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THE CARES ACT GIVETH WHAT THE 2017 TAX CUTS AND JOBS ACT TOOK AWAY

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The 2017 Tax Cuts and Jobs Act (P.L. 115-97) (the "2017 Act") introduced enormous changes to aviation tax planning, allowing bonus depreciation for used aircraft, but also adding a few new minefields in the maze of tax rules to limit immediate benefits that could be realized by businesses for their aviation operations. Because depreciation and expense deductions can easily exceed income directly attributable to an aircraft (especially with the 100% expensing provisions), many deductions were lost after the 2017 Act became law.

The recently enacted Coronavirus Aid, Relief and Economic Security Act (the" Cares Act") has suspended many of the limitations put in place by the 2017 Act, and thus presents an opportunity for businesses considering a corporate aircraft purchase by significantly reducing current tax burdens and also providing the opportunity for refunds for taxes already paid over the past five years with a carryback of net operating losses ("NOLs") that were limited by the 2017 Act.

There are three major provisions of the Cares Act for potential business aircraft purchasers to be aware of:

1. **Modification of rules relating to NOL carrybacks.** Section 172(b) of the 2017 Act permitted only a carryforward of NOLs. The Cares Act allows NOLs arising in any tax year beginning after December 31, 2017 and before January 1, 2021 to also be carried back to each of the five tax years preceding the year of the loss. This would permit a business to amend its 2012-2019 tax returns to carry back an NOL generated in that year to offset income in the prior 5 years and receive a refund for taxes paid those years.

2. **Temporary repeal of limitations for NOL's under Section 172.** Section 172 (a) of the 2017 Act limited the amount of taxable income that NOL's could offset in any year to 80% of taxable income (meaning you could never wipe out all income with NOLs). The Cares Act temporarily removes the taxable income limitation to allow an NOL carryforward to fully offset income for tax years before 2021. (For tax years beginning in 2021 a taxpayer will be able to take a 100% deduction rather than the 80% in the 2017 Act). For tax years beginning after 2021, taxpayers can take a 100% deduction for NOL's arising in tax years prior to 2018 and an 80% deduction of modified taxable income for NOL's arising in tax years after 2017.

3. **Modification of limitations on losses for non-corporate taxpayers.** Section 461(l) of the 2017 Act disallowed a non-corporate taxpayer's excess business losses to $250,000 (or $500,000 for married taxpayers filing jointly) for tax years beginning after December 31, 2017 and before

January 1, 2026. Such losses had to be carried forward in subsequent years and the limitation would apply only after the application of the passive loss rules. In case of a partnership or s-corporation the provision applied at the partner or shareholder level. The Cares Act retroactively modifies these loss limitations for non-corporate taxpayers so they can deduct excess business losses arising in 2018, 2019 and 2020.

Other loss limitations that may be applicable to aircraft operations, such as passive activity loss limitations, at risk loss limitations, and entertainment disallowances are not affected by the Cares Act. Even with these rules still in place, there may never be a better time to purchase an aircraft!

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