

# CARES Act: Changes to the Treatment of NOLs

The Tax Cuts and Jobs Act (TCJA) eliminated the ability to carryback NOLs and limited a NOL deduction carryforward to 80% of taxable income.

The Coronavirus Aid, Relief and Economic Securities (CARES) Act made several changes to the NOL carryback and carryforward rules:

- ✓ For tax years beginning after 12/31/2017 and before 01/01/2021 losses can be carried back five years
- ✓ NOLs carried forward to a year before 2021 will not be subject to the 80% limitation
- ✓ A technical correction was made to the language for fiscal year corporations
  - Prior language: the 80% limitation applied to NOLs generated in the first tax year ending after 12/31/2017 (i.e. fiscal year end 06/30/2018 was subject to the limitation on their 2017 return)
  - Correction: changed to the first tax year beginning after 12/31/2017

## **Carryback Claims:**

Under prior tax law, a carryback claim could be filed up to the end of the year following the year in which the NOL was generated. So a 2018 NOL carryback claim filing due date was 12/31/2019. This is preferable as carryback claims are processed much more quickly than amended returns.

The CARES act did not address this timing issue; however, Notice 2020-26 grants an additional six month extension to file a carryback claim. This extension applies to calendar year taxpayers. **That means a 2018 NOL carried back to 2013 must be filed by 06/30/2020.** To properly file the claim, use Form 1396 for corporations or Form 1045 for all other businesses. Include on the top of the form "Notice 2020-26, Extension of Time to File Application for Tentative Carryback Adjustment."

Corporations with a fiscal year end in 2018, who were inadvertently subject to the 80% limitation a year early, have until 07/27/2020 to file a carryback claim per Revenue Procedure 2020-24. To properly file the claim, use Form 1045 or 1139 and include on the top of the form "Filed pursuant to Rev. Proc. 2020-24."

Note that the carryback period is automatic. If a client does not want to carryback a NOL generated in 2018, 2019, or 2020, an election must be made to waive the carryback on the tax return for the first tax year ending after 03/27/2020 (i.e. a calendar year taxpayer would file the election on the 2020 return due 10/15/2021 if extended).

## **Carryforward Claims:**

NOLs generated in 2018 or 2019 which are carried forward will not be subject to the 80% limitation through tax years before 2021. So for those businesses whose 2018 NOL exceeds the carryback period, or who forgo the carryback period, the 2019 return must be amended (if already filed) to claim 100% of the NOL.

## **Other Matters:**

Issues not addressed in this article include Section 965 (foreign income), special rules for REITs and insurance companies, or NOLs carried back to a year under audit.

Sources for further reading:

- [Toni Nitti Forbes Article](#) published April 13, 2020
- Checkpoint → 2020 COVID-19 Guidance → New Law Special Study → Highlights of the CARES Act
- [Notice 2020-26](#)
- [Revenue Procedure 2020-24](#)

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