SOME HIGHLIGHTS FROM SENATE CORONA VIRUS BILL ON BUSINESS TAX PROVISIONS

The anti-coronavirus bill, the ‘‘Coronavirus Aid, Relief, and Economic Security Act’’, H.R. 748, was approved by the Senate on the evening of March 25, 2020. The bill is expected to be approved by the House in the next day or two and signed into law by the President. The bill contains a number of business tax provisions. This alert presents some selected highlights of those business tax provisions.

NOL Carrybacks.

The bill would amend section 172 to allow 5-year NOL carrybacks for the years 2018, 2019 and 2020. This change in the law should not adversely affect partners in BBA partnerships because the amount of the losses, to the extent that the bill does not change that amount, will have flowed through to the partners for the 2018 year and if the 2019 return on form 1065 has been filed, for the 2019 year as well. However, some provisions of the bill, could affect the tax items for 2018 and 2019, namely the technical correction allowing bonus depreciation to apply to qualified restaurant and other property under section 168. In that case, since section 6031(b) prohibits amended form 1065 returns, the IRS would have to take remedial action.

The bill would also amend section 172 so that the 80 percent of taxable income limitation would be computed not only without regard to section 172, but also without regard to sections 199A and 250. The proposed section 250 regulations would compute the taxable limitation under section 250(a)(2) by applying sections 163(j) and 172(a). Under section 163(j), adjusted taxable income is computed without regard to sections 172 and 199A. Under section 199A, the taxable income limitation is computed without regard to section 199A. Thus, the various taxable income limitations under the TCJA seem better coordinated.

Excess Business Losses. Several technical changes are to be made to section 461(l).

The statute does not apply to the 2018, 2019 and 2020 tax years. It only applies starting in 2021 and ending in 2026.

A change to section 461(l)(2) says that any excess business losses is treated as an NOL for the year and is to be carried forward as per section 172. Carryovers are only allowed because starting in 2021 the special 5-year carryback NOL rule no longer applies to that year and following years. This provision seems to clarify that any excess loss under section 461(l) is mixed into a regular NOL and is not to be separately carried forward from year to year.

Business items do not include services as an employee.

Allowable deductions are computed without regard to being disallowed under sections 172 and 199A, as well as under section 461(l)(1).

Capital losses are not business deductions under section 461(l) and capital gains are only business income under section 461(l) if they are business capital gains.

Excess business interest under section 163(j).

For the tax years 2019 and 2020, the 30% of adjusted taxable income threshold is generally increased to 50 percent.

However, in apparent recognition of the fact that under the BBA partnerships cannot file amended form 1065 under section 6031(b), the increased 50% threshold does not apply for the 2019. This is so because the drafters apparently did not want to get into the issue of whether a partnership could file an amended return for the 2019 year. In lieu of this increased threshold for the 2019 year, the bill would treat 50 percent of, in effect, the increased excess business interest limit (due to the failure to increase the threshold from 30% to 50%) caused by the lower adjusted taxable income limitation to be treated as fully deductible business interest in 2020, with the other 50% treated as subject to the regular limits. A partner can elect not to have this special partner treatment not apply (the lower 30% limit would apply in that case). There is also an election not to apply the increased 50% threshold for the 2020 tax year.