

CARES ACT – INDIVIDUALS, TRUSTS & ESTATES

The following chart sets forth some of the tax provisions affecting individuals, trusts and estates in the CARES Act. This chart highlights only some of the key issues and is not intended to address all aspects of the legislation. If you have any questions, please contact your Andersen Tax advisor.

As of March 27, 2020

INDIVIDUALS, TRUSTS & ESTATES		
Provision	Description of Change	Comments
Net Operating Loss (NOL) Deductions and Carrybacks	<p>This provision modifies certain NOL rules enacted as part of Tax Cuts and Jobs Act (TCJA). The NOL rules will affect individuals, trusts and estates as it pertains to business deductions reported on those tax returns.</p> <p>TCJA had (i) limited NOL carryovers to 80% of taxable income before NOLs, and (ii) generally repealed all carrybacks of NOLs.</p> <p>The NOL rules are not applied at the partnership or the S corporation level; rather, the partner or S corporation shareholder take them into account in determining such person’s taxable income. NOL carryforwards and carrybacks are permitted for individuals, trusts and estates as it pertains to trade or business deductions from a pass-through business or sole proprietorship.</p> <p>For taxable years beginning before January 1, 2021, the CARES Act repealed the 80% taxable income limitation (i.e., net operating loss (NOL) deductions taken in all taxable years prior to 2021 are allowed up to 100% of taxable income). The 80% taxable income limitation enacted in TCJA will still be applied for NOL deductions taken beginning in 2021 to the extent that the NOL carryover being deducted arose in 2018, 2019, or 2020. In addition, the CARES Act provides a carryback rule up to five taxable years for NOLs arising in 2018, 2019, and 2020.</p> <p>While not specifically classified as technical corrections within the bill, the CARES Act made additional modifications to the NOL rules enacted as part of TCJA. First, the CARES Act addressed the stacking issue arising from having a mix of NOL carryovers, where only the pre-TCJA NOL carryovers are expiring and where the post-TCJA NOL carryover deductions were limited to 80% of taxable income. Beginning with 2021 taxable years, the CARES Act clarifies that taxable income is first reduced by pre-TCJA NOL carryovers (that expire but are not subject to a taxable income limitation) before being reduced by the post-TCJA NOL carryovers with no expiration that are subject to the 80% taxable income limitation. Second, the CARES Act also addresses a stacking issue arising from having multiple Code sections subject to a taxable income limitation. Beginning with 2021 taxable years, the CARES Act clarifies that taxable income is first reduced by any NOL deduction under Sec. 172 before being reduced by any deductions under Sec. 199A or Sec. 250.</p> <p>If an NOL is carried to a Sec. 965 inclusion year, the taxpayer is treated as having made the election in Sec. 965(n), which provides that the income inclusion under Sec. 965 does not need to be taken into account to determine either the NOL deduction for that year or the amount of taxable income eligible for reduction by an NOL carryover or carryback to that year. However, taxpayers can elect to exclude any Sec. 965 inclusion year from the five-year carryback period.</p> <p>The CARES Act also made a technical correction with respect to the effective date in TCJA to ensure that NOLs for 2017 fiscal years remain subject to pre-TCJA law (carrybacks allowed, no taxable income limitation), consistent with taxpayers with a 2017 calendar tax year.</p>	<p>This change provides the opportunity to carry back 2018, 2019 and 2020 losses for five years and to offset 100% of income of such prior taxable years (instead of the 80%). In particular, the creation of a five-year carryback for these NOLs creates an opportunity to carry such losses back to a pre-TCJA taxable year when higher individual income tax rates were in effect, thus increasing the amount of potential refund available.</p> <p>Affected individuals, trusts and estates should evaluate the availability and benefit of filing NOL carryback refund claims.</p> <p>Individuals should consider interaction with the alternative minimum tax (AMT) rules as NOLs may only offset 90% of taxable income, rather than 100%, for AMT purposes.</p>

INDIVIDUALS, TRUSTS & ESTATES (CONT.)		
Provision	Description of Change	Comments
Limitation on Business Losses for Taxpayers Other than C-Corporations	<p>The excess business loss limitation rule of Sec. 461(l), which was enacted as part of the Tax Cuts and Jobs Act (TCJA), has been suspended for 2018, 2019, and 2020. The loss limitation rule will come back in play in taxable years beginning in 2021 and expire for taxable years beginning after December 31, 2025. In addition, taxpayers engaged in a farming business are also not subject to the loss limitation rule of Sec. 461(j) for 2018, 2019 and 2020.</p> <p>Under TCJA, after the application of the passive loss limitation regime under Sec. 469, excess business losses of a taxpayer (other than a C corporation) are deferred and carried forward as a part of the taxpayer's NOL carryforward. For trades or businesses that are partnerships or S corporations, the limitation applies at the partner or shareholder level, and excess business loss is determined by looking at the partner's allocable share or shareholder's pro rata share of items from the partnership(s) or S corporation(s), combined with any other trade or business gross income and deductions of the taxpayer.</p> <p>The CARES Act also made technical corrections to TCJA that a taxpayer's excess business loss is computed without regard to any Sec. 172 or 199A deductions and without regard to income from being an employee for taxable years beginning after December 31, 2017. The CARES Act also clarified that an excess business loss does not include deductions for capital losses from the sale or exchange of a capital asset. In addition, the CARES Act also clarified that capital gain from the sale or exchange of a capital asset is only included in computing the excess business loss by including the lesser of the net capital gain attributable to a trade or business or the capital gain net income.</p>	<p>This change provides that the excess business loss limitation rule is inapplicable for three years (2018, 2019, and 2020).</p> <p>Affected individuals, trusts and estates subject to an excess business loss limitation in 2018 or 2019 should consider whether to amend tax returns to claim a refund based on this change and the other changes to the NOL rules.</p> <p>Affected taxpayers will no longer have to file Form 461 for these years.</p>
Limitation on Excess Farm Losses for Taxpayers Other than C-Corporations	<p>For taxable years beginning after December 31, 2017 and before January 1, 2026, the limitation on excess farm losses for non- C corporate taxpayers do not apply. However, starting with taxable years beginning after January 1, 2021, the limitation on excess business losses under Sec. 461(l) does apply.</p>	<p>This change, along with the repeal of Sec. 461(l) for 2018, 2019, and 2020 allows individuals, trusts and estates to take excess farm losses into account for those taxable years. Affected taxpayers should consider whether to amend 2018 and 2019 tax returns based on this change.</p>
Other Changes to the Taxation of Business Income Reported on the Tax Return of an Individual, Trust or Estate	<p>The CARES Act made various other changes to the taxation of business income that may be reported on the tax return of an individual, trust or estate. Modifications were made to the business interest expense limitation under Sec. 163(j). Qualified improvement property (QIP) is eligible for 100% bonus depreciation and a 15-year recovery period. The rules for charitable donations of food inventory were changed to allow for a limitation of 25% of taxable income rather than 15%.</p>	<p>Refer to the CARES Act – Pass-Through Business Income chart for a detailed analysis of how these changes affect the taxation of an individual, trust or estate.</p>

INDIVIDUALS, TRUSTS & ESTATES (CONT.)		
Provision	Description of Change	Comments
Required Minimum Distributions (RMD) Requirements Waived for 2020	Under the CARES Act, the provisions of Sec. 401(a)(9) requiring that RMDs be made annually to a retirement plan owner once the owner reaches age 72 are temporarily suspended. For the calendar year 2020, RMDs do not apply to defined-contribution plans described in Secs. 403(a) and 403(b), a defined-contribution plan which is an eligible deferred-compensation plan described in Sec. 457(b), if such plan is maintained by an employer described in Sec. 457(e)(1)(A), and individual-retirement plans.	This provision will allow one year of deferral and tax-free growth on taxpayers' 2020 RMDs.
Additional 10% Early Withdrawal Penalty from Retirement Plans Waived for Coronavirus-Related Distributions	The CARES Act waives the 10% early withdrawal penalty on coronavirus-related distributions, up to \$100,000. A coronavirus-related distribution is a distribution made during calendar year 2020 to a taxpayer diagnosed with the virus, with a spouse or dependent diagnosed with the virus, or who experienced adverse financial consequences due to the virus' impact. At the election of the taxpayer, withdrawn amounts are taxable over a three-year period, beginning on the date of the distribution. However, taxpayers can recontribute the withdrawn funds into their retirement accounts for three years without affecting retirement account caps. Eligible retirement accounts include individual retirement accounts (IRAs), 401ks and other qualified trusts, certain deferred compensation plans, and qualified annuities.	For taxpayers meeting the qualifications, this provision allows for greater flexibility in cash-management. Early withdrawals are withdrawals made before age 59 ½.
INDIVIDUAL INCOME		
Provision	Description of Change	Comments
Modification of Adjusted Gross Income (AGI) Limitations for Certain Charitable Contributions	The CARE Act provides that the deduction for qualified contributions is limited to 100% of AGI. This limit is reduced by the amount of any other deductible non-qualified charitable contributions. Qualified distributions are defined as cash contributions during calendar year 2020 made to a Sec. 170(b)(1)(A) organization and which the taxpayer elects to be subject to this provision. Contributions to donor-advised funds, Sec. 509(c)(3) support organizations, or private foundations are not qualified contributions.	Taxpayers wishing to take advantage of this 100% AGI limitation must be careful not to donate to the support organizations that charities often use to solicitate donations. Cash contributions made to federal state and local governments are qualified for the increased threshold. Any excess contributions that are not deducted in 2020 are carried forward for 5 years subject to the 60% of AGI threshold.

INDIVIDUAL INCOME (CONT.)		
Provision	Description of Change	Comments
The \$300 Above-the-Line Charitable Deduction	Under this provision of the CARES Act, eligible individual taxpayers are allowed a deduction from the calculation of gross income for qualified charitable contributions not exceeding \$300. Eligible individuals are defined as individuals who do not itemize deductions. Qualified charitable contributions are defined as cash contributions allowable as a deduction under Sec. 170 and made to a Sec. 170(b)(1)(A) organization. Contributions to donor-advised funds, Sec. 509(c)(3) support organizations, or private foundations are not qualified charitable contributions.	
Recovery Rebates	Eligible individuals are entitled to a refundable credit in the amount of \$1,200 for a single individual or \$2,400 for married filing jointly. Qualifying children will generate an additional \$500 each. The credit phases out completely when a taxpayer's AGI exceeds \$99,000 for a single individual, \$146,500 for heads of household, or \$198,000 for married filing jointly.	IRS will be making direct deposits or mailing rebate checks based on 2019, or if not available, 2018 tax return data. Individuals who are above the income threshold or are otherwise ineligible should not receive a rebate check.

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