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From: [REDACTED]
Sent: Monday, April 08, 2019 7:02:29 AM
To: [REDACTED]
Cc:
Bcc:
Subject: RE: Section 172(b)(3) Election to Forego Carryback

An election to forgo an NOL carryback period is available under section 172(b)(3). Under that provision, the election must be made by the due date (including extensions) for filing the taxpayer's return for the taxable year of the NOL. Once made, the election is irrevocable.

Under § 1.9100-2, a taxpayer is allowed an automatic 6-month extension from the due date of the return (**excluding extensions**) to make a statutory election whose due date is the due date of the return including extensions, provided the taxpayer timely filed its return for the taxable year the election should have been made and the taxpayer takes corrective action within the 6-month extension period.

Because the deadline for making the election under section 172(b)(3) is prescribed by the statute, the IRS cannot provide any relief for late elections beyond that provided in § 1.9100-2. In your case, I assume the taxpayer is well beyond the 6-month automatic extension period. As a result, he cannot make this election and is required to carryback the NOL.