

FAQs for CARES Act: Business Tax Provisions

1. Are there changes to the U.S. federal income tax rules under the CARES Act that could help a business?

Yes, there are several potential benefits that could generate a refund to your business or you as its owner. Specifically, changes in the CARES Act that are most likely to have a potential benefit for a business or a business owner are:

- A new rule for the depreciation of improvements to the interior of a building;
- New rules for net operating losses; and
- The accelerated recovery of alternative minimum tax credits for corporations.

2. What is a net operating loss?

In general, your business has a net operating loss for a tax year if the deductible expenses for your business exceed your revenue in that year. There are some limitations on what expenses your business can deduct, however, so the deductible expenses may be less than the total expenses of your business. These expenses are not only out-of-pocket payments, but also depreciation of certain of the properties used in your business.

In general, the CARES Act provides new and more favorable rules for the use of net operating losses. Generally, net operating losses may be used to offset taxable income in taxable years preceding the year of the net operating loss (referred to as a net operating loss “carryback”), or may be used to offset taxable income in taxable years following the year of the net operating loss (referred to as a net operating loss “carryforward.”). These rules are discussed later in this Q&A.

3. If my business did not have a net operating loss in 2018 or 2019, but a net profit, is there still a potential benefit?

Yes, the CARES Act allows for a new deduction of accelerated or “bonus” depreciation of “qualified improvement property”. This comprises improvements to the interior of a building, such as many build-outs of leased commercial real property, if it has been placed in service after December 31, 2017. Before the changes of the CARES Act, this kind of property had to be depreciated over a period of 39 years. Now, this property is, retroactively, eligible for bonus depreciation, if the property was placed in service in your business in 2018, 2019 or 2020. Bonus depreciation allows you to deduct the full cost of this property in the year in which you placed the property in service. For example, if your business placed qualified improvement property in service in 2018, you or your business can reduce taxable income for 2018 and receive a refund for the overpayment of taxes in 2018.

4. After applying the bonus depreciation in 2018 or 2019, my business no longer shows a profit, but a net operating loss. Do the new rules for net operating losses apply?

Yes, the new rules apply to net operating losses that arise in taxable years beginning after December 31, 2017 and before January 1, 2021, even if the loss was not shown on the original tax return already filed for the 2018 or 2019 tax years for your business. If your business files a

tax return for a “fiscal year” that ends on a date other than December 31 (in other words, the tax year is different than the calendar year) the rules apply to your first year that begins after 2017, and the last year to which the rules currently apply is the last year starting before January 1, 2021. In other words, if the tax year is the calendar year, the new rules for net operating losses apply to 2018, 2019 and 2020. If the tax year is a fiscal year that starts, for example, on September 1, then the new rules for net operating losses apply to the tax year that started on September 1, 2017, the tax year that started on September 1, 2018, the tax year that started on September 1, 2019 and the tax year that will start on September 1, 2020. These are referred to as the Special NOL Years.

5. What are these new rules for net operating losses?

Net operating losses arising in the Special NOL Years must be “carried back” for five years to each year in which your business had taxable income, unless the business elects to waive the carryback period. Generally, by carrying a loss back to a prior year in which the business had taxable income, the net operating loss can be used as an additional deduction from income. As a result, if there was such prior income, the carried-back loss could result in an immediate refund. While this carryback can be very complex and require special elections for a businesses that had foreign subsidiaries or 10%-or-greater interests in certain controlled foreign corporations, businesses that operate only within the United States face less complexity. Nonetheless, a business owner should always consult with a tax advisor to ensure that any potential refund or future benefits from a net operating loss is used to the maximum benefit of the business, including whether or not to waive this net operating loss carryback.

6. My business is conducted by me as a partnership for U.S. federal income tax purposes or as an S-corporation. Are there special rules that apply to me?

The new rules for net operating losses generally apply to you with respect to the net operating losses of your business that are “passed through” to you and your personal income tax return. Importantly, and in addition to the five-year carryback rule, the CARES Act allows you to continue to use any “excess business losses” against other income during the taxable year. For example, a business loss passed through to you might be available to offset personal dividend or interest income or other non-business income. The CARES Acts in effect postponed to taxable years beginning after December 31, 2020, the disallowance of using so-called excess business losses, which is the excess of the total amount of business deductions for the taxable year over the sum of (1) the aggregate gross business income plus (2) \$250,000. However, this rule does not apply to losses from the sale of capital assets.

7. What is the accelerated recovery of alternative minimum tax credits?

This benefit is available only if, first, your business is conducted as a corporation for U.S. federal income tax purposes (other than an S-corporation) and, second, your business has paid alternative minimum tax, or AMT, in the past that gave rise to alternative minimum tax credits. Because the AMT system has been repealed for tax years of such corporations beginning after 2017, a refund of AMT credits is available. This refund can now be accelerated under the CARES Act so that a corporation for tax purposes (other than an S-corporation) can elect to claim the full amount of AMT credit refunds in its first tax year beginning after December 31, 2017. (Before the CARES Act changes, these refunds were spread out over several years.)

8. How can I get these refunds and benefits from the Internal Revenue Service?

You can claim a quick refund by filing:

- IRS Form 1139, if your business is conducted as a corporation for U.S. federal income tax purposes, including a limited liability company that has made a tax election to be treated in the same manner as a corporation; or
- IRS Form 1045 for a refund for you personally if your business is conducted as a partnership, including a limited liability company that is treated as a partnership, as an S-corporation, or as a “disregarded entity.”

You should talk to your tax advisor about the details because the IRS has implemented special, temporary procedures for faxing these forms to the IRS in order to expedite processing. These procedures are described on the IRS’s website at <https://www.irs.gov/newsroom/temporary-procedures-to-fax-certain-forms-1139-and-1045-due-to-covid-19>.

Importantly, if you want to elect the accelerated refund of AMT credits for your corporate business, the business must make the election by filing a tentative refund application before December 31, 2020.

9. I made an estimated tax payment for 2020 earlier this year, but in light of the current circumstances, this is an overpayment of estimated taxes. Can I get a quick refund of estimated taxes?

Yes, a quick refund of estimated tax overpayments is available by filing IRS Form 4466 if your business is a corporation for U.S. federal income tax purposes (other than an S-corporation). Your business can get this refund if it overpaid estimated tax for 2020 by at least 10% of the expected total tax liability and at least \$500. Your tax advisor should be able to help you with filing this refund claim and determining whether it is available in your circumstances.

10. Is there a source where I can conveniently find additional information?

The IRS has a special website dedicated to coronavirus-related tax relief measures and procedures, which is at <https://www.irs.gov/coronavirus-tax-relief-and-economic-impact-payments>.

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