



COMPARISON OF NET OPERATING LOSS (NOL) TAX PROVISIONS IN CARES ACT, HEROES ACT & WHITEHOUSE/DOGGETT BILLS

As of May 12, 2020

Current Law / CARES Act (HR 748)	HEROES Act	Whitehouse (S 3640) / Doggett (HR 6579) Bills
Total Revenue Loss over 10 years: \$160 billion per Joint Committee on Taxation (JCT)	Total Revenue Gain from CARES Act: TBD, but could be at least \$135 billion	Total Revenue GAIN from CARES Act: Not Available
Sec 2304 – Permits excess losses generated by pass-through businesses in 2020, 2019 and 2018 to offset non-business income over \$500,000 for joint filers (\$250,000 for others). Would lose \$135 billion ; JCT determined 82% of the benefit would go to those making over \$1 million in 2020, with an average tax cut of \$1.6 million this year.	Sec 20301 -- Repeals Sec 2304 and permanently prohibits pass-through businesses from using losses to offset non-business income over \$500,000 for joint filers (\$250,000 for others).	Repeals Sec 2304 and permanently prohibits pass-through businesses from using losses to offset non-business income over \$500,000 for joint filers (\$250,000 for others).
Sec 2303 – Allows both C-corps and pass-through businesses to carry back NOLs generated in 2020 and the pre-pandemic years of 2018 and 2019 to offset income earned during a 5-year period, including 3 pre-TCJA years when the corporate income tax rate was 35% and the top personal income tax rate was 39.6%, (thereby creating a tax arbitrage opportunity with the current 21% corporate rate and 29.6% top pass-through rate). Would lose \$25 billion over 10 (loses \$89 billion in first two years after which it becomes revenue positive).	Sec 20302 -- Limits the NOL carry-back period to 2018 and 2019, removing the tax arbitrage opportunity created by the CARES Act.	Limits the NOL carry-back period to 2018 and 2019, removing the tax arbitrage opportunity created by the CARES Act.
	Disallows businesses to carry back losses generated in 2018 but permits NOL carry-backs from 2019 (a pre-pandemic year) and 2020. No provision for an advance on 2020 NOL refunds (but the possibility to generate liquidity now from a 2019 carryback).	Limits businesses to NOL carrybacks from 2020, disallowing the pre-pandemic years of 2018 and 2019. Allows businesses an advance on estimated refunds from 2020 NOL carrybacks.
	Permits businesses both big and small to carry back NOLs.	Limits eligibility for carrying back NOLs to businesses with less than \$15 million in gross receipts, as was done during the 2009 stimulus (the American Recovery and Reinvestment Act).
	Ensures that companies paying excessive executive compensation and engaging in significant stock buybacks do not qualify for this relief.	Ensures that companies paying excessive executive compensation and engaging in significant stock buybacks do not qualify for this relief.