

SEQUOIA FINANCIAL ADVISORS PRESENTS

# Hidden Stimulus: NOLs ELLs, and Refunds: What To Do Before the Year Closes



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# 1. Net Operating Loss Rules Modified

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# Net Operating Loss Rules Rolled Modified

The Coronavirus Aid, Relief and Economic Security Act (CARES Act) makes significant changes to the net operating loss (NOL) rules, including technical corrections to provisions added by the Tax Cuts and Jobs Act (TCJA).

1. Five Year Carryback and Suspension of 80 Percent Taxable Income Limitation
  - a) An NOL arising in a tax year beginning in 2018, 2019, and 2020 may be carried back five years (IRC Section 172(b)(1)(D)).
  - b) Taxpayers may elect to waive the carryback period and instead carry the NOL forward indefinitely (IRC Section 172(b)(3)).
  - c) The 20 year carryforward period for NOLs arising in tax years beginning before 2018 is unchanged (IRC 172(b)(1)(A)(ii)(I)).

# Net Operating Loss Rules Rolled Modified

- d) The rule limiting an NOL deduction that arises in tax year beginning after 2017 to 80 percent of taxable income is suspended for a tax years beginning in 2018, 2019, or 2020 (IRC Section 172(a)(1)).
- e) Any portion of an unused NOL arising in a tax year beginning in 2018, 2019, or 2020 is subject to the 80 percent limit in tax years beginning after 2020 (IRC Section 172(a)(2)).



## Net Operating Loss Rules Modified (cont.)

2. Extension of Time to Waive the Five-Year Carryback Period for 2018 and 2019 NOLs
  - a) Generally, an election to waive the carryback period is required by the due date (including extensions) of the return for the tax year in which the NOL arose (IRC Section 172(b)(3)).
  - b) For NOLs that arose in tax years beginning in 2018 or 2019, the time for making the waiver election is extended to the due date (including extensions) for filing the taxpayer's return for the first tax year ending after March 27, 2020, (IRC Section 172(b)(1)(D)(v)(II)). In other words, April 15, 2021, or October 15, 2021, for a corporation with a calendar year end.



# Net Operating Loss Rules Modified (cont.)

## 3. Technical Corrections to the TCJA

- a) For tax years that begin after 2020, the allowable NOL deduction in a carryforward year is equal to the sum of:
  - The aggregate amount of unused NOLs that arose in tax years beginning before 2018 plus
  - The lesser of:
    - The aggregate amount of unused NOLs that arose in tax years that began after 2017 or
    - 80 percent of the excess of taxable income computed without regard to NOL deductions and deductions claimed under Sections 199A or 250, over the aggregate amount of unused NOLs that arose in tax years that began before 2018 (IRC Section 172(a)(2)).
- b) Previously, the 80 percent of taxable income was computed with no reductions for NOL carryforwards that arose before 2018 and considered deductions under Section 199A and Section 250 (IRC 172(a)(2) as amended by the TCJA).

## Net Operating Loss Rules Modified (cont.)

- c) The CARES Act clarifies that the 80 percent of taxable income limitation and unlimited carryforward period both apply to tax years *beginning* after 2017 (IRC Sections 172(a)(2)(B) and 172(b)(1)(A)(ii)(II)).
  - The TCJA provided that the 80 percent of taxable income limitation was effective for tax years *beginning* after 2017 (IRC 172(a) as amended by the TCJA), while the unlimited carryforward period and elimination of the ability to carryback NOLs was effective for tax year *ending* after 2017 (IRC 172(b)(1)(A) as amended by the TCJA).
  - This drafting error affected taxpayers with a 2017/2018 fiscal year. An NOL incurred in a tax year that began in 2017 and ended in 2018 could not be carried back, received an unlimited carryforward period, but was not subject to the 80 percent of taxable income limit.



## Net Operating Loss Rules Modified (cont.)

### 4. Form 1045 and Form 1139 Due Dates

- a) Generally, Form 1045 or Form 1139 are due by the end of the tax year that follows the NOL year (IRC Section 6411(a)).
- b) Taxpayers that generated an NOL in a 2017/2018 fiscal year have until July 27, 2020, to carryback the NOL using Form 1045 or Form 1139, make the election to waive the carryback period, or revoke an election previously made to waive the carryback period (CARES Act Section 2303(d) and Rev. Proc. 2020-24).
- c) Taxpayers that generated an NOL in tax years beginning in 2018 and ended on or before June 30, 2019, have six additional months to file Form 1045 or Form 1139 (See Notice 2020-26).



## Our Take:

- Leverage the power of tax software to determine which clients have incurred NOLs in 2018 and 2019 as well as which clients incurred an NOL in a 2017/2018 fiscal year.
- Optimize the value of a 2018 or 2017/2018 fiscal year NOL by calculating the value of the NOL in both a carryback and carryforward scenario. Tax rate arbitrage opportunities exist since tax rates are generally lower in 2018 and 2019 than rates were before 2018.
- Evaluate the impact of having to pay a balance due on July 15, 2020, with respect to 2019 tax return without an NOL carryforward if a refund with respect to a 2018 carryback is not received by July 15, 2020, as well as the impact of the decision to carry back an NOL on 2020 estimated tax payments.
- State considerations – A Michigan NOL may be used in the manner set forth in IRC Section 172(b). However, taxpayers have the ability to carryback an NOL for Federal tax purposes, but relinquish the carryback period for Michigan tax purpose and vice versa (RAB 2017-14).
- IRC Section 165 considerations – IRC Section 165(i) allows losses attributable to a Federally declared disaster to be deducted on the taxpayer's prior year return. As a result, losses incurred in 2020 that are eligible under IRC Section 165(i) to be deducted on the taxpayer's prior year return have the potential to increase a 2019 NOL.



# ELLs : Excess Business Loss Limitations





## TCJA taketh away CARES giveth



### Coronavirus Aid, Relief, Economic Security (CARES) Act:

- Suspends IRC Section 461(l)
  - Retroactively to for tax years 2018, 2019 and 2020
- Losses become fully deductible
- Forced to Amend Prior Year Returns
  - Can not carry forward previous year disallowed losses
  - Generates immediate refunds of taxes paid in 2018 or 2019



## Example: We will keep it simple



	Original	Amended
Business Income	100,000	100,000
Less Business Expenses	-800,000	-800,000
Net Business (Loss)	-700,000	-700,000
Excess Loss Carried Over	200,000	0
Business Loss Allowed	-500,000	-700,000
Non Business Income	750,000	750,000
Taxable Income	250,000	50,000

*Potential shifting of income from higher bracket to lower bracket in 2018 and/or 2019*

*Could also work the other way too.*

*If 2019 was filed to take original loss carry over, it would have to be amended as well.*



## EBL: Looking Beyond 2020



### Technical Corrections:

- Clarification on W-2 wages - EBL Limitations without regard to any deductions, gross income or gains attributable to any trade or business of performing services as an employee
- Deductions under §172 and §199A - not taken into account in determining the amount of a taxpayer's deductions.
- Net capital gains - will be taken into account when calculating EBL but will be limited to the taxpayer's overall capital gain net income.
  - Attributable to trade or business
  - Does not apply to capital losses







# THANK YOU!!!

▶ For more Information Contact Us

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## COST SEGREGATION 101

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# HIDDEN TREASURES POST COVID 19







Cost Segregation is by far the most powerful tax strategy for increasing cash flow for real estate investors, owners and operators!

*“A cost segregation study should be considered in almost every real estate transaction”*

US TREASURY DEPT





85% of property owners are not taking full advantage of cost segregation – leaving thousands and even millions of dollars on the table each year!

Why is this? *CPAs typically don't offer this service in house*

*Highly specialized area of tax, legal & engineering methods*

*IRS does not promote it*





A CORE Cost Segregation Study allows a property owner to **ACCELERATE** the depreciation much faster - in today's dollars! **(Time value of money)**

- **OLD METHOD:** Traditional Depreciation for commercial buildings is 39 years.
- **NEWER METHOD:** Write off your building in 1 – 5 years.







- For every \$1 million dollars in acquisition or construction cost, a cost segregation study generates approximately **\$250,000** in NET Savings!
- Any property with purchase price / construction cost over \$500K







## IMPORTANT TAX PLANNING FOR 2019 – 2020

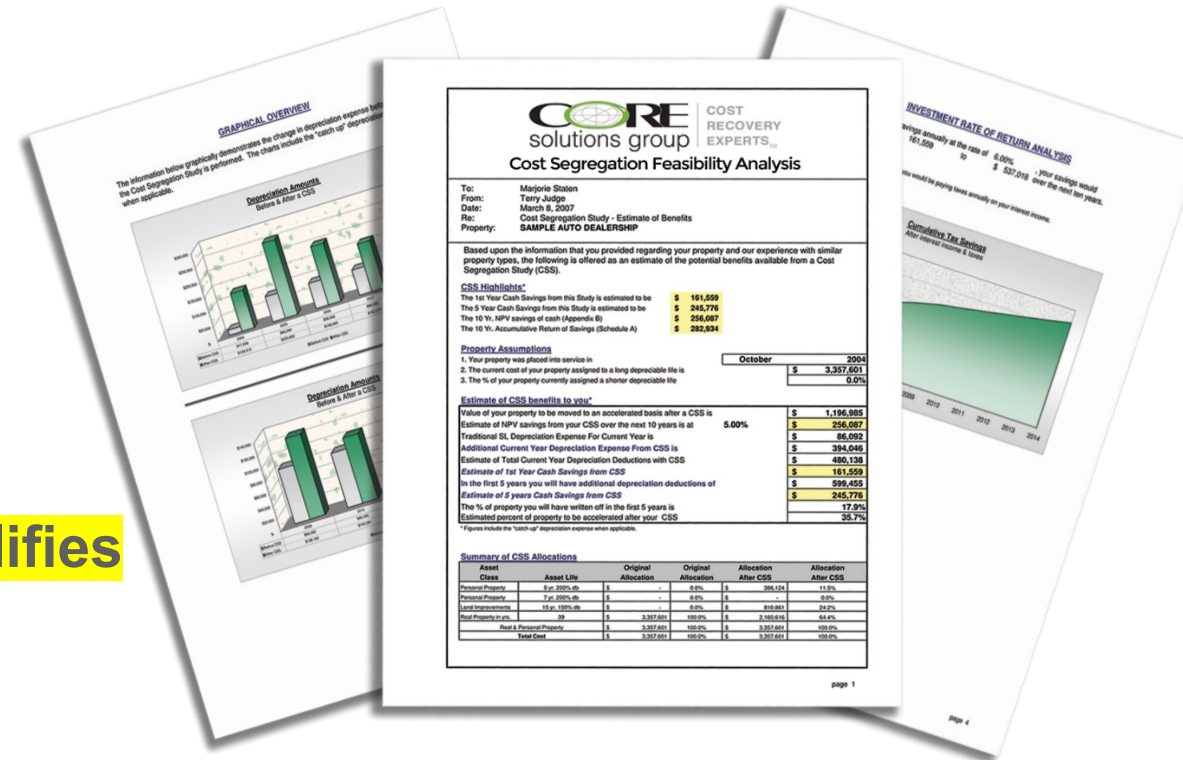
- ☐ 100% FIRST YEAR BONUS DEPRECIATION (After Sept 27<sup>th</sup> 2017)
- ☐ QUALIFIED IMPROVEMENT PROPERTY (QIP) (15 year vs 39 year)
- ☐ NET OPERATING LOSSES (NOL) Carry Back for 5 years (REFUNDS)
- ☐ REPAIR & MAINTENANCE STUDY (Expense vs Capitalize)
- ☐ SELLING A BUILDING: 1031 Exchange / Opportunity Zones



## WHAT INFO DO WE NEED?

- ☐ Type of Building
- ☐ Purchase Price
- ☐ Purchase Date or Date of Occupancy
- ☐ Renovation Cost

Any property in the US over \$500,000 qualifies







**THANK YOU FOR YOUR TIME!**

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