PP&Co Action Alert

Opportunities for Review

More actions you may be able to take now to get a tax refund by amending prior years' tax returns or defer certain payments!

The CARES Act Excess Business Losses and Net Operating Loss Carryback
Earlier we sent out an Action Alert outlining provisions in the CARES Act that changed the depreciable life of Qualified Improvement Property from 39 to 15 years (qualifying QIP for bonus depreciation) and changes to the business loss rules. These changes could potentially generate additional losses in prior tax years, which could then be carried back or carried forward. Each individual situation is different and should be reviewed to determine if amended returns can be filed to generate refunds.

The Tax Cuts and Jobs Act (TCJA) limited business losses available to offset other income at $250,000 single and $500,000 married filing joint, with any excess carrying over, effective 2018 forward. The CARES Act suspends this law for 2018, 2019 and 2020; thus, 2018 and 2019 tax returns could be amended to fully apply the losses against other income and potentially claim a refund.

But… what if those changes create a Net Operating Loss (NOL) in one of those prior years? The TCJA eliminated the ability for taxpayers to carry back NOLs and limited carry forwards to 80% of taxable income. **Under the CARES Act, 2018, 2019, and 2020 NOLs can be carried back 5 years**, potentially providing additional tax refunds for prior years' taxes paid. Alternatively, taxpayers may carry the NOLs forward to 2019 and 2020 without the TCJA's 80% income limitation. For partnerships the CARES Act allows these adjustments to the tax return to be made at the partnership level, then passed through to the partners. There are some additional limitations with respect to REITs and foreign income.

Deferral of Employer's Social Security Tax Deposits and Payments through December 31, 2020
Under the CARES Act, Employers can defer the payment of the employer's portion of Social Security taxes (not the employer's portion of Medicare taxes and not any employees' portion of either Social Security or Medicare taxes) for deposits and payments required to be made between March 27, 2020 to December 31, 2020. Those deferred Social Security tax payments must be made as follows:

50% on December 31, 2021; and
50% on December 31, 2022

Employers who have received a Paycheck Protection Loan may no longer defer payment of the employer's portion of Social Security taxes after the PPP Loan has been forgiven. However, previously deferred employer's Social Security tax payments prior to loan forgiveness may still be deferred to the dates described above. Check out the IRS FAQ page for additional information.

1031 Exchanges & Opportunity Zone Fund Deadlines Extended
President Trump's March 22 Major Disaster Declaration for all of California due to the ongoing Coronavirus pandemic has a significant impact on 1031 Tax Deferred Exchanges and California's Opportunity Zone Businesses.

1031 Exchange Identification Period and Date Required for Close of Escrow Postponed
Recently released IRS Notice 2020-23 states that if the last day of the 45-day identification period ***or*** the 180-day acquisition period falls between April 1, 2020, and July 15, 2020, then the respective date is extended to July 15, 2020.

Opportunity Zone (OZ) Fund Deadlines Extended
The Opportunity Zone Final Regs released December, 2019, provide additional time for OZ Funds to deploy their capital. Pursuant to the final regulations, "If the qualified opportunity zone business is located in a qualified opportunity zone within a federally declared disaster (as defined in section 165(i)(5)(A)), the qualified opportunity zone business may receive up to an additional 24 months to consume its working capital assets…" This 24-month extension is in addition to the 31 months allowed under the regs. See Final Regulations dated December 19, 2019 Section 1.1400Z(d)-1(d)(3)(v)(D).

Notice 2020-23 provides additional time for investors to invest in an OZ fund after disposing of their property and realizing capital gains. In order to qualify for tax deferral and possible exclusion of gain, a taxpayer generally needs to make an OZ investment within 180 days of disposing of capital gain property. Notice 2020-23 extends this 180-day period. Therefore, if the taxpayer's deadline to invest in an Opportunity Zone falls between April 1, 2020, and July 15, 2020, the deadline is automatically extended to July 15, 2020.

These provisions can create opportunities, so talk to your tax advisor today. Still have questions? We're here to help. Contact us at info@ppandco.com or (408)287-7911 for assistance. For more updates, check out our COVID-19 Resources & Updates webpage.

Our focus. Your **freedom.**