

The Modification of the Net Operating Loss Deduction: What Does This Mean To You?

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The Tax Cuts and Jobs Act imposes modifications to the net operating loss (“NOL”) deduction rules. These new rule changes affect tax years beginning January 1, 2018 and are scheduled to sunset on December 31, 2025.

Summary

The modifications to the NOL rules (with some exceptions for certain farms and insurance companies) restrict a taxpayer’s ability to fully offset their current year taxable income through the use of losses generated in prior years by limiting NOL deductions. Also, taxpayers will no longer be eligible to carry back losses to prior years.

Combined with other new restrictions on losses and deductions, particularly the excess business loss limitation and the interest deduction limitation, the changes enacted ensure that many more taxpayers will incur a tax liability on an annual basis.

Modifications

Modifications made to the NOL laws, apply to net operating losses arising in taxable years beginning after December 31, 2017. It is unclear how this date applies for fiscal year taxpayers. The new law restricts the amount of the NOL that a taxpayer can utilize, to either the lesser of the total NOL carryover to such year, or 80% of a taxpayer's taxable income, computed without regard to the NOL deduction.

The changes also impose the following modifications:

- *Indefinite Carryforward*: NOLs generated after 12/31/17 will be carried forward indefinitely.
- *Repeal of Two Year NOL Carryback*: NOLs generated after 12/31/17 can no longer be carried back.
- *NOLs generated prior to 12/31/17* will not be subject to the new rules (2017 NOLs can be carried back and NOLs generated prior to 1/01/18 can offset 100% of future taxable income)

These changes might encourage utilizing NOLs generated in tax years prior to 2018, to the extent the two year carryback is available to a taxpayer. Taxpayers should evaluate whether existing NOLs will provide more value.

Alternative Minimum Tax (AMT)

An NOL can be generated in a year that a taxpayer was in Alternative Minimum Tax (AMT). An AMT NOL generated in a tax year that the taxpayer was subject to the AMT is a separate and distinct tax attribute from an NOL for regular income tax purposes.

The AMT for corporations has been repealed under the TCJA. This repeal raises a question as to what should happen to the NOL's previously generated by corporations in AMT years. This issue has not formally been addressed in the new rules. Without guidance issued to the contrary, it seems that an NOL generated for corporate AMT purposes will

remain an attribute of the corporation despite the fact that it will currently be rendered unusable. In the event that the corporate AMT provisions are re-enacted, it is possible that AMT NOLs previously generated will have the ability to be utilized by the corporation.

The AMT provisions for individual taxpayers have been retained. Therefore, individual AMT NOLs will continue to be able to offset up to 90% of AMT.

Impact

We are evaluating how this will impact you and your company. Speak with your Anchin Relationship Partner about any questions you may have.