

## **COVID-19 RESPONSE:**

# **CARES ACT BUSINESS TAX PROVISIONS**

**MODIFICATIONS FOR NET OPERATING LOSSES** The Tax Cuts and Jobs Act (“TCJA”) imposed certain limitations on the utilization of net operating losses (“NOL”). Those limitations included restrictions on NOL carrybacks as well as the amount of an NOL available for use in a tax year for NOL’s generated in 2018 and subsequent years.

The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) has given relief to taxpayers through expanded use of NOLs. Taxpayers will now have the ability to carryback losses up to five years for NOLs arising in a taxable year beginning after December 31, 2017 and before January 1, 2021. Please note there are special rules for REIT’s, life insurance companies, and taxpayers who had an income inclusion for mandatory repatriation of offshore profits in their 2017 or 2018 tax return.

In addition, the CARES Act also repeals the current 80% limitation on utilizing NOLs carried to 2019 and 2020. Taxpayers will be able to utilize 100% of their NOL in those two years.

Taxpayers should review losses in 2018, 2019 and 2020 returns to ensure they take advantage of the expanded carryback opportunity. Year 2018 losses can be carried back to as early as 2013. This coupled with the ability to utilize losses 100% in 2019 and 2020 should provide much needed liquidity to taxpayers.

## **MODIFICATIONS OF LIMITATION ON LOSSES FOR TAXPAYERS OTHER THAN CORPORATIONS**

The TCJA imposed a limitation on the ability for taxpayers other than a corporation to deduct net business losses in excess of \$250,000 (\$500,000 Married Filing Joint) for tax years beginning after December 31, 2017.

The CARES Act has repealed this limitation for tax years 2018, 2019 and 2020. Losses previously subject to limit shall be treated as a net operating loss, now available for 5-year carryback. Any taxpayer who was subject to a limitation in 2018 or 2019 (if they have already filed) should determine whether they would benefit from an amended return.

The CARES Act does exclude any deductions, gross income, or gains attributable from any trade or business of performing services as an employee from the definition of net business loss for years beginning after December 31, 2020. This could potentially limit a taxpayer from offsetting W-2 wages with business losses.

#### MODIFICATION OF CREDIT FOR PRIOR YEAR MINIMUM TAX LIABILITY OF CORPORATIONS

The TCJA repealed the alternative minimum tax (“AMT”) for corporate taxpayers. A corporation that had an excess minimum tax credits (“AMT Credit”) could refund 50% of the AMT Credit in tax years 2018 through 2021 (subject to limitations). The full amount of the remaining AMT Credit was able to be refunded in 2021.

The CARES Act allows the AMT Credit to be fully refundable in 2019. In addition, a corporate taxpayer can make an election to have the entire AMT Credit refunded in tax year 2018.

Any corporate taxpayer with an AMT Credit carryover should evaluate whether to amend their 2018 return or utilize the entire credit in their 2019 tax return.

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