But the General Assembly has never amended the bank tax to include an NOL deduction.

At bottom, the Court of Appeals' (and ALC's) decision merely affirms the obvious: if there is no NOL deduction in the bank tax statutes, then banks cannot claim one. The Court of Appeals rightly rejected Synovus' arguments to marry the bank tax and corporate income tax through IRC conformity, or backdoor the deduction through financial accounting. Its decision is not based on blind deference to an agency, but with a full view of the statutory framework and legislative history of the bank tax, 80 years of consistent administration interpretation and accepted practice, and Synovus' burden to prove it is entitled to a statutory deduction the bank tax does not expressly authorize.

For 2011–2014, Synovus initially followed the bank tax rules and accepted practice. It reported net income of over \$1.2 billion, did not deduct any NOLs for the nearly \$400 million losses it had incurred in 2009–2010, and paid approximately \$4,487,374 in South Carolina bank taxes. Years later, Synovus changed its mind. It filed amended tax returns for 2011–2014, unilaterally altering its bank tax return (Form SC1101B) to include an NOL deduction that zeroed-out its net income—despite clear instructions on Form SC1101B that “banks are not allowed a net operating loss deduction.” As a result, Synovus’ bank tax liability vanished, and it sought refunds of the taxes it previously paid.

In 2010, the same year Synovus incurred the losses it now seeks to deduct, the President of the South Carolina Bankers Association testified (perhaps foreshadowing) to the legislatively-created Tax Realignment Commission (TRAC). He explained that the bank tax is computed on book income (not taxable income like corporations), and that banks cannot claim NOL carryforward deductions. His testimony was uncontroversial: Synovus’ expert and South Carolina tax professionals had an identical understanding, consistent with longstanding Department practice. TRAC publicly reported its findings to the General Assembly. Every year since, the General Assembly has amended the corporate income tax code to include conformity with the federal NOL deduction, but it has never amended the bank tax statutes to contradict TRAC’s findings.

Synovus’ primary justification for certiorari—there are no court opinions about the bank tax—is not a reason to grant certiorari; it weighs against it. In the face of eight decades of consistent treatment, a dearth of court opinions about the bank tax is evidence of clarity and uniformity, not confusion and uncertainty. Respectfully, this Court need not grant certiorari just for the sake of breaking the silence, especially where the Court of Appeals and Administrative Law Court (ALC) decisions more than competently addressed the issues in dispute.

This appeal does not present any novel question of law. Rather, it is the result of Synovus advancing novel theories in the hopes of finding a tax deduction the Department and other South

Carolina banks have all overlooked. For example, Synovus asked the lower courts to find that the absence of a statutory NOL deduction in the bank tax renders the statutory scheme ambiguous, and to resolve the ambiguity by judicially creating the missing deduction under principles of equity. The lower courts rightly declined to do so. Now, Synovus worries the entire banking industry is clueless about how to compute their bank tax liability. But this case has always been about the existence (or absence) of a deduction, not about how banks have been computing their bank tax liability since 1937. The record contains no evidence that any bank, including Synovus (prior to developing its litigation position), has been uncertain about computing its bank tax. The opposite is true: the rule-of-thumb for computing a bank's tax liability is to multiply its book income by 4.5%.

Nor does this appeal involve substantial constitutional issues. Each of Synovus' constitutional concerns are grounded in a faulty understanding of the Opinion (or ALC decision) or belied by Synovus' own position. There is no due process concern of "vagueness" when the evidence shows that both the Department and bank taxpayers had a common understanding of the law. There is no equal protection problem in the absence of evidence that similarly situated taxpayers are being treated differently in an unconstitutional manner. And Synovus cannot credibly argue that computing the bank tax using book income is an unconstitutional delegation of taxing power to FASB/GAAP, while at the same time arguing for conformity to the corporate income tax rules that likewise rely on book income (often in accordance with GAAP) as the starting point for computing the corporate tax base.

In short, because the bank tax does not expressly authorize an NOL carryforward deduction, Synovus' invites the Court on a wishful journey through the labyrinth of the corporate income tax and conformity in search of the missing bank tax deduction. The gist of its appeal is that everyone—the Department, Tax Commission, Attorney General, General Assembly, banking industry, Synovus' own expert—has been wrong about the bank tax all along. But the Court of Appeals was right: "restraint and modesty advise the court to not upend these settled understandings without a strong reason for

doing so.” Our General Assembly, like Congress, does not “hide elephants in mouseholes” (to paraphrase Justice Scalia); granting an NOL deduction to Synovus in the absence of clear legislative authorization is contrary to established precedent, with far-reaching implications. The Court of Appeals wisely declined to legislate where the General Assembly has not. Respectfully, the reasoning and holding of the Court of Appeals do not present “special and compelling reasons” for this Court to grant certiorari. Rule 242(b) & (b)(4), SCACR. The Petition, therefore, should be denied.

COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

- I. Did the Court of Appeals correctly hold the General Assembly has not authorized banks like Synovus to deduct NOL carryforwards when computing their bank tax liability?
- II. Is it unconstitutional for the Department to measure Synovus’ entire net income based on its book income as computed in accordance with its ordinary method of accounting?
- III. Did the Court of Appeals err by giving respectful consideration to the long, consistent interpretation of the bank tax uniformly held by the Department, other authorities, and the banking industry, especially where the General Assembly has acquiesced to that interpretation?
- IV. Did the Court of Appeals employ the proper standard by narrowly construing Synovus’ claim for a tax deduction?

STATEMENT OF THE CASE

A. Relevant Facts

The Income Tax Act of 1926 (1926 Act) imposed a tax on the “entire net income” of corporations, including banks. *See* 1927 S.C. Acts 1, §§ 1, 3. (R. p 844–46). The tax base was not computed by reference to federal law or the IRC. Instead, “net income” was computed in accordance with “the method of accounting [the taxpayer] regularly employed in keeping [its] books,” less any exemptions or deductions specifically allowed by the 1926 Act. *Id.* at §§ 7–9. (R. pp. 849–50). The 1926 Act included deductions, but none for NOLs. *Id.* at § 13. (R. p. 852).

In 1937, the General Assembly removed banks from the 1926 Act and taxed them under a new, separate statutory tax scheme (1937 Act). *See* 1937 S.C. Acts 565–66, *now codified at* S.C. Code

Ann. § 12-11-10 et seq. (R. p. 872). The 1937 Act imposed an annual bank tax on “the entire net income of the taxpayer doing a banking business within this State.” *Id.* at § 2. (R. p. 872). The bank tax was “in lieu of all other taxes” (including the corporate income tax) except taxes on real property. *Id.* at § 3. Banks enjoyed a lower tax rate than corporations. The 1937 Act contained no deductions.

The General Assembly approved bank tax regulations as early as 1967. (R. p. 2067); *see also* S.C. Code Ann. Regs. 117-1500. The Regulations explain that certain income is included in a bank’s entire net income (despite typically being excluded from the corporate income tax base). *Id.* The Regulations also direct banks to compute and report their net income based on their ordinary method of accounting—either cash or accrual basis. *Id.* Banks annually report their income to the Department using the Bank Tax Return Form SC1101B. (R. pp. 582–86). Form SC1101B computes the tax on a bank’s total net income, and the instructions plainly state: “Federal net operating loss deduction. (Banks are not allowed a net operating loss deduction.)” *Id.* (R. p. 586).

Synovus was formed following a 2010 merger between the National Bank of South Carolina and Columbus Bank and Trust Company. (R. p. 416). In 2009 and 2010, Synovus and its predecessor entities reported combined operating losses of \$391,050,990. *Id.* On its original bank tax returns for 2011–2013, Synovus claimed no NOL deductions for the 2009–2010 losses. *Id.* Synovus reported its entire net income—based on its book income—as directed by the instructions on Form SC1101B:

Synovus Bank Tax Returns (Original)			
Tax Year	2011	2012	2013
Company-wide Book Income per Federal Schedule M-2	\$24,172,236	\$712,351,287	\$173,783,226
Entire Net Income	\$24,171,754	\$712,326,730	\$173,402,129
South Carolina Bank Tax	\$116,000	\$3,478,544	\$892,830

(R. pp. 416–17, 960–61, 1249–50, 1546–47).

Several years later, Synovus filed amended bank tax returns for 2011–2013 and claimed—for the first time—an NOL deduction for the 2009–2010 losses. (R. p. 417). It altered Schedule A and B

of each SCForm1101B by typing “SC Bank Net Operating Loss Carryover Deduction” onto the form and claiming (for each year) a deduction equal to the entire net income it had reported on the corresponding original return. (*Compare* R. pp. 960, 1249, 1546, *with* R. pp. 1199, 1442, 1681). The amended returns reported “zero” entire net income, no bank tax liability, and requested a refund for 2012–2013. (R. pp. 417, 1197–1201, 1441–45, 1680–84). For 2014, Synovus claimed the deduction and a refund of \$968,585. (R. pp. 417, 1939–40, 1949). In the amended returns, Synovus included an attachment detailing the NOLs it intended to carryforward and claim as deductions in future tax years:

Synovus Bank Tax Returns (Amended)			
Tax Year	2011	2012	2013
Company-wide Book Income per Federal Schedule M-2	\$24,172,236	\$712,351,287	\$173,783,226
Entire Net Income	\$0	\$0	\$0
South Carolina Bank Tax	NONE	NONE	NONE
NOL Carryforward Remaining for Future	\$366,879,236	\$311,172,233	\$291,331,561

(R. pp. 504–05, 1197–1200, 1441–44, 1680–84).

The refund requests initiated a verification process, which led to an audit. (R. p. 505). The Department’s Proposed Notice of Adjustment to Synovus disallowed the claimed NOL deductions for 2011–2014, explaining that “banks cannot carryforward net operating losses [because] Bank taxes are based on *book income(loss)*, not on adjusted federal taxable income.” (R. pp. 2010–11). The disallowed NOL deductions resulted in an assessment of \$1,370,716 in bank tax and \$184,520.86 in interest. (R. p. 2044).

B. Procedural History

On November 16, 2017, Synovus requested a contested case hearing with the ALC to challenge the Department’s final agency determination that Synovus was not entitled to deduct NOL carryforwards when computing its bank tax liability. (R. pp. 344–52, 2044–60). On October 22, 2018, the ALC granted partial summary judgment affirming the Department’s position that there is no

statutory basis under South Carolina law for Synovus to claim an NOL carryforward deduction when computing its bank tax. (R. pp. 89–109). However, the ALC found there was a question of fact whether it was reasonable for the Department to use book income as the basis for determining the entire net income of a bank when computing its bank tax liability.

Following the contested case hearing on October 17, 2019, and the ALC’s request for supplemental briefing, the ALC entered a Final Order and Decision on April 17, 2020. The ALC denied Synovus’ Motion to Reconsider and entered an Amended Final Order on June 22, 2030, which affirmed the Department’s Determination and denied Synovus’ deduction of NOLs for 2011–2014. (R. pp. 45). The Court of Appeals affirmed the ALC’s decision on July 31, 2024 (the Opinion) and denied Synovus’ petition for rehearing on September 5, 2024.

ARGUMENT

I. The Court of Appeals correctly held the General Assembly has not authorized banks like Synovus to deduct NOL carryforwards when computing their bank tax liability.

This case has always been about a single issue: whether Synovus (or any bank) can claim an NOL carryforward deduction to reduce its entire net income when computing its South Carolina bank tax liability. The ALC’s primary ruling, which the Court of Appeals affirmed, is that the General Assembly has not authorized such a deduction for banks. There are five undisputed propositions that are foundational to a proper understanding of this dispositive issue.

First, this Court has long recognized the axiomatic tax principle that NOL deductions—like any tax deduction—are creatures of statute that exist only if the legislature expressly enacts them. *C. W. Matthews Contracting Co. v. S.C. Tax Comm’n*, 267 S.C. 548, 557, 230 S.E.2d 223, 227 (1976). An NOL deduction is not a common law concept. It is not inherent to any tax measured by income, nor does it arise by implication or inference. As Synovus and its experts concede, it is a unique tax benefit created by 26 U.S.C. § 172 or authorized under the tax laws of some states. (R. pp. 219–21, 286–88, 338).

Second, the bank tax (Chapter 11 of Title 12) has no provision that authorizes NOL deductions for banks. (R. p. 502). This is critical given the above proposition, and why Synovus' entire appeal hinges on finding an NOL deduction for banks somewhere in the tax code other than Chapter 11.

Third, from its earliest days the bank tax has “always been construed to be a franchise tax measured by the bank’s entire net income.” (R. pp. 2063). The bank tax Regulations, approved by the General Assembly, could not be clearer: “Chapter 11 of Title 12 imposes a franchise tax on banks.” S.C. Code Regs. 117-1500 (emphasis added). Although Synovus questioned the validity of Regulation 117-1500 during the contested case, the ALC found “the bank tax is a franchise tax” based on the plain language of the regulation and the legislature’s acquiescence to the long history (dating back to 1937) of interpreting the bank tax as a tax measured by income (not a tax on income), i.e. a franchise tax. (R. pp. 17–20, 2069).

Fourth, both the Department and banking industry have long interpreted the bank tax as unique and different from the corporate income tax. There are “special rules” for the taxation of banks in South Carolina. (R. p. 2068). The “special base” of the bank tax is “economic income rather than taxable income.” *Id.* The same year the bank tax was enacted (1937), the Attorney General opined it is “absolutely necessary to grasp this legal, technical distinction [that the bank tax is not a tax on income but measured by income] if one is to reconcile it with the interpretation of the Tax Commission.” (R. p. 2069). The Department computes the bank tax using a bank’s book income, not “taxable income” as defined in the corporate income tax statutes. (R. p. 356). Synovus’ expert acknowledged this is what the Department “has always done,” and he authored a tax treatise opining that the bank tax is “based on book income.” (R. p. 171–72). Undisputed expert testimony established that that South Carolina accountants have always understood the bank tax to be computed on book income. (R. pp. 240–41, 247–48, 295). In 2010, TRAC reported to the General Assembly that banks “are exempt from South Carolina income tax” but instead pay a “franchise tax” based on a bank’s

“book income.” (R. pp. 572–75). And the South Carolina banking industry has always understood the bank tax is based on book income, “not calculated in the same manner” as the corporate income tax and “without regard to the majority of the book/tax differences considered for federal income tax purposes, including the NOL carryforward.” (R. p. 589). Synovus may argue this interpretation is incorrect, but it cannot deny its existence. It would have been error for Court of Appeals to ignore it.

Fifth, Synovus has always filed bank tax returns using its book income and never challenged this method of computing its entire net income. Even when it filed amended returns to claim an NOL deduction, Synovus still computed its entire net income using its book income as the initial tax base.

In the face of these undisputed propositions, Synovus urged the Court of Appeals to approve its NOL deduction on the grounds that the bank tax and corporate income tax are both based on “taxable income,” so the same rules for computing the corporate income tax (conformity) should apply to computing the bank tax, including the NOL deduction created by 26 U.S.C. § 172. The Court of Appeals and ALC correctly rejected Synovus’ argument because it is “not faithful to the text of the relevant legislation” and inconsistent with the historic treatment of the bank tax.

A. The Court of Appeals did not err in acknowledging the undisputed evidence that the bank tax has always been treated as different and unique from the corporate income tax.

Synovus contends the Court of Appeals both ignored the legislative history of the bank tax and corporate income tax, while also placing too much emphasis on the historic record of treating the bank tax as a franchise tax based on financial income rather than taxable income. *See* Petition at 5, 16. But the Court of Appeals did not ignore legislative history—its analysis is anchored in a thorough consideration of the legislative development of both taxes, particularly the General Assembly’s decision in 1937 to remove the bank tax from the statutory scheme created by the 1926 Act. The two taxes have evolved differently. Chapter 6 (corporate income tax) exempts banks from the tax it imposes, while Chapter 11 (bank tax) makes it clear the bank tax is the exclusive for banks. *See* S.C.

Code Ann. §§ 12-6-550, 12-11-30. The General Assembly's intent could not be clearer: banks are taxed differently from corporations.

Synovus' argument presumes a tethering of Chapter 11 to Chapter 6, but without a provision of Chapter 11 that provides as much. If that was the intent of the General Assembly, it had ample opportunities to make that explicit. It did not. Instead, on countless occasions the General Assembly has made significant changes to the corporate income tax (including related to the authorization of NOL deductions for corporations) but never made similar changes to the bank tax.

It was not error for the Court of Appeals to consider the accepted practice that the bank tax is a franchise tax with a different tax base than the corporate income tax. Synovus characterizes the Opinion as placing "undue emphasis" on a 1948 Attorney General opinion, but that is an overly-reductionistic view of the Court of Appeals' analysis. The Opinion did not identify each authority by name, but it certainly relied on the record of "various executive branch authorities over several decades" that have reiterated a consistent interpretation. For example:

- In 1937, the Attorney General emphasized the necessary, technical distinction by the Tax Commission that the bank tax is "not a tax on income but a tax measured by or according to income." (R. p. 2069) (emphasis added).
- In 1948, the Attorney General opined on the "so-called income tax on banks," differentiating the bank tax from the corporate income tax in that the bank tax base "includes all income from whatever source derived, even income from non-taxable securities," for the reason it is "a franchise tax for the privilege of operating, or doing business, in this State, the amount thereof being measured by the entire net income." (R. p. 2066) (emphasis added).
- As early as 1967, Regulations defined "entire net income" to include income derived from any source whatsoever, including interest on government obligations, and required "net income" to be computed on a cash or accrual basis (the two primary accounting methods). (R. p. 2067).
- In a 1975 Tax Commission Decision, the Commission noted "there are special rules in this state applicable to the taxation of banks. . . The tax has always been construed to be a franchise tax measured by the bank's entire net income. The phrase 'entire net income' has been construed to mean 'all income from whatever source derived, less all expenses incurred.' The special base of this tax is, therefore, economic income rather than taxable income." (R. p. 2063) (emphasis added).

- A 1983 Tax Commission Memorandum noted the term “‘entire net income’ is defined to include income derived from any source whatsoever, including interest on U.S. obligations. . . [Banks] are subject to a separate South Carolina bank tax, are exempt from South Carolina income tax law” (R. p. 2071).
- In 1992, published guidance by the Department reiterated that “section 12-11-20 provides for a franchise tax based on net income on banks” (R. p. 578) (emphasis added).
- In 2003, the General Assembly recodified approved bank tax Regulations providing that “Chapter 11 of Title 12 imposes a franchise tax on banks” and requiring “net income” to be computed under the two primary methods of accounting. *See* S.C. Code Ann. Regs. 117-1500.
- In 2020, TRAC reported to the General Assembly that “although the chapter [11] is entitled ‘Income Tax on Banks’ and several sections refer to it as an income tax, this tax has always been considered a franchise tax based upon net book income.” (R. p. 268) (emphasis added).
- In 2013, Synovus’ expert published the third edition of his treatise entitled *South Carolina Taxation and Economic Tax Incentives*, noting that banks are taxed “[b]ased on book income, the bank tax is a franchise tax measured . . . by entire net income.” (ROA 171–72).
- In 2016, the Department publicly circulated draft Revenue Ruling #16-x, in which it confirmed the longstanding interpretation that the “South Carolina bank tax is a franchise tax based on book income rather than federal income tax accounting. . . .” (R. p. 2076).

The Petition dismisses the 1948 Attorney General opinion and “any agency decision cited after its issuance” as improper. *See* Petition at 16. But Synovus does not explain why the above chorus of authorities is incorrect, nor does it offer any evidence of a contrary interpretation (other than its litigation position) since 1937. The Court of Appeals’ careful, reasoned consideration of the undisputed historical record is not clearly erroneous and does not warrant certiorari.

B. The Court of Appeals correctly held that when the General Assembly, through conformity, adopted the federal NOL carryforward deduction for the income tax in Chapter 6, it did not extend that NOL deduction to the bank tax in Chapter 11.

Because there is no provision in Chapter 11 that authorizes banks to deduct NOLs, Synovus urged the Court of Appeals to import the federal NOL deduction in Section 172, through Chapter 6, by means of the conformity legislation in 1985 and 2005. The Court of Appeals correctly affirmed the

ALC's conclusion that the conformity amendments related to the Income Tax Act of 1926 did not authorize an NOL deduction for the bank tax.

The 1985 conformity legislation made wholesale changes to the income tax statutes, including repealing the 1926 Act, changing the income tax base for corporations from "entire net income" to "taxable income," and partially adopting the IRC. *See* 1985 S.C. Acts 280–314. The computation of a corporation's "taxable income" is now directly tied to the IRC and includes an NOL deduction as computed in accordance with 26 U.S.C. § 172. *Id.* at 293, *codified at* S.C. Code Ann. § 12-6-1130(4).

As the Court of Appeals explained, the 1985 amendments made no changes to the provisions of the bank tax. In fact, the 1985 conformity legislation expressly noted that all its amendments were only "relating to the Income Tax Act of 1926," from which the General Assembly had removed the bank tax nearly 50 years earlier. The definitions adopted by the 1985 amendments were all "for purposes of this chapter," not the bank tax chapter. The 1985 amendments explicitly provided that banks are exempt from the corporate income tax and therefore are not taxed under the conformity rules. *See* 1985 S.C. Acts 287, *codified at* S.C. Code Ann. § 12-6-550.

The 1995 conformity legislation moved the 1926 Act to Chapter 6 of Title 12. The 2005 legislation then modified the language of section 12-6-50 (known as the Decoupling Statute). Synovus points to this change as a clear signal from the General Assembly that the IRC conformity provisions in Chapter 6 should apply to all chapters in Title 12, including Chapter 11, so that banks can claim an NOL carryforward deduction. *See* Petition at 9. This is a complete misreading of the Decoupling Statute, and the Court of Appeals explained the facial and structural defects of this argument. The clear purpose of the Decoupling Statute in the 2005 legislation was to identify the provisions of the IRC the General Assembly had not adopted—it was not to adopt new deductions for banks not were not previously authorized. *See* Act No. 145, 2005 S.C. Acts § 8 (amending S.C. Code Ann. § 12-6-50). Lest there be any doubt, the General Assembly made clear it was specifically

not adopting “Sections 581, 582, and 585 through 596 relating to the taxation of banking institutions.” *See* S.C. Code Ann. § 12-6-50(9).¹ In short, rather than extending an NOL deduction to banks, the conformity legislation actually underscores the legislative intent to tax South Carolina banking institutions differently from those entities subject to the corporate income tax.

C. Synovus’ new argument about the National Bank Act is irrelevant because the National Bank Act says nothing about NOL carryforward deductions for computing the bank tax.

Synovus argues the Court of Appeals erred because it did not consider the significance of the 1926 National Bank Act, 12 U.S.C. § 548.² As an initial matter, Synovus never cited to or discussed the National Bank Act in its briefings to the Court of Appeals; the first time it ever mentioned the National Bank Act was in its Petition for Rehearing. *See* Petition for Reh’g at 8. Arguments not timely presented to the Court of Appeals should not be a basis for granting certiorari. *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (declining to consider arguments raised for the first time in a party’s petition for rehearing); *see also Herron v. Century BMW*, 395 S.C. 461, 469, 719 S.E.2d 640, 644 (2011) (citations omitted) (“The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended . . .”).

Regardless, Synovus’ National Bank Act argument is just a rebranded version of its conformity argument. According to Synovus, the National Bank Act authorized states to tax national banks so long as the taxation did not discriminate against national banks compared to other businesses. *See*

¹ The Petition suggests that if the General Assembly had not intended for conformity to apply to the bank tax, it would have “list[ed] the Bank Tax in one of the excluded enumerated sections of the Decoupling Statute.” *See* Petition at 9–10. That flips the purpose of the Decoupling Statute on its head. By its clear terms, the Decoupling Statute is intended to identify the sections of the IRC that South Carolina is not adopting; not to identify each of the many chapters of Title 12 that are not impacted by conformity.

² The Act traces its roots as far back as 1864; Congress authorized states to tax national banks in limited ways prior to 1926, but it was the 1926 amendments that included all four of the permitted tax methods that Synovus references in its Petition. *See* Petition at 11; STATE TAXES AND THE NATIONAL BANKS, 41 Yale L.J. 609, n.2 (1932).

Petition at 11. Synovus makes the unsubstantiated conclusory declaration that it is “inherently discriminatory” to allow corporations—but not banks—to claim an NOL deduction. And it urges this Court to cure the alleged “discrimination” by construing Chapter 11 to permit an NOL deduction through “rolling conformity” with Chapter 6. *See* Petition 11–15.³

This overstates the reach of the National Bank Act. The Act approved certain methods for states to tax banks, and the purpose was to ensure that states did not create unfair competition for national banks “by favoring institutions or individuals carrying on a similar business and operations and investments of a like character.” *Mercantile Nat. Bank v. City of New York*, 121 U.S. 138, 155, 7 S. Ct. 826, 835 (1887); *First Agr. Nat. Bank of Berkshire Cnty. v. State Tax Comm’n*, 392 U.S. 339, 343, 88 S. Ct. 2173, 2176 (1968). South Carolina’s bank tax complied with the purpose and requirements.⁴

The National Bank Act did not require states to tax banks exactly like other businesses. The tax rate for banks could not be higher than for other businesses, but that is a far cry from requiring states to treat national banks just like other corporations in all other aspects of taxation, including granting them the same deductions. *See, e.g., First Nat. Bank v. Louisiana Tax Comm’n*, 143 So. 23, 29 (1932), *aff’d by* 289 U.S. 60, 53 S. Ct. 511 (1933) (upholding state statute that provided one method for taxing all banks—state and federal—in the state while providing another method for taxation of corporations other than those engaged in the banking business); *see also Mercantile Nat. Bank*, 121 U.S. 138 at 155, 7 S. Ct. at 835 (finding the National Bank Act was “indifferent” as to how or whether states choose to tax non-financial corporations).

³ Synovus refers to this new theory of “rolling conformity” no fewer than 5 times throughout the Petition—despite having never used the term “rolling conformity” in any of its prior filings with the ALC and Court of Appeals. *See* Petition at 13, 15–16, 24.

⁴ As Synovus notes, the National Bank Act permitted a franchise tax measured by the bank’s “entire net income received from all sources.” *First Agr. Nat. Bank*, 392 U.S. at 343, 88 S. Ct. at 2176. The bank tax applies to all banks (both state and national); it is a franchise tax measured by the bank’s entire net income; and its tax rate of 4.5% is lower than the 5% rate for other corporations. S.C. Code Ann. § 12-11-10 to -30; S.C. Code Regs. 117-1500.

But notice that Synovus buried the lede. Four pages into its discussion of the National Bank Act, Synovus acknowledges that since 1969 the National Bank Act “only prohibit[s] a national bank from being treated differently than a state bank.” *See* Petition at 14; 12 U.S.C. § 548. In other words, even if granting NOL deductions to corporations but not banks violated the National Bank Act at one time, Synovus is asking this Court now to judicially create a state tax NOL deduction for banks to ensure the General Assembly has not offended an alleged prohibition in the National Bank Act that was removed by Congress 55 years ago. *See* Petition at 14–15.

II. The Court of Appeals correctly held it is not unconstitutional to measure Synovus’ entire net income based on its book income as computed in accordance with its ordinary method of accounting.

Synovus asks this court to grant certiorari because of three alleged constitutional problems with the Court of Appeals’ holding. Two of those concerns—due process and equal protection—were not properly preserved for the Court of Appeal’s review; the third was correctly rejected by the ALC and the Court of Appeals. All three complaints are unsupported by record evidence, they are merely unsubstantiated arguments by Synovus’ counsel in briefs. These complaints are also inconsistent with the record testimony and Synovus’ own prior conduct.

A. It is not an unconstitutional delegation of the State’s taxing authority to compute the entire net income of a bank using its book income.

The ALC and Court of Appeals correctly agreed here is no unconstitutional delegation of the State’s taxing authority if book income is the appropriate tax base for calculating a bank’s entire net income. Synovus claims these holdings create “significant problems,” *see* Petition at 17–19, but this is an imaginary bogeyman that ignores the history of income taxes and the undisputed expert testimony.

Every tax on income, by definition, must begin with some measure of a taxpayer’s income. This starting point for the tax base is usually the taxpayer’s net income, as determined in keeping its books. That was the method under the 1926 Act, which required a taxpayer to compute its net income “in accordance with the method of accounting regularly employed in keeping the books of such

taxpayer.” See 1927 S.C. Act No. 1, § 9. (R. p. 850). The computation of federal taxable income under the IRC also starts with the net income from the books (income statements) of a company, which can be determined using several different accounting standards. (R. pp. 240, 332–33, 2395–96). And because the South Carolina corporate income tax begins with federal taxable income, it too relies indirectly on book income for the tax base. (R. p. 328). Thus, it is completely inconsistent for Synovus to argue that the bank tax must be computed under the income tax provisions of Chapter 6, which ultimately begins (in Synovus’ case) with GAAP-based book income, while simultaneously arguing that any tax that relies on book income computed by GAAP is unconstitutional.⁵

Synovus’ reliance on *E. Fed. Corp. v. Wasson*, 281 S.C. 450, 316 S.E.2d 373 (1984) is misplaced. The primary concern in *Wasson* was that the “statute impose[d] no guidelines for rating of films,” so the determination of whether the movie was taxable ultimately rested “solely [in] the discretion of the MPAA.” *Id.* at 452, 316 S.E.2d at 374. There is a fundamental difference between delegating authority to determine whether a movie is taxable in the first instance (as in *Wasson*) versus relying on a universally recognized accounting concept (net income) as the starting point for determining the tax base of a tax that is measured by net income. But see *Cent. Power & Light Co. v. Sharp*, 919 S.W.2d 485 (Tex. App. 1996) (rejecting claim that it was an unconstitutional delegation of legislative authority to compute the tax base of a franchise tax based on the “generally accepted accounting principles” as set forth by FASB).

Synovus also misconstrues the Department’s position and Opinion to require the bank tax to be computed using GAAP. The Department has never mandated that a bank must use GAAP to compute its entire net income. Instead, what the ALC concluded, and the Court of Appeals affirmed,

⁵ GAAP is an accrual-based accounting method and the primary accounting method by which companies keep their books. (R. pp. 181–83). The Financial Accounting Standards Board (FASB) publishes the accounting standards known as GAAP. GAAP is mandatory for publicly traded companies and the method used by South Carolina banks. (R. pp. 213, 243–44). Synovus prepares its financial statements in accordance with GAAP.

is that a bank's book income is the proper method for computing the bank tax base. Experts for both parties confirmed that "book income" is the colloquial shorthand for net income, a canonical financial accounting term. (R. pp. 236–38, 240–41). The two primary financial accounting methods are cash-basis and accrual-basis, but either method will ultimately generate an income statement that reports the company's net income. (R. pp. 154, 186–87, 189, 204, 214, 219, 236–37). This is precisely why Regulation 117-1500.2 requires banks to compute their net income on either a cash or accrual basis. The Court of Appeals and ALC decisions do not require banks to use a particular accounting method. Rather, they simply confirm that a bank's entire net income is measured by its book income as computed under its usual accounting method, and they recognized the reality that for banks this will often (though not always) be computed in accordance with GAAP.

Finally, the Court of Appeals has not "eliminated the deferred tax asset allowable under GAAP." *See* Petition at 19. Publicly traded banks are required under federal law to prepare their financial statements in accordance with GAAP, in part because investors rely on these statements to inform them about the financial health of the company. (R. pp. 8, 41). GAAP requires entities to report any applicable NOL deduction as a "deferred tax asset" because it reflects an expected reduction of future taxes payable in the tax jurisdiction where the deduction is permitted. (R. pp. 193–94, 210, 214–15, 223). Thus GAAP, properly understood, provides guidance on how a bank should account for a pre-existing tax benefit that arises by operation of the tax laws of the relevant taxing jurisdiction. It does not independently create a tax benefit (like an NOL deduction) where one does not already exist. (R. pp. 9, 11). The record is replete with expert testimony that, under GAAP, an entity does not report a deferred tax asset based on an NOL deduction unless the taxing jurisdiction authorizes that specific tax deduction. (R. pp. 2094, 2097, 2098).

Thus, as Synovus well knows, the Court of Appeals did not eliminate the deferred tax asset under GAAP. It merely clarified that there is no deferred tax asset to be reported for an NOL

deduction insofar as it relates to South Carolina’s bank tax liability. As the Court of Appeals specifically noted, Synovus can indicate on its balance sheet that there is no NOL deduction to recognize in South Carolina, which is precisely what Synovus’ expert opined should happen. (R. p. 224).⁶

B. There is no due process violation.

Synovus urges this Court to grant certiorari because it believes the definition of “entire net income” is ambiguous and therefore violates due process. Synovus never raised a due process challenge until its Motion to Reconsider, so this issue is not preserved for appellate review. *Kiamah Prop. Owners Grp. v. Pub. Serv. Comm’n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004).

Regardless, Synovus due process challenge suffers from a legal and evidentiary defect. A statute is not void for vagueness in a way that offends due process just because it contains undefined (or even ambiguous) terms. This would be an impossible standard because virtually every statute has words that are not defined. *See State v. McClain*, 880 S.E.2d 889, 895 (W.Va. 2022) (“Not every ambiguity, uncertainty or imprecision of language in a statutory pattern rises to the level of being unconstitutionally void for vagueness.”); *see also State v. Thongsavanb*, 915 A.2d 421, 430 (Me. 2007) (same). “[T]he fact that people can, in good faith, litigate the meaning of a statute does not necessarily (or even usually) mean that the statute is so indefinite as to be unconstitutional.” *Dep’t of Revenue v. Nabors Int’l Fin., Inc.*, 514 P.3d 893, 899 (Alaska 2022).

Instead, a law is unconstitutionally vague only if it forbids or requires an act that cannot be ascertained by the common understanding and knowledge of the person or group affected by the

⁶ Synovus complains the Court of Appeals’ decision “makes no common sense” when it looks to the income statement to determine entire net income because GAAP requires the use of four different financial statements. *See* Petition at 19. This obfuscates the real issue. GAAP requires entities to use all four of these financial statements, but each one serves a unique purpose. The uniform testimony from both GAAP experts is that the income statement—not the balance sheet—is the part of the financial statements that shows a company’s net income (i.e. all revenues less expenses) for that specific reporting period. (R. p. 200, 236, 333–34). Even the Petition acknowledges that “net income is determined in the income statement.” *See* Petition at 19.

law. *S.C. Dep't of Soc. Servs. v. Michelle G.*, 407 S.C. 499, 506, 757 S.E.2d 388, 392 (2014); *Huber v. S.C. State Bd. of Physical Therapy Examiners*, 316 S.C. 24, 26–27, 446 S.E.2d 433, 435 (1994).⁷ A statute satisfies due process if the terms can be interpreted in “common usage and understanding” or “can be given meaning by reference to other definable sources.” *S.C. Hum. Affs. Comm'n v. Zeyi Chen*, 430 S.C. 509, 530, 846 S.E.2d 861, 871 (2020).

Synovus knew that its bank tax would be computed based on book income, and it is clear how book income is determined. The Court of Appeals chronicled the “common understanding and knowledge” regarding the bank tax, including of the banking industry and tax professionals who are affected by the law. (R. pp. 144, 171–72, 240–41, 243–48, 333–34). (R. p. 573). The General Assembly was aware of this practice, and Synovus filed its tax returns using book income as the starting point for computing its own tax liability. (R. p. 573).

Synovus accuses the Department of a “failure to act for the 85+ year history of the Bank Tax” by failing to issue regulations about how to compute the tax base. *See* Petition at 20. This is a bizarre claim in light of the Department’s promulgation of the bank tax Regulations (consistent with prior guidance), which have instructed taxpayers for over 50 years that the bank tax is computed in accordance with a bank’s accounting methods—cash or accrual basis. *See* S.C. Code Regulation 117-1500; (R. pp. 2066, 2069). It also ignores the numerous other formal and informal guidance discussed above. (R. pp. 448, 578, 2061–63).

Synovus’ claim that banks still have no idea how to compute the bank tax in light of the Court of Appeals’ decision is attenuated in light of the record. Every witness understood what net income and book income mean, and how it is determined. (R. p. 156, 213–14, 233–34, 240–41). Accountants

⁷ “The void-for-vagueness doctrine is primarily a criminal doctrine.” *S.C. Hum. Affs. Comm'n v. Zeyi Chen*, 430 S.C. 509, 529, 846 S.E.2d 861, 871 (2020). Synovus bears the burden to overcome the presumption of constitutionality. *S.C. Dep't of Soc. Servs. v. Michelle G.*, 407 S.C. 499, 757 S.E.2d 388 (2014) (“[A] legislative act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt.”).

have an easy rule-of-thumb for computing the South Carolina bank tax liability: multiply the bank's book income by the tax rate of 4.5%. (R. p. 247–48). During the audit period, Synovus' financial statements and other federally required reports routinely identified its “net income,” which was effectively identical to the net income it listed on its tax returns. (R. pp. 242–43, 1786, 2242, 2251, 2286, 2288, 2323, 2325). Synovus has always reported its company-wide book income (i.e. net income) on both its federal and state tax returns. (R. pp. 959–1022, 1248–336, 1545–604). Synovus and the banking industry know what book income is, and how to compute it.

C. There is no equal protection violation.

Synovus' equal protection claim also does not warrant certiorari because it suffers the same lack of proof and failure to preserve as the due process claim. An equal protection claim requires a showing that similarly situated persons received disparate treatment, and Synovus bears the burden of proving as much. *Ed Robinson Laundry & Dry Cleaning, Inc. v. S.C. Dep't of Revenue*, 356 S.C. 120, 123–24, 588 S.E.2d 97, 99 (2003). This showing requires factual evidence in the record; simply suggesting—as the Petition does—there may be a “different bank tax result” between a bank that uses accrual-based accounting versus a bank that uses cash-based accounting does not constitute a “showing.”

Even if there were a different tax result for banks using accrual-based accounting versus cash-based accounting (the record contains no evidence of this), it does not mean the bank tax is unconstitutional. The Supreme Court has examined a similar issue involving net operating loss deductions and the difference between cash or accrual basis accounting and held that just because the outcome is different depending on the accounting method does not render the statute constitutionally defective. *United States v. Olympic Radio & Television*, 349 U.S. 232, 235, 75 S. Ct. 733, 736 (1955). Instead, any perceived inequity merely “suggest[s] that changes in the law are desirable. But if they are to be made, Congress must make them.” *Id.* The same is true here.

Further, it is irrelevant what caused the losses (mortgage defaults) for which Synovus seeks to claim an NOL deduction. However, Synovus’ framing of the equal protection argument reveals its fatal flaw: the purported comparison class (a mortgage broker who processes mortgages on homes in South Carolina but has no physical location in the state) is fundamentally different from a bank located in South Carolina whose holdings include mortgages secured by property in South Carolina and elsewhere. *See* Petition at 21. The Tax Commission dealt with this issue in a 1983 memorandum and concluded that if a foreign bank’s only business in South Carolina is the origination and servicing of mortgage loans, these limited activities do not rise to the level of “banking” in South Carolina sufficient to implicate the bank tax rather than the income tax. (R. p. 320–22, 2071). This distinction has nothing to do with different accounting methods, but whether a financial institution is “doing a banking business within this State.” S.C. Code Ann. § 12-11-20.

III. The Court of Appeals properly gave respectful consideration to the long, consistent interpretation of the bank tax uniformly held by the Department, other authorities, and the banking industry itself, especially where the General Assembly has acquiesced to that interpretation.

Synovus asks the Court to grant certiorari to correct the “enormous degree of deference” the Court of Appeals gave to the Department, arguing that “all such deference is improper” in a post-*Chevron* world. *See* Petition at 22–24 (citing *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024) (overruling *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778 (1984))). Nothing in the Opinion suggests the Court of Appeals improperly ceded its independent judgment to the Department or other executive authorities. Rather, the Court of Appeals appropriately gave due weight to the historic, accepted understanding of the bank tax (as evidenced by a variety of sources) in a manner consistent with South Carolina’s established deference doctrine.

Although Synovus points to *Kiamah Dev.* (and by extension, *Chevron*) as the expression of South Carolina’s deference doctrine, the genesis of the deference principles are much older. *See Kiamah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) (citing

numerous cases explaining the deference doctrine). South Carolina courts have long given “the most respectful consideration” to the construction of a statute by those charged with the duty of executing it, unless there are “compelling” or “cogent” reasons to differ. *Id.* (citing *Read Phosphate Co. v. S.C. Tax Comm’n*, 169 S.C. 314, 168 S.E. 722, 728 (1933)). Where the construction of a statute has been (a) uniform for many years in administrative practice and (b) acquiesced in by the General Assembly for a long period of time, that construction is entitled to “great weight.” *Stone Mfg. Co. v. S.C. Emp. Sec. Comm’n*, 219 S.C. 239, 249, 64 S.E.2d 644, 648 (1951) (citing *Etiwan Fertilizer Co. v. S.C. Tax Comm’n*, 217 S.C. 354, 359–60, 60 S.E.2d 682, 684 (1950)); *see also Craig v. Bell*, 211 S.C. 473, 478, 46 S.E.2d 52, 54 (1948) (noting importance of “contemporaneous construction of a statute”). Within this framework, “the final responsibility for the interpretation of the law rests with the courts.” *Stone Mfg.*, 219 S.C. at 249, 64 S.E.2d at 648. Administrative practice should be “weighed seriously,” but it is not necessarily conclusive. *Id.*

By contrast, the deference doctrine outlined in *Chevron* demanded that if a statute was ambiguous the courts must defer to an agency’s permissible construction of the statute. *Loper Bright*, 144 S. Ct. at 2254 (citing *Chevron*, 467 U.S. at 843, 104 S.Ct. at 2778). As the United States Supreme Court explained, *Chevron* improperly elevated deference above affording “respect” to the views of the Executive Branch; instead, it allowed the administrative interpretation to supersede the independent judgment of the courts. *Id.* at 2258. This was particularly problematic to the extent it required courts to “mechanically afford binding deference to agency interpretations, including those that have been inconsistent over time.” *Id.* at 2265. For these reasons, the Supreme Court overruled the *Chevron* framework because it is unworkable and inconsistent with the judiciary’s obligation to exercise its own independent legal judgment as contemplated by the Constitution and the federal Administrative Procedures Act. *Id.* at 2257, 2263, 2270.

Importantly, and to the extent *Loper Bright*'s holding regarding federal court's deference to federal agencies interpreting federal law impacts South Carolina's own courts, agencies, and law, the Supreme Court did not throw out the proverbial baby with the bathwater. Even under *Loper Bright*, giving "respect" to Executive Branch interpretations is consistent with properly exercising independent judgment. *Id.* at 2265. In fact, "[c]areful attention to the judgment of the Executive Branch may help inform that inquiry." *Id.* at 2273. And that "most respectful consideration" is "especially warranted" when the interpretation was given "roughly contemporaneously with enactment of the statute and remained consistent over time." *Id.* at 2258.

The Opinion's careful analysis is both faithful to South Carolina precedent and well within the appropriate deference framework the Supreme Court blessed in *Loper Bright*. The Opinion does not cite to *Kiamah Dev.* (or *Chevron*), nor does it ever use the term "deference." Instead, the Court of Appeals rooted its analysis first in the "strong evidence" it gleaned from the text of the statutes and its legislative development, mindful of the court's overarching obligation to ascertain and effectuate legislative intent. It also considered the "long and uniform" interpretation of the bank tax by executive branch authorities (i.e. those charged with the duty of executing the tax), as well as by those subject to the tax (the banking industry). As discussed above, the earliest executive branch interpretations were contemporaneous with the enactment of the Bank Tax, and the Opinion noted the General Assembly's acquiescence to (and approval of) these interpretations of the Bank Tax as evidenced in legislatively approved Regulations. Most importantly, the Opinion strikes the appropriate balance of exercising independent judicial review, while not "upend[ing] settled understandings" without a "strong [or compelling or cogent] reason for doing so." This issue does not warrant certiorari.

IV. The Court of Appeals employed the proper standard by narrowly construing Synovus' claim for a tax deduction.

The Court of Appeals correctly noted "this case is about a tax deduction." Contrary to Synovus' contention, the ALC and Court of Appeals both applied the correct "frame of reference"

for evaluating Synovus' claim for a tax deduction. Not only is the standard of review for tax deductions well-established, but this Court has specifically explained the standards for reviewing NOL deductions: Synovus has the burden of proving there is a statute that authorizes an NOL carryforward deduction and bringing itself squarely within the terms of that authorizing statute. If there is any ambiguity in the state, the statute is construed strictly against Synovus and the claimed deduction. *See Davis Mech. Contractors, Inc. v. Wasson*, 268 S.C. 26, 29, 231 S.E.2d 300, 301 (1977) (noting net loss carryover deduction is a matter of legislative grace and the taxpayer must establish compliance with the statutory conditions); *see also C. W. Matthews Contracting Co. v. S.C. Tax Comm'n*, 267 S.C. 548, 557, 230 S.E.2d 223, 227 (1976) (affirming denial of net operating loss deduction to a corporation because it failed to meet exact requirements of the authorizing statute); *Chronicle Publishers, Inc. v. S.C. Tax Comm'n*, 244 S.C. 192, 194, 136 S.E.2d 261, 262 (1964) (denying deduction for net operating losses).

Synovus argues the Court of Appeals erred because it should have applied the more liberal standard that ambiguities in imposition statutes should be resolved in favor of the taxpayer. *See* Petition at 24 (citing *Hayden v. S.C. Tax Comm'n*, 183 S.C. 38, 190 S.E.2d 249 (1937)). This misses the mark. Courts apply a more liberal standard for imposition statutes because the issue is whether a specific person or specific income is subject to tax in the first instance. If there is any question, the doubts are resolved in favor of the taxpayer. *Hayden*, 183 S.C. at 38, 190 S.E. at 252 (discussing whether the ambiguous language would “bring the particular person or subject within the law” or “exclude” them from being taxed). However, once it is established the legislature intended to impose a tax on a taxpayer's income, the presumption flips, because deductions (a matter of legislative grace) are exceptions to the rule. *Davis Mech. Contractors*, 268 S.C. at 29, 231 S.E.2d at 301; *C. W. Matthews Contracting Co.*, 267 S.C. at 557, 230 S.E.2d at 227. There is no question Synovus is subject to the bank tax, and it cannot avoid the black letter standard of review by reframing this as a question of whether the bank tax imposes a tax that includes an NOL deduction. As the Petition reveals, the ultimate issue

is not on whether or how the tax is imposed on Synovus, it is “whether NOL carryforward [deductions] should be considered” in computing its bank tax liabilities.

Synovus’ argument is also internally inconsistent. It claims the “deduction is clear and unambiguous,” yet in the next sentence urges this Court to accept certiorari to apply the correct statutory construction principles. *Id.* at 24–25. The rules of statutory construction are not needed when a statute is clear and unambiguous. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). In reality, Synovus is asking the Court to manufacture a tax deduction in the absence of a clear legislative directive. Respectfully, the wisdom or folly of this type of tax policy decision is “exclusively within the purview of the legislature.” *Centex Int’l, Inc. v. S.C. Dep’t of Revenue*, 406 S.C. 132, 151, 750 S.E.2d 65, 75 (2013). If Synovus (and banks) want an NOL deduction, they should lobby the General Assembly to authorize it—not this Court.

CONCLUSION

For the reasons stated above, the Petition for Certiorari should be denied because the Court of Appeals did not err in affirming the ALC’s ruling that a bank is not allowed to use NOL carryforward deductions when computing its entire net income for state bank tax purposes.

Respectfully submitted,

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Columbia, South Carolina
November 18, 2024