

## 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)

### Special elections for taxpayers with Farming Loss NOLs

Rev. Proc. 2021-14

#### SECTION 1. PURPOSE

.01 This revenue procedure provides guidance regarding elections and revocations related to § 2303(e) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281 (Mar. 27, 2020), as added by § 281 of the COVID-related Tax Relief Act of 2020 (CTRA 2020), which was enacted as Subtitle B of Division N of the Consolidated Appropriations Act, 2021 (CAA 2021), Public Law 116-260, 134 Stat. 1182 (Dec. 27, 2020). Section 2303(e) of the CARES Act provides special rules for taxpayers with a net operating loss (NOL) for any taxable year beginning in 2018, 2019, or 2020, all or a portion of which consists of a “farming loss,”

as defined by § 172(b)(1)(B)(ii) of the Internal Revenue Code (Code) (Farming Loss NOL).

.02 Specifically, this revenue procedure prescribes when and how to make an election with regard to all NOLs of the taxpayer, regardless of whether the NOL is a Farming Loss NOL. This revenue procedure also provides that a taxpayer is treated as having made a deemed election under § 2303(e)(1) of the CARES Act if the taxpayer, before December 27, 2020, filed one or more original or amended Federal income tax returns, or applications for tentative refund, that disregard the CARES Act Amendments with regard to a Farming Loss NOL. This revenue procedure further prescribes when and how to revoke an election made under § 172(b)(1)(B)(iv) or § 172(b)(3) of the Code to waive the two-year carryback period for the farming loss portion of a Farming Loss NOL incurred in a taxable year beginning in 2018 or 2019.

## SECTION 2. BACKGROUND

.01 TCJA Modifications of NOL Deduction and NOL Carryback Rules--(1) Enactment of 80-percent Limitation. Section 13302(a)(1) of Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), amended § 172(a)(2) of the Code to provide that, with regard to NOLs arising in a taxable year beginning after December 31, 2017, the amount allowed as a “net operating loss deduction,” as defined in § 172(a) (NOL deduction), cannot exceed 80 percent of the taxable income of the taxpayer computed without regard to any NOL deduction (80-percent limitation). The 80-percent limitation does not apply in the case of an insurance company, as defined in § 816(a), other than a life insurance company. See § 172(f) (as added by § 13302(d)(2) of the TCJA).

(2) Two-year carryback period for farming losses. Section 13302(b) of the TCJA amended § 172(b)(1) of the Code to generally eliminate NOL carrybacks. However, § 13302(c)(1) of the TCJA amended § 172(b)(1) to provide a two-year carryback period for the portion of an NOL that is a farming loss. Section 13302(c)(1) of the TCJA further amended § 172(b)(1) to provide that taxpayers entitled to this two-year carryback period may make an irrevocable election to waive it. See § 172(b)(1)(B)(iv). In addition, § 172(b)(3), which predates the TCJA amendments, separately provides that any taxpayer entitled to an NOL carryback period under § 172(b)(1) may irrevocably elect to relinquish the entire carryback period with respect to that NOL for any taxable year. The TCJA changes relating to loss carrybacks apply to NOLs arising in taxable years beginning after December 31, 2017. See § 13302(e)(2) of the TCJA, as amended by § 2303(c)(1) of the CARES Act.

.02 CARES Act Amendments to TCJA 80-percent Limitation and NOL Carryback Rules--(1) Temporary suspension of 80-percent limitation. Section 2303(a) of the CARES Act amended § 172(a) of the Code to provide that the 80-percent limitation applies only to NOLs arising in taxable years beginning after December 31, 2017, that are deducted in taxable years beginning after December 31, 2020.

(2) Five-year carryback periods. Section 2303(b) of the CARES Act amended § 172(b)(1) of the Code to provide a five-year carryback period for any NOL arising in a taxable year beginning after December 31, 2017 and before January 1, 2021. See § 172(b)(1)(D). Section 172(b)(1)(D)(i)(II), as added by section 2303(b) of the CARES Act, provides, in part, that the two-year carryback period provided by § 172(b)(1)(B) for farming losses does not apply to any such NOL.

.03 CTRA 2020 Amendments to CARES Act. Section 281(a) of the CTRA 2020 amended § 2303 of the CARES Act by adding a new subsection (e), which took effect as if originally included in that CARES Act section. See § 281(b) of the CTRA 2020. New § 2303(e) of the CARES Act contains the following provisions:

(1) Election to disregard the CARES Act Amendments. Section 2303(e)(1) of the CARES Act provides that a taxpayer with a Farming Loss NOL for any taxable year beginning in 2018, 2019, or 2020, may make an election to disregard the amendments made by section 2303(a) and (b) of the CARES Act (that is, the CARES Act Amendments).

(2) Consequences of Election. If a taxpayer makes the election under § 2303(e)(1), the following consequences will result:

(a) Application of 80-percent limitation. The 80-percent limitation will apply to determine the NOL deduction for each taxable year beginning in 2018, 2019, or 2020 to the extent the deduction is attributable to NOLs arising in taxable years beginning after December 31, 2017. The 80-percent limitation will not apply to determine the NOL deduction for any taxable year beginning before 2018.

(b) Application of modified taxable income rules. Section 172(b)(2)(C) of the Code, as added by the TCJA and effective prior to enactment of the CARES Act, provides a modified taxable income rule to account for the 80-percent limitation. This rule will apply with regard to each taxable year beginning in 2018, 2019, or 2020.

(c) NOL carryback period. The NOL carryback period will be determined under § 172(b) of the Code, as amended by the TCJA and effective prior to enactment of the CARES Act, for any NOL arising in any taxable year beginning in 2018, 2019, or 2020.

For example, if a taxpayer with a Farming Loss NOL in 2018 makes the election under § 2303(e)(1), only the portion of the Farming Loss NOL that consists of a farming loss can be carried back two taxable years. In addition, for taxpayers other than insurance companies, as defined in section 816(a) of the Code, that are not life insurance companies, no portion of any NOL that does not constitute a farming loss can be carried back to any taxable year beginning before January 1, 2018.

(3) Making the Election--(a) Overview. Section 2303(e)(1)(B)(i) of the CARES Act provides that, except in the case of a deemed election described in 3.02(3)(b) of this revenue procedure, an election to disregard the CARES Act amendments (Affirmative Election) under § 2303(e)(1) must be made in the manner prescribed by the Secretary. Once made, an election under § 2303(e)(1) is irrevocable. Section 2303(e)(1)(B)(ii)(I) of the CARES Act generally provides that an Affirmative Election must be made by the due date, including extensions of time, for filing the taxpayer's Federal income tax return for the taxpayer's first taxable year ending after December 27, 2020.

(b) Deemed election. In the case of any taxpayer with a Farming Loss NOL that files a Federal income tax return before December 27, 2020, that disregards the CARES Act Amendments, the taxpayer is treated as having made a deemed election (Deemed Election) under § 2303(e)(1) unless the taxpayer amends such return to reflect such amendments by the due date (including extensions of time) for filing the taxpayer's Federal income tax return for the first taxable year ending after December 27, 2020.

(4) Revocation of election to waive two-year carryback period. Section 2303(e)(2) of the CARES Act provides taxpayers with the ability to revoke an election made under

§ 172(b)(1)(B)(iv) or § 172(b)(3) of the Code to waive the two-year carryback period if the election--

(i) was made by the taxpayer before December 27, 2020; and

(ii) relates to the two-year carryback period for the portion of any Farming Loss NOL that is a farming loss arising in taxable years beginning in 2018 or 2019.

### SECTION 3. ELECTIONS TO DISREGARD CARES ACT AMENDMENTS

.01 Affirmative Election--(1) Overview. A taxpayer with a Farming Loss NOL, other than a taxpayer making a Deemed Election described in section 2.03(3)(b) of this revenue procedure, may make an Affirmative Election under section 2303(e)(1) of the CARES Act if--

(a) the Farming Loss NOL arose in any taxable year of the taxpayer beginning in 2018, 2019, or 2020; and

(b) the taxpayer satisfies all of the conditions described in section 3.01(2) of this revenue procedure.

(2) Time and manner for making an Affirmative Election. To make a valid Affirmative Election under section 3.01(1) of this revenue procedure, a taxpayer must satisfy the following conditions:

(a) Election deadline. The taxpayer must make the Affirmative Election on a statement described in section 3.01(2)(b) of this revenue procedure by the due date, including extensions of time, for filing the taxpayer's Federal income tax return for the taxpayer's first taxable year ending after December 27, 2020.

(b) Required statement. The taxpayer must attach a statement to the taxpayer's Federal income tax return for the taxpayer's first taxable year ending after December

27, 2020. The statement must provide in type or legible writing at the top of the statement the following: “The taxpayer elects under § 2303(e)(1) of the CARES Act and Revenue Procedure 2021-14 to disregard the amendments made by § 2303(a) of the CARES Act for taxable years beginning in 2018, 2019, and 2020, and the amendments made by § 2303(b) of the CARES Act that would otherwise apply to any net operating loss arising in any taxable year beginning in 2018, 2019, or 2020. The taxpayer incurred a Farming Loss NOL, as defined in section 1.01 of Revenue Procedure 2021-14, in [list each applicable taxable year beginning in 2018, 2019, or 2020].” The taxpayer should also attach a copy of the statement to any original or amended Federal income tax return or application for tentative refund on which the taxpayer claims a deduction attributable to a two-year NOL carryback pursuant to the Affirmative Election.

.02 Deemed Election--(1) Overview. Except as provided in section 3.02(3) of this revenue procedure, a taxpayer is treated as having made a Deemed Election under section 2303(e)(1) of the CARES Act if the taxpayer, before December 27, 2020, filed one or more original or amended Federal income tax returns, or applications for tentative refund, that disregard the CARES Act Amendments with regard to a Farming Loss NOL.

(2) Special procedure for certain taxpayers whose two-year carryback claims filed before December 27, 2020 were rejected. Some taxpayers may have had their two-year carryback claims, as reflected on their applications for tentative refund or claims for refund that were filed before December 27, 2020, rejected by the Internal Revenue Service (IRS). If such a taxpayer wants to continue to pursue those claims, the taxpayer should submit complete copies of their rejected applications or claims,

including the original or amended Federal income tax returns for the taxable years in which the NOLs arose, in the manner set forth in this section 3.02(2), which will enable the IRS to review their cases as expeditiously as possible.

(a) The taxpayer should submit a complete copy of each rejected application for tentative refund or claim for refund based on a two-year carryback period, including the original or amended Federal income tax return for the taxable year in which the NOL arose, to the IRS Service Center at which the taxpayer previously filed the application or claim and return.

(b) The taxpayer should provide in type or legible writing at the top of the first page of a complete copy of each application or claim the following: "Deemed Election under section 3.02(2) of Revenue Procedure 2021-14."

(c) The complete copy of each application or claim and return should be submitted on or before the due date, including extensions of time, for filing the taxpayer's Federal income tax return for the taxpayer's first taxable year ending after December 27, 2020.

(3) Exception to Deemed Election. A taxpayer will not be treated as having made a Deemed Election if, for each taxable year for which the taxpayer filed an original or amended Federal income tax return or an application for tentative refund that treated a Farming Loss NOL in a manner that disregards the CARES Act Amendments, the taxpayer subsequently files either an amended return by the due date, including extensions of time, for filing the taxpayer's Federal income tax return for the taxpayer's first taxable year ending after December 27, 2020, or an application for tentative refund within the required time for filing such an application and also by the due date, including



extensions of time, for filing the taxpayer's Federal income tax return for the taxpayer's first taxable year ending after December 27, 2020, that properly reflects the treatment of each Farming Loss NOL under the CARES Act Amendments.

For example, a taxpayer who disregarded the CARES Act Amendments by using a 2-year carryback for the farming loss portion of the taxpayer's only Farming Loss NOL and filed Forms 1120X for the two carryback years, and who subsequently timely files a Form 1139 with a 5-year carryback that accounts for that Farming Loss NOL in a manner consistent with the CARES Act Amendments for each of the five carryback years, will not be treated as having made a Deemed Election. Similarly, a taxpayer who filed a Form 1139 prior to December 27, 2020, and disregarded the CARES Act Amendments by using a 2-year carryback for the farming loss portion of the taxpayer's only Farming Loss NOL and subsequently timely files a Form 1139 with a 5-year carryback that accounts for that Farming Loss NOL in a manner consistent with the CARES Act for each of the five carryback years, will not be treated as having made a Deemed Election.

#### SECTION 4. REVOCATIONS REGARDING WAIVERS OF CARRYBACK PERIODS

.01 Revocation of election not to apply the two-year carryback period for farming losses--(1) Overview. A taxpayer that, pursuant to § 172(b)(1)(B)(iv) or § 172(b)(3) of the Code, elected not to have the two-year carryback period apply to the farming loss portion of a Farming Loss NOL incurred in a taxable year beginning in 2018 or 2019 may revoke that election if the taxpayer--

(a) made that election before December 27, 2020; and

(b) satisfies all of the conditions described in section 4.01(2) of this revenue

procedure.

(2) Time and manner for filing a revocation. To make a valid revocation under section 4.01(1) of this revenue procedure, a taxpayer must satisfy the following conditions:

(a) Revocation deadline. A taxpayer must make the revocation described in section 4.01(1) of this revenue procedure by the date that is 3 years after the due date, including extensions of time, for filing the return for the taxable year the Farming Loss NOL was incurred.

(b) Required statement. The taxpayer must attach a statement to an amended return for the loss year. The statement must provide in type or legible writing at the top of the statement the following: “Pursuant to section 4.01 of Rev. Proc. 2021-14 the taxpayer is revoking a prior §172(b)(1)(B)(iv) or § 172(b)(3) election not to have the two-year carryback period provided by § 172(b)(1)(B)(i) apply to the Farming Loss NOL, as defined in section 1.01 of Rev. Proc. 2021-14, incurred in the taxable year.”

## SECTION 5. CONSOLIDATED GROUPS

.01 In general--(1) Defined terms. For purposes of this revenue procedure, with regard to an affiliated group of corporations, as defined in section 1504 of the Code, 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) of the Income Tax Regulations without regard to any consolidated net operating loss (CNOL)

deduction.

(2) Manner of making elections. An Affirmative Election under section 3.01 of this revenue procedure and a revocation described in section 4.01 of this revenue procedure are made by the agent for the consolidated group. An amended return described in section 3.02(3) of this revenue procedure is filed, and a Deemed Election under section 3.02 of this revenue procedure is deemed made, by the agent for the consolidated group. See § 1.1502-77(a) and (c).

.02 Consequences of Affirmative and Deemed Elections. If the agent for the consolidated group makes an Affirmative Election or a Deemed Election, the consequences described in section 2.03(2) of this revenue procedure apply to the consolidated group. Therefore, for example, if a consolidated group has a CNOL a portion of which is a farming loss, and if the agent for the consolidated group makes an Affirmative Election or a Deemed Election, then the portion of the CNOL that is a farming loss can be carried back two taxable years, and the 80-percent limitation will apply to determine the deduction for the entire CNOL for each taxable year beginning in 2018, 2019, or 2020.

.03 Reliance on rules in § 1.1502-21 regarding application of the 80-percent limitation. If a consolidated group makes an Affirmative Election or a Deemed Election, the consolidated group may choose to apply § 1.1502-21(a), (b)(1), (b)(2)(iv), and (c)(1)(i)(E), as revised by TD 9927 (85 FR 67966, Oct. 27, 2020), for its taxable years beginning in 2018, 2019, or 2020.

## SECTION 6. EFFECTIVE DATE

This revenue procedure is effective on [INSERT DATE OF RELEASE].

## SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Forest Boone of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Lewis Saideman at (202) 317-5414, or (concerning consolidated groups) Russell Jones at (202) 317-5357 (not a toll-free call).