

IRS Issues Net Operating Loss Guidance Under The Cares Act

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The Internal Revenue Service (IRS) recently issued guidance regarding the net operating loss (NOL) provisions of the Coronavirus Aid, Relief, and Economic Security Act (the Act). We summarized these NOL provisions in *The CARES Act: A Reference Guide* (pg. 7) and Notice 2020-26 and Revenue Procedure 2020-24 provide details on the NOL rules. The new guidance is summarized below.

NOTICE 2020-26

Notice 2020-26 (the Notice) addresses a technical issue in the Act regarding additional time to file a NOL carryback. NOL carrybacks were eliminated in the 2017 Tax Cuts and Jobs Act (2017 Tax Act) and Section 2303 of the Act amended the NOL rules to allow a carryback of NOLs arising in a taxable year beginning after December 31, 2017 and before January 1, 2021.

The Notice observed that the Act did not provide additional time to file an expedited NOL carryback claim under Section 6411(a) of the Internal Revenue Code of 1986, as amended (the Code), for NOLs arising in a taxable year beginning on or after January 1, 2018 and ending before March 27, 2019. The expedited NOL carryback rules require a NOL carryback claim to be filed within 12 months after the end of a tax year, so expedited NOL carrybacks for this tax period was not available. This meant that for this tax period, a taxpayer would need to forego the expedited process and use the (slower) amended return process.

To remedy this problem, the IRS has granted a six-month extension of time to file an expedited NOL carryback claim with respect to a taxable year that began during calendar year 2018 and ended on or before June 30, 2019. This extension fixes the 12-month limitation in Code Section 6411 by allowing the expedited NOL carryback to be made on or before June 30, 2019.

REVENUE PROCEDURE 2020-24

Revenue Procedure 2020-24 (the Revenue Procedure) provides details on the NOL provisions of the Act and on the extension of time granted in Notice 2020-26 to file an expedited NOL carryback claim. The Revenue Procedure focuses on the following elections to be made to implement the NOL carryback rules:

- A taxpayer can make an election to waive the carryback of NOLs arising in taxable years beginning in 2018 or 2019. The election must be made no later than the due date, including extensions, for filing the taxpayer's federal income tax return for the first taxable period ending after March 27, 2020.

- If a taxpayer has income under the Code Section 965 repatriation tax rules, the taxpayer can make an election to exclude all such years from the carryback period with respect to a NOL arising in a taxable year beginning 2018, 2019 or 2020. The election for a NOL arising in a taxable year beginning in 2018 or 2019 must be made no later than the due date, including extensions, for filing the taxpayer's federal income tax return for the first taxable period ending after March 27, 2020. An election for a NOL arising in a taxable year beginning in 2020 must be made by the due date of the return for that year. The benefit of this election is that a taxpayer will then have the ability to use the NOLs against income in other tax years in the carryback period.
- The Revenue Procedure references Notice 2020-26 for the mechanics on how to claim expedited NOL carryback relief for NOLs arising in taxable years beginning after December 31, 2017. In the case of NOLs arising in a taxable year beginning before January 1, 2018, the Revenue Procedure states that that expedited NOL carryback relief is available if the claim is filed no later than July 27, 2020.

The NOL rules under the Act provide a significant benefit that was taken away by the 2017 Tax Act. However, as noted above, there are election timelines and taxpayers with NOLs should discuss the various carryback options with their tax advisor.

If you have any questions, please contact John Eagan (eaganj@whiteandwilliams.com; 212.868.4835) or another member of the Tax and Estates Group.

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