

CARES Act: Modifications for Net Operating Losses

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides tax relief to individuals and businesses in an effort to support the economy. Included in the numerous provisions is a modification to the rules on the tax treatment of net operating losses.

Normally, NOLs arising in tax years beginning after 2017 may only reduce 80 percent of a taxpayer's taxable income in carryback and carryforward years. The two-year carryback period and twenty-year carryforward period, as well as the longer carryback periods for special types of losses, were eliminated under the Tax Cuts and Jobs Act, effective for NOLs arising in tax years ending after 2017. NOLs arising in tax years ending after 2017 are carried forward indefinitely.

However, under the CARES Act, net operating losses (NOLs) arising in tax years beginning in 2018, 2019, and 2020 now have a five-year carryback period and an unlimited carryforward period. The general rule limiting an NOL deduction to 80 percent of taxable income does not apply to NOLs arising in these years.

Extension of time to waive five-year carryback for 2018 and 2019 NOLs. The five-year carryback period may be waived by making an election. For NOLs that arose in tax years beginning in 2018 or 2019, the time for making the waiver election is extended to the due date (including extensions) for filing the taxpayer's return for the first tax year ending after March 27, 2020 (the date of enactment of the new law). Normally, the election is required by the due date (including extensions) of the return for the tax year in which the NOL arose. The regular election deadline continues to apply to NOLs arising in a tax year that begins in 2020.

The extended due date is necessary because the statutory deadline for making the waiver election has expired for some taxpayers. The CARE Act contains no specific relief that allows taxpayers with a 2018 or 2019 NOL to file a late tentative refund application. Since the due date for filing a tentative refund application is statutorily required to be filed within one year after the close of the NOL year the IRS is not able grant administrative relief. Consequently, taxpayers for whom the deadline has passed will need to file amended returns in order to claim refunds.

If you have any questions related to the NOL rules, please call our office. We can help you determine the best timing for claiming a net operating loss.