



# TaxNewsFlash

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## Final regulations: Consolidated NOLs (text of regulations released by IRS)

The IRS today posted on its website a version of final regulations (T.D. 9927) under sections 1502 and 172 as guidance implementing recent statutory amendments to section 172 made by tax law changes—first, by the 2017 U.S. tax law (Pub. L. No. 115-97), the law that is often referred to as the “Tax Cuts and Jobs Act” (TCJA) and subsequently by the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act)—relating to the absorption of consolidated net operating loss (NOL) carryovers and carrybacks.

Read the [final regulations](#) [PDF 475 KB] (84 pages) that finalized regulations that were proposed in July 2020.

As previously reported in [TaxNewsFlash](#), the TCJA and subsequently the CARES Act amended the rules for NOLs. After amendment, the NOL deduction is the sum of:

- The total of the NOLs arising before January 1, 2018 (pre-2018 NOLs) that are carried to that year; plus
- The lesser of:
  - The total of the NOLs arising after December 31, 2017; or
  - 80% of taxable income less pre-2018 NOLs (the 80% limitation).
- The TCJA generally eliminated NOL carrybacks and permitted NOLs to be carried forward indefinitely. The TCJA also provided special rules for nonlife insurance companies and farming losses.
- Nonlife insurance companies are permitted to carry back NOLs two years and forward 20 years, and the 80% limitation does not apply.
- Farming losses are permitted to be carried back two years and carried forward indefinitely, subject to the 80% limitation.

The CARES Act effectively delayed application of the TCJA amendments until January 1, 2021. Additionally, the CARES Act permits a five-year carryback for NOLs, including farming losses and NOLs of nonlife insurance companies, for tax years beginning after December 31, 2017, and before January 1, 2021.

The July 2020 proposed regulations:

- Provided guidance to consolidated groups on the application of the 80% limitation
- Removed obsolete provisions from the rules for consolidated groups that contain both life insurance companies and nonlife insurance companies

Because the CARES Act allows certain NOLs to be carried back five years, corresponding temporary regulations allowed certain acquiring consolidated groups to make an election to waive all or a portion of the pre-acquisition portion of the extended carryback period for certain losses attributable to certain acquired members.

According to the preamble to today's final regulations:

*This Treasury decision adopts the proposed regulations, other than proposed §1.1502-21(b)(3)(ii)(C) and (D), as final regulations with the changes described in the following Summary of Comments and Explanation of Revisions. The Treasury Department and the IRS expect to finalize proposed §1.1502-21(b)(3)(ii)(C) and (D) at a later date and welcome further comments on these provisions.*

The version of the final regulations released by the IRS today also includes the following statement:

*This document will be submitted to the Office of the Federal Register (OFR) for publication and will be pending placement on public display at the OFR and publication in the Federal Register. The version of the final regulations released today may vary slightly from the published document if minor editorial changes are made during the OFR review process. The document published in the Federal Register will be the official document.*

The purpose of this report is to provide text of the final regulations.

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