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Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also: Part I. §§172; 6411

Rev. Proc. 2020-24

SECTION 1. PURPOSES

.01 This revenue procedure provides guidance regarding elections described in section 1.02 of this revenue procedure related to new § 172(b)(1)(D) of the Internal Revenue Code (Code) enacted by section 2303(b) of the Coronavirus Aid, Relief and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281 (March 27, 2020). Section 2303(b) of the CARES Act amended § 172(b)(1) to provide for a carryback of any net operating loss (NOL) arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, to each of the five taxable years preceding the taxable year in which the loss arises (carryback period). Section 172(b)(1)(D). As a result of that amendment, taxpayers take into account such NOLs in the earliest taxable year in the carryback period, carrying forward unused amounts to each succeeding taxable year.

.02 This revenue procedure prescribes when and how to file the following elections.

(1) Election to waive NOL carryback. Section 4.01(1) of this revenue procedure provides guidance regarding an election under § 172(b)(3) to waive the carryback period for an NOL arising in a taxable year beginning after December 31, 2017, and before January 1, 2020.

(2) Election to exclude section 965 years. Section 4.01(2) of this revenue procedure provides guidance regarding an election under § 172(b)(1)(D)(v)(I) to exclude from the carryback period for an NOL arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, any taxable year in which the taxpayer has a section 965(a) inclusion, as defined in § 1.965-1(f)(37) (a section 965 year).

(3) Elections under the CARES Act special rule concerning taxable years beginning before January 1, 2018, and ending after December 31, 2017. Section 4.04(1) of this revenue procedure provides guidance regarding elections under the special rule set forth in § 2303(d) of the CARES Act to waive any carryback period, to reduce any carryback period, or to revoke any election made under § 172(b) to waive any carryback period for a taxable year that began before January 1, 2018, and ended after December 31, 2017.

SECTION 2. BACKGROUND

.01 For a taxable year beginning before January 1, 2021, § 172(a)(1), as amended by the CARES Act, allows a deduction for the taxable year equal to the aggregate of the NOL carryovers and carrybacks to the taxable year. For any taxable year beginning

after December 31, 2017, and before January 1, 2021, new § 172(b)(1)(D)(i) provides that an NOL must be carried back to each of the five taxable years preceding the taxable year of the NOL (that is, the taxable years in the carryback period for the NOL). Section 172(b)(3) permits a taxpayer entitled to a carryback period under § 172(b)(1) to make an irrevocable election to relinquish the carryback period for an NOL for any taxable year.

.02 Section 172(b)(1)(D)(iv) provides that if an NOL is carried back under § 172(b)(1)(D)(i) to any section 965 year, then the taxpayer is treated as having made the election under § 965(n) with respect to each such section 965 year.

.03 Section 172(b)(1)(D)(v) provides two special rules for elections under § 172(b)(3). The first rule allows a taxpayer with one or more section 965 years to elect, in lieu of the election under § 172(b)(3), to exclude all section 965 years from the carryback period for an NOL. See § 172(b)(1)(D)(v)(I). The second rule provides that a taxpayer must make an election under § 172(b)(1)(D)(v)(I) or § 172(b)(3) to exclude section 965 years from or waive, respectively, the carryback period for an NOL arising in a taxable year beginning in 2018 or 2019 by the due date, including extensions of time, for filing the taxpayer's Federal income tax return for the first taxable year ending after March 27, 2020 (that is, the date of enactment of § 172(b)(1)(D)). See § 172(b)(1)(D)(v)(II).

.04 Section 965 and the regulations thereunder generally require the subpart F income (as defined in § 952) of a deferred foreign income corporation to be increased for the last taxable year of such corporation that begins before January 1, 2018, by the

greater of the accumulated post-1986 deferred foreign income of such corporation as of November 2, 2017, or December 31, 2017, and for certain taxpayers to include in gross income their pro rata share of the increase in subpart F income of the deferred foreign income corporation. Section 965(n) and § 1.965-7(e) allow a taxpayer to make an election for a taxable year to not take into account § 965(a) inclusions, reduced by § 965(c) deductions, and associated § 78 gross-ups in determining the taxpayer's (1) NOL deduction under § 172 for the taxable year, or (2) taxable income for the taxable year (computed without regard to the deduction allowable under § 172) that may be reduced by NOL carryovers or carrybacks to the taxable year under § 172.

.05 Section 6411(a) provides that a taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by an NOL carryback from any taxable year. Section 6411(a) also provides that the application must be filed on or after the date of filing for the return for the taxable year of the NOL from which the carryback results and within a period of 12 months after that taxable year or, for any portion of a business credit carryback attributable to an NOL from a subsequent taxable year, within a period of 12 months from the end of the subsequent taxable year. Section 6411(b) provides a 90-day period during which the Internal Revenue Service (IRS) will make a limited examination of the application to discover omissions and errors of computation and determine the amount of the decrease in tax attributable to the carryback. The IRS may disallow, without further action, any application that contains errors of computation that cannot be corrected within the 90-day period or that contains material omissions. The decrease in tax attributable to the carryback is applied against

unpaid amounts of tax. Any remainder of the decrease is credited or refunded within the 90-day period.

.06 Section 2303(d) of the CARES Act provides a special rule for NOLs arising in taxable years which begin before January 1, 2018, and end after December 31, 2017. Under that special rule, applications under § 6411(a) with respect to such NOLs are treated as timely filed if filed no later than 120 days after March 27, 2020, the date of enactment of the CARES Act. Additionally, elections to forgo or reduce the carryback of such NOLs, or elections to revoke any such prior elections, shall be treated as timely made if made no later than 120 days after March 27, 2020.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that want to (1) elect under § 172(b)(3) to waive the carryback period for an NOL arising in a taxable year beginning in 2018 or 2019, (2) elect under § 172(b)(1)(D)(v)(I) to exclude all section 965 years from the carryback period for an NOL arising in a taxable year that begins in 2018, 2019, or 2020, or (3) make an application under § 6411(a) for an NOL arising in a taxable year that began before January 1, 2018, and ended after December 31, 2017.

SECTION 4. APPLICATION

.01 Time and manner of filing election to waive carryback or exclude section 965 years from carryback.

(1) *Elections to waive carryback under § 172(b)(3) for NOLs arising in taxable years beginning in 2018 or 2019.* A taxpayer within the scope of this revenue procedure may elect under § 172(b)(3) to waive the carryback period for an NOL arising in a

taxable year beginning in 2018 or 2019. Such an election must be made no later than the due date, including extensions, for filing the taxpayer's Federal income tax return for the first taxable year ending after March 27, 2020. A taxpayer must make an election described in this section 4.01(1) by attaching to its Federal income tax return filed for the first taxable year ending after March 27, 2020, a separate statement for each of taxable years 2018 or 2019 for which the taxpayer intends to make the election. The election statement must state that the taxpayer is electing to apply § 172(b)(3) under Rev. Proc. 2020-24 and the taxable year for which the statement applies. Once made, the election is irrevocable.

(2) *Election to exclude section 965 years from carryback period.* A taxpayer within the scope of this revenue procedure may elect under § 172(b)(1)(D)(v)(I) to exclude all section 965 years from the carryback period for an NOL arising in a taxable year beginning in 2018, 2019, or 2020.

(a) *When to file.* An election under this section 4.01(2) for an NOL arising in a taxable year beginning in 2018 or 2019 must be made no later than the due date, including extensions, for filing the taxpayer's Federal income tax return for the first taxable year ending after March 27, 2020. For an NOL arising in a taxable year beginning after December 31, 2019, and before January 1, 2021, an election under this section 4.01(2) must be made by no later than the due date, including extensions, for filing the taxpayer's Federal income tax return for the taxable year in which the NOL arises.

(b) *What to file.* A taxpayer must make the election described in this section

4.01(2) by attaching an election statement to the earliest filed, after this revenue procedure is effective, of:

(1) The Federal income tax return for the taxable year in which the NOL arises;

(2) The taxpayer's claim for tentative carryback adjustment (Form 1045, *Application for Tentative Refund*; or Form 1139, *Corporation Application for Tentative Refund*) applying the NOL to a taxable year in the carryback period; or

(3) The amended Federal income tax return applying the NOL to the earliest taxable year in the carryback period that is not a section 965 year.

(c) A taxpayer making the election who claims a refund or credit as a result of the carryback of the NOL by filing amended Federal income tax returns for taxable years in the carryback period must also attach an election statement to each amended return.

The election statement must state that the taxpayer is electing to apply § 172(b)(1)(D)(v)(I) under Rev. Proc. 2020-24, the taxable year in which the NOL arose, and the taxpayer's section 965 years. Once made, the election is irrevocable.

(d) *Effect of election.* An election under § 172(b)(1)(D)(v)(I) to exclude all section 965 years from the carryback period for an NOL allows a taxpayer to disregard those taxable years when applying an NOL to the carryback period and determining whether the taxpayer has an overpayment and can receive a refund or credit for any of the remaining years in the carryback period to which the NOL is applied. A taxpayer who makes an election under § 172(b)(2)(D)(v)(I) for an NOL must include all section 965 years for purposes of counting the five taxable years in the carryback period for the NOL.

.02 *Carrybacks to section 965 years.* To the extent an NOL is carried back pursuant to § 172(b)(1)(D)(i) to a section 965 year, the deemed election under § 965(n) pursuant to § 172(b)(1)(D)(iv) may not be waived for that section 965 year (including if a taxpayer previously revoked an election under § 965(n) for that section 965 year pursuant to § 1.965-7(e)(2)(ii)(B)). If the deemed election under § 965(n) applies to a section 965 year for which a taxpayer previously revoked or did not previously make an election under § 965(n), the deemed election shall only apply for purposes of the carryback of an NOL to such section 965 year.

.03 *Consolidated groups.*

(1) *Defined terms.* For purposes of this revenue procedure, with regard to an affiliated group of corporations (as defined in § 1504) filing (or required to file) a consolidated return for the taxable year (consolidated group)--

(a) Taxpayer. The term “taxpayer” includes a consolidated group.

(b) NOL. The term “NOL” includes, with regard to a consolidated taxable year, the excess of deductions over gross income, as determined under § 1.1502-11(a) (without regard to any consolidated net operating loss (CNOL) deduction).

(2) *Manner of making elections.* The agent for the consolidated group must make the election under § 172(b)(3) or 172(b)(1)(D)(v)(I). See §§ 1.1502-21(b) and 1.1502-77(a) and (c).

.04 *Applications under § 6411(a).* A taxpayer within the scope of this revenue procedure may make an application under § 6411(a) for an NOL arising in a taxable year that began before January 1, 2018, and ended after December 31, 2017, by filing

the application no later than the deadline described in this section 4.04.

(1) *NOLs arising in a taxable year beginning before January 1, 2018, and ending after December 31, 2017.* Taxpayers with an NOL arising in a taxable year that began before January 1, 2018, and ended after December 31, 2017, who make an application under § 6411(a) on either Form 1045 or Form 1139 with respect to a carryback of such NOL will be treated as having timely filed if the application is filed no later than July 27, 2020. Similarly, elections for such taxable years with an NOL to waive any carryback period, to reduce any carryback period, or to revoke any election made under § 172(b) to waive any carryback period will be treated as timely filed if filed no later than July 27, 2020. A taxpayer may file such elections where the taxpayer files its Federal income tax return by attaching the statement required to make the election, with “Filed pursuant to Rev. Proc. 2020-24” at the top, to an amended return, Form 1045, or Form 1139 containing only the taxpayer’s name, address, and taxpayer identification number. The statement required to make the election must indicate the section under which the election is being made and shall set forth information to identify the election, the period for which it applies, and the taxpayer’s basis and entitlement to make the election.

(2) *NOLs arising in taxable years beginning after December 31, 2017.* Taxpayers with NOLs arising in taxable years beginning after December 31, 2017, may consult Notice 2020-26 for procedures on how to file applications under § 6411(a) for taxable years that may otherwise be outside of the period for filing such applications.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective **April 9, 2020**.

SECTION 6. DRAFTING INFORMATION

The principal authors of this revenue procedure are James P. Beatty of the Office of the Associate Chief Counsel (Income Tax & Accounting) and Natalie Punchak of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact James P. Beatty on (202) 317-7006 (not a toll free call) or Natalie Punchak on (202) 317-6934 (not a toll free call).

