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The CARES Act Offers a New Tax Planning Opportunity

One provision of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) involves a “real estate” tax break, which is actually much broader and applies to many taxpayers, and may require the filing of amended tax returns.

The Tax Cuts and Jobs Act of 2017 enacted Section 461(l) of the Code, which limits the ability of non-corporate taxpayers to deduct more than \$500,000 (\$250,000 if filing as a single person) of business losses—**not just real estate losses**—against non-business income. For example, it allows the ability to deduct business losses against investment income. Any disallowed loss was carried forward as a net operating loss carryforward.

The CARES Act not only temporarily repeals Section 461(l) for 2020, but also repeals it retroactive to 2018. As a result, taxpayers whose losses were limited by Section 461(l) can now file amended returns for 2018 (and for 2019, if their return has been filed already).

Further, losses of taxpayers passing away in 2018 or 2019 that were subject to limitation under Section 461(l) were lost as Section 461(l) was originally drafted; there was no ability to carryforward the losses. Losses of estates subject to limitation for losses arising in 2018 (or 2019 if a return has already been filed) may need to file amended tax returns as well.

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If you have questions regarding the CARES Act or other tax planning issues, please do not hesitate to contact Scott Bakal or your Neal Gerber Eisenberg attorney.

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