

## [Federal Tax Day - Current, I.1, Final Consolidated Return Regulations Implement Recent NOL Changes \(T.D. 9927\), \(Oct. 14, 2020\)](#)

Federal Tax Day - Current

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Final regulations implement recent statutory amendments to [Code Sec. 172](#) relating to the absorption of consolidated net operating loss (CNOL) carryovers and carrybacks. They also update rules applicable to consolidated groups that include both life insurance companies and other companies to reflect these statutory changes. The final regulations adopt, with certain changes, proposed regulations issued with [NPRM REG-125716-18](#), July 8, 2020.

### **Code Sec. 172 Changes by TCJA and CARES Act**

The final regulations implement certain changes to [Code Sec. 172](#) by the Tax Cuts and Jobs Act (TCJA) ([P.L. 115-97](#)) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) ([P.L. 116-136](#)). In particular, the TCJA and the CARES Act disallowed the carryback of NOLs generated in tax years beginning after 2020, except for farming losses and losses incurred by nonlife insurance companies. In addition, the TCJA and the CARES Act limited the NOL deduction in tax years beginning after 2020 for NOLs generated in 2018 or later (post-2017 NOLs) to 80 percent of taxable income determined after the deduction for pre-2018 NOLs but before the deduction for post-2017 NOLs. This 80-percent limitation does not apply to nonlife insurance companies.

### **Overview of the Final Regulations**

The final regulations implement the NOL changes in the consolidated group context. In particular, the final regulations address three issues related to consolidated groups that were not expressly addressed in the TCJA or the CARES Act:

- The final regulations describe how to determine the 80-percent limitation in the case of a "mixed" group – that is, a consolidated group containing nonlife insurance companies and other members.
- The final regulations address the calculation and allocation of farming losses.
- The final regulations implement the 80-percent limitation into existing regulations to determine the CNOL deduction attributable to losses from a member arising during periods in which that member was not part of that group.

### **Application of 80-percent Limitation to Mixed Groups**

The final regulations retain the proposed approach to computing a consolidated group's post-2017 CNOL deduction limit. Thus, for consolidated groups comprised of both nonlife insurance companies and other members for a consolidated return year beginning after December 31, 2020, the final regulations adopt the two-factor computation approach.

In general, under this approach, the post-2017 CNOL deduction limit for such a group equals the sum of two amounts. The first amount, which relates to the income of those members that are not nonlife insurance companies (residual income pool), is subject to the 80-percent limitation. The second amount, which relates to the income of those members that are nonlife insurance companies (nonlife income pool), is not subject to the 80-percent limitation. Therefore, this approach divides a consolidated group's nonlife insurance companies and its other members into two separate "pools" for purposes of determining the amount of consolidated taxable income (CTI) that is available to be offset by post-2017 CNOLs after applying the 80-percent limitation.

### **Farming Losses**

The final regulations clarify that the maximum amount of farming loss is the CNOL of the group rather than the NOL of the specific member generating the loss in farming activities. The regulations allocate the farming loss to each member of the group in proportion with their share of total losses, without regard to whether each member actually engaged in farming.

In addition, given the overlapping categories of NOLs eligible for carryback (farming losses and nonlife insurance companies), the final regulations provide rules allocating the farming loss to the various members to determine the total amount of CNOL that can be carried back.

## Separate Return Limitation Year

The final regulations modify the separate return limitation year (SRLY) rules to take into account the limitations on NOL deductions. Thus, any losses by members of the group that are absorbed by the group and subject to the 80-percent limitation cause a reduction to the cumulative register (i.e., the cumulative amount of the members' income that is taken into account in the group's income) equal to the full amount of income needed to support that deduction. The final regulations clarify that this modification does not apply for purposes of the dual consolidated loss (DCL) rules.

## Applicability Dates

The final regulations apply generally to tax years beginning after December 31, 2020. However, a taxpayer may choose to apply the rules in [Reg. §1.1502- 1\(k\)](#) and [Reg. §1.1502- 47](#) to tax years beginning on or before December 31, 2020, provided the taxpayer applies these rules in their entirety and consistently with other provisions applicable to the years at issue.

[T.D. 9927](#)

Other References:

[Code Sec. 1502](#)

CCH Reference - [2020FED ¶33,142](#)

CCH Reference - [2020FED ¶33,169B](#)

CCH Reference - [2020FED ¶33,193](#)

[Code Sec. 1503](#)

CCH Reference - [2020FED ¶33,248](#)

CCH Reference - [2020FED ¶33,252](#)

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CCH Reference – [TRC CONSOL: 41,000](#)