

New Guidance Released Regarding Carryback of Net Operating Losses Under the CARES Act

The IRS continues to provide clarity regarding application of the various Coronavirus Aid, Relief, and Economic Security ("CARES Act") modifications to the Internal Revenue Code (the "Code") (see prior coverage [here](#)).

In addition to recent guidance regarding [bonus depreciation](#), the IRS on April 9 released Rev. Proc. 2020-24 and Notice 2020-26, both of which address CARES Act amendments applicable to net operating losses ("NOLs").

The CARES Act effectively unwinds certain changes to the treatment of NOLs made by the Tax Cuts and Jobs Act of 2017 (the "TCJA"). The TCJA significantly limited the treatment of NOLs after 2017 by restricting the carryback of such NOLs outright and by limiting the NOL deduction to 80 percent of taxable income.

Prior to the TCJA, an NOL generally was required to be carried back to the two preceding tax years, with any excess carried over to the 20 succeeding tax years. For regular tax purposes, the NOL offset up to 100 percent of taxable income of a tax year (90 percent for alternative minimum tax purposes) within the carryback and carryforward periods. The CARES Act has largely restored the treatment of NOLs to the pre-TCJA era, with some changes.

The CARES Act amends Code Section 172(b)(1) to temporarily require taxpayers to carry back losses arising in tax years from 2018 through 2020 for up to five years unless they elect to waive or reduce the carryback period. As a result of that amendment, taxpayers take into account such NOLs in the earliest taxable year in the carryback period, carrying forward unused amounts to each succeeding taxable year. The CARES Act now also permits NOLs to offset 100% of a taxpayers income with respect to tax years beginning before January 1, 2021.

Rev. Proc. 2020-24

In [Rev. Proc. 2020-24](#), the IRS provides guidance to taxpayers that want to: (1) elect under Code Section 172(b)(3) to waive the carryback period for an NOL arising in a taxable year beginning in 2018 or 2019, (2) elect under Code Section 172(b)(1)(D)(v)(I) to



by Daren R. Shaver

exclude all "Section 965 years" from the carryback period for an NOL arising in a taxable year that begins in 2018, 2019, or 2020, or (3) make an application under Code Section 6411(a) for an NOL arising in a taxable year that began before January 1, 2018, and ended after December 31, 2017.

Notice 2020-26

In [Notice 2020-26](#), the IRS stated that it is granting a six-month extension to file applications for a tentative carryback adjustment under Code Section 6411 for NOLs that arose in tax years beginning in calendar year 2018 and ending on or before June 30, 2019. Individuals, trusts, and estates would file [Form 1045](#), "Application for Tentative Refund," and corporations would file [Form 1139](#), "Corporation Application for Tentative Refund."

Taxpayers with questions arising from changes under the CARES Act should contact [Daren Shaver](#) or the [Hanson Bridgett Tax Group](#).

For more information, please contact:

Daren R. Shaver, Senior Counsel
415-995-5061
DShaver@hansonbridgett.com