How to Treat Stock Issuance Costs

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Can you deduct them, or must you offset them against the proceeds of the stock issuance? A recent technical advice memorandum (TAM) concludes that stock issuance costs are simply netted and do not create a separate intangible asset.

In TAM 200503026, Tax Analysts Document No. 2005-1316, 2005 TNT 14-22, Oct. 26, 2004, there were two domestic holding companies that issued additional stock in a public offering. One of the companies reflected the issuance costs in the equity section of its financial statements. The holding companies then merged into another domestic holding company, with the shares of both the targets being converted into the shares of the acquiring company.

The acquiring company then claimed a refund on an amended tax return, showing increased deductions for transaction costs that no longer provide a future benefit. The IRS dug up its old saw: *INDOPCO, Inc.*, SCt, 92-1 USTC ¶50,113, 503 US 79, 112 SCt 1039. Despite the IRS's long fixation with the INDOPCO case, the TAM concludes that *INDOPCO* does not change the result of earlier precedent. In fact, a hoary old case, *Pacific Coast Biscuit Co.*, 32 BTA 39, Dec. 8881 (1935) stands for the proposition that no loss is allowed for stock issuance costs. The issuance costs simply reduce the amount of capital the taxpayer received on the stock sales.

When you consider that the stock issuance costs can be substantial, this is not a happy result. Although taxpayers would obviously hope to deduct the costs, the IRS treats the issuance costs as a nontaxable item; since the proceeds of the stock sale themselves do not generate income, the issuance costs do not create a loss.