von Briesen
von Briesen & Roper, s.c. | Attorneys at Law

IRS Issues Guidance on Net Operating Loss Carryback Adjustments under the CARES Act

Apr 17 2020

Practice Area: Tax

The IRS recently provided guidance in Revenue Procedure 2020-24 and Notice 2020-26 to assist taxpayers on how to take advantage of the new five-year net operating loss carryback provision or waive it under the CARES Act. The Act added a five-year net operating loss carryback period and repealed the 80% limitation on losses incurred in tax years beginning after December 31, 2017 and before January 1, 2021. Taxpayers can now carryback 2018 and 2019 losses to as far back as 2013 and 2014 to recoup prior tax paid. Before this guidance was issued, taxpayers were uncertain how and when to file the carryback claims because Form 1045 (taxpayers other than corporations) or Form 1139 (corporate taxpayers) for 2018 was due no later than December 31, 2019.

Taxpayer Electing to Carryback NOL Under Notice 2020-26
If a taxpayer wishes to take advantage of the carryback, Notice 2020-26 provides guidance regarding the timing of a carryback claim for the 2018 year. Absent relief from the IRS, a taxpayer carrying back a 2018 loss to 2013 would be required to file an amended return and would not be entitled to the expedited 90 day refund process by filing a Form 1045 or Form 1139. Pursuant to the Notice, the IRS grants a six month extension of time to file a carryback claim for any tax year beginning in 2018 and ending before June 30, 2020.

A taxpayer must do two things to take advantage of this Notice:

1. File Form 1045 or Form 1139 no later than 18 months after the close of the year in which the NOL arose. For example, if the NOL arose in 2018, the Form must be filed no later than **June 30, 2020**.
2. Include an election with the Form stating "Notice 2020-26, Extension of Time to File Application for Tentative Carryback Adjustment."

Election to waive carryback for NOLs incurred in tax years beginning in 2018 or 2019
Under the CARES Act, an NOL must be carried back unless the carryback is waived. If a taxpayer does not waive the carryback, but fails to timely claim a refund for prior years, they may lose the benefits of the NOL. Taxpayers electing to waive losses incurred in either tax year 2018 or 2019 must follow the procedures below:

- Prepare a statement for each tax year (2018 and/or 2019) electing to waive the carryback.
- Include the following language in the statement: "Taxpayer is electing to apply section 172(b)(3) under Rev. Proc. 2020-24 for [insert tax year]" and waive the carryback period.
- Attach the statement(s) to the first Federal income tax return filed on or immediately following March 27, 2020.
- File the election(s) for either or both tax years no later than the applicable due date of that Federal income tax return, including extensions.

The election to waive the carryback period is irrevocable.

"Fiscal year" taxpayers with tax years beginning before January 1, 2018, and ending after December 31, 2017
Revenue Procedure 2020-24 also addresses NOL carrybacks for taxpayers whose fiscal year began before January 1, 2018 and ended after December 31, 2017, that were previously restricted under TCJA from carrying back an NOL. The CARES Act retroactively corrected the previous technicality in the TCJA. As a result, the CARES Act allows fiscal-year taxpayers to carryback an NOL incurred during this "straddle period" by filing an application for a tentative refund. Form 1139 for fiscal year taxpayers will be treated as timely filed if filed no later than **July 27, 2020**. This deadline is exclusively available for fiscal year taxpayers who incurred an NOL during this straddle period.

Because the NOL is required to be carried back (unless waived), Revenue Procedure 2020-24 clarifies that fiscal-year filers who incurred an NOL during this straddle period must file an election no later than **July 27, 2020**, to waive the carryback period, to reduce any carryback period or to revoke certain elections made under section 172(b). Fiscal-year taxpayers must file the election by incorporating the following information within the statement:

- Adding "Filed pursuant to Rev. Proc. 2020-24" to the top of the statement;
- Indicating the IRC section under which the election is filed; and
- The time period for which it applies, and the taxpayer's basis to make the election.

The election statement must be attached to either the taxpayers' amended tax return, Form 1045 or Form 1139, which only reports the taxpayer's name, address and taxpayer identification number.

If you incurred losses in these periods, please consult with your tax advisor.

---

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.