O'NEIL CANNON
HOLLMAN DEJONG & LAING S.C.

TAX AND WEALTH ADVISOR ALERT: BUSINESS TAX PROVISIONS IN CARES ACT

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). This article summarizes the tax relief provisions for businesses other than the payroll tax relief provisions that are contained in the Act.

Modifications to Net Operating Losses (NOLs)

The use of NOLs for businesses will be expanded with two amendments to Internal Revenue Code (IRC) Section 172(a). One amendment repeals the taxable income limitation for NOLs and the other modifies the rules relating to NOL carrybacks.

Taxable Income Limitation

Old Law: IRC Section 172(a) provides that the amount of the NOL deduction is equal to the lesser of: (1) the aggregate of NOL carryovers to such year and NOL carrybacks to such year, or (2) 80% of taxable income computed without regard to the deduction allowable in this section. As a result, NOLs are currently subject to a taxable-income limitation and they cannot fully offset income.

New Law: The CARES Act temporarily removes the 80% taxable-income limitation to allow an NOL to fully offset income. This temporary provision applies to NOLs incurred in the 2018, 2019, or 2020 tax years.

Carrybacks

Old Law: Code Sec. 172(b)(1) provides that, except for farming losses and losses of property and casualty insurance companies, an NOL for any tax year is carried forward to each tax year following the tax year of the loss, but it cannot be carried back to any tax year preceding the tax year of the loss.

New Law: The CARES Act provides that NOLs from tax years after Dec. 31, 2018 and before Jan. 1, 2020 can be carried back to offset prior year income for 5 years.

Modification of Limitation on Losses for Taxpayers Other than Corporations

Old Law: In general, IRC Section 461 limits excess business losses on all noncorporate taxpayers—e.g., passthroughs and sole proprietors —to $250,000 ($500,000 married filing jointly). This limitation is effective for taxable years beginning after December 31, 2017and before January 1, 2026.

New Law: The CARES Act temporarily removes this loss limitation for noncorporate taxpayers so they can deduct excess business losses arising in 2018, 2019, and 2020. The CARES Act also allows the carryover of losses into subsequent taxable years.

Credit for Corporate Prior Year AMT Accelerated

Old Law: The Tax Cuts and Jobs Act of 2017 (TCJA) repealed the alternative minimum TAX (AMT) for corporations but provided that any corporation that paid AMT is eligible for an AMT credit under Section 53(b). The AMT credit can be applied against regular tax liability in later years, subject to certain reductions. Section 53(e) provides corporations with a refund for corporate AMT credits not used to reduce regular tax liability. For tax years beginning in 2018, 2019, and 2020, to the extent that AMT credit carryovers exceed regular tax liability, 50% of such excess AMT credit carryovers will be refundable.

New Law: With the CARES Act changes, corporations with AMT credits will be able to claim a refund for 100% of the credit in 2019.

Modifications of Limitations on Business Interest

Old Law: The TCJA modified IRC Section 163(j) to generally limit the amount of business interest allowed as a deduction to 30% of adjusted taxable income.

New Law: The CARES Act will allow taxpayers to deduct more interest expense by temporarily increasing the limitation on the deductibility of interest expenses from 30% to 50% for tax years 2019 and 2020. However, under a special rule for partnerships, the increase in the limitation will not apply to partners in partnerships for 2019 (it applies only in 2020).

Technical Correction for Bonus Depreciation for Qualified Improvement Property

Old Law: The TCJA amended IRC Section 168 to allow 100% additional first-year depreciation deductions ("100% Bonus Depreciation") for certain qualified property. However, in the final draft there was a technical error that made property called qualified improvement property ("QI Property") ineligible for 100% Bonus Depreciation.

New Law: The CARES Act provides a correction to this technical error under the TCJA, thereby making QI Property eligible for 100% Bonus Depreciation. This will allow taxpayers that make or have made improvements to their facilities to deduct those costs immediately rather than depreciating those costs over a period of 39 years. The correction is effective as of the enactment of TCJA, (i.e. for property placed in service after Dec. 31, 2017) so taxpayers can amend returns for costs that were previously depreciated.

Modifications of Limitations on Charitable Contributions

Old Law: Under IRC Section 170(b)(2)(A), a corporation's charitable deduction cannot exceed 10% of its taxable income. Any excess is carried over for a period of 5 years.

New Law: Starting with the 2020 tax year, the CARES Act will increase the taxable income limitation from 10% to 25% allowing corporations to deduct more of their charitable contributions.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and ready to help you. For questions or further information relating to the CARES Act, please speak to your regular OCHDL contact or attorney Britany E. Morrison.