

§461(I) LIMITATION ON EXCESS BUSINESS LOSSES OF NONCORPORATE TAXPAYERS

- (1) LIMITATION** In the case of ~~taxable year of a taxpayer other than a corporation beginning after December 31, 2017, and before January 1, 2026~~a taxpayer other than a corporation—
- (A)** ~~for any taxable year beginning after December 31, 2017, and before January 1, 2026,~~ subsection (j) (relating to limitation on excess farm losses of certain taxpayers) shall not apply, and
- (B)** ~~for any taxable year beginning after December 31, 2020, and before January 1, 2026,~~ any excess business loss of the taxpayer for the taxable year shall not be allowed.
- (2) DISALLOWED LOSS CARRYOVER** Any loss which is disallowed under paragraph (1) shall be treated as ~~a net operating loss carryover to the following taxable year under section 172~~ a net operating loss for the taxable year for purposes of determining any net operating loss carryover under section 172(b) for subsequent taxable years.
- (3) EXCESS BUSINESS LOSS** For purposes of this subsection—
- (A)** In general The term “excess business loss” means the excess (if any) of—
- (i)** the aggregate deductions of the taxpayer for the taxable year which are attributable to trades or businesses of such taxpayer (determined without regard to whether or not such deductions are disallowed for such taxable year under paragraph (1) and without regard to any deduction allowable under section 172 or 199A), over
- (ii)** the sum of—
- (I)** the aggregate gross income or gain of such taxpayer for the taxable year which is attributable to such trades or businesses, plus
- (II)** \$250,000 (200 percent of such amount in the case of a joint return).
- Such excess shall be determined without regard to any deductions, gross income, or gains attributable to any trade or business of performing services as an employee.
- (B) Treatment of Capital Gains and Losses—**
- (i) Losses.—**Deductions for losses from sales or exchanges of capital assets shall not be taken into account under subparagraph (A)(i).
- (ii) Gains.—**The amount of gains from sales or exchanges of capital assets taken into account under subparagraph (A)(ii) shall not exceed the lesser of—

(I) the capital gain net income determined by taking into account only gains and losses attributable to a trade or business, or

(II) the capital gain net income.

(CB) Adjustment for inflation In the case of any taxable year beginning after December 31, 2018, the \$250,000 amount in subparagraph (A)(ii)(II) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting “2017” for “2016” in subparagraph (A)(ii) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$1,000, such amount shall be rounded to the nearest multiple of \$1,000.

(4) APPLICATION OF SUBSECTION IN CASE OF PARTNERSHIPS AND S CORPORATIONS In the case of a partnership or S corporation—

(A) this subsection shall be applied at the partner or shareholder level, and

(B) each partner’s or shareholder’s allocable share of the items of income, gain, deduction, or loss of the partnership or S corporation for any taxable year from trades or businesses attributable to the partnership or S corporation shall be taken into account by the partner or shareholder in applying this subsection to the taxable year of such partner or shareholder with or within which the taxable year of the partnership or S corporation ends.

For purposes of this paragraph, in the case of an S corporation, an allocable share shall be the shareholder’s pro rata share of an item.

(5) ADDITIONAL REPORTING The Secretary shall prescribe such additional reporting requirements as the Secretary determines necessary to carry out the purposes of this subsection.

(6) COORDINATION WITH SECTION 469 This subsection shall be applied after the application of section 469.

The above changes are effective for tax years beginning after December 31, 2017. This applies to the above changes to §461(l)(1) that are new in the CARES Act (PL 116-136; 3/27/20) and the changes to §461(l)(2) and (3) that are technical corrections to the TCJA (PL 115-97; 12/22/17), Sec. 11012.