

Income/Franchise:

Virginia: New Law Updates State Conformity to Internal Revenue Code and Addresses CARES Act

H.B. 1935 / S.B. 1146, signed by gov. 3/15/21. Effective immediately and applicable retroactively to tax years beginning on or after January 1, 2019, new law generally updates state corporate and individual income tax statutory references to federal income tax law as it existed on December 31, 2020 (previously, December 31, 2019). However, under the new law, Virginia will decouple from the following provisions of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (*i.e.*, P.L. 116-136) and the federal Consolidated Appropriations Act (CAA), 2021 (*i.e.*, P.L. 116-260):

URL: <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+HB1935>

URL: <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+SB1146>

- The provisions of sections 2303(a) and 2303(b) of the CARES Act related to the net operating loss (NOL) limitation and carryback; accordingly, Virginia will *not* conform to the temporary suspension of the 80% limitation on NOLs or the special five-year NOL carryback;
- The provisions of section 2304(a) of the CARES Act related to excess farm and business loss limitations applicable to taxpayers other than corporations;
- The provisions of section 2306 of the CARES Act related to special rules in 2019 and 2020 which impact the limitation on business interest under IRC section 163(j); accordingly, Virginia will *not* conform to the higher 50% limitation of adjusted taxable income for 2019 or 2020, and will *not* follow the election to use 2019 adjusted taxable income in calculating the business interest limitation in 2020; and
- The provisions of sections 276(a), 276(b)(2)-(3), 278(a)(2)-(3), 278(b)(2)-(3), 278(c)(2)-(3), 278(d)(2)-(3) of the CAA related to deductions, tax attributes, and basis increases for certain loan forgiveness and other business financial assistance; accordingly, Virginia will *not* conform to provisions of the CAA that allow deductions for business expenses funded by forgiven Paycheck Protection Program (PPP) loans.

A subsequently issued administrative bulletin [Tax Bulletin 21-4] explains the adjustments that may be necessary on taxable year 2020 income tax returns to address conformity and the Virginia tax law changes affecting businesses.

URL: <https://www.tax.virginia.gov/sites/default/files/inline-files/tb-21-4-irc-conformity-advanced.pdf>

Note also that for tax year 2020, Virginia law continues to decouple from i) certain IRC section 168(k) bonus depreciation provisions; ii) the five-year net operating loss (NOL) carryback provisions under IRC section 172(b)(1)(H) for certain NOLs generated in taxable years 2008 and 2009; and iii) the deferral of recognition of income from discharge of certain business indebtedness under IRC section 108(i). Please contact us with any questions or comments.

— Dave Vistica (Washington, DC)
Managing Director
Deloitte Tax LLP
dvistica@deloitte.com

Jennifer Alban-Bond (McLean)
Senior Manager
Deloitte Tax LLP
jalbanbond@deloitte.com

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the “Deloitte” name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see www.deloitte.com/about to learn more about our global network of member firms.