

NEW LAW BROADENS THE OPPORTUNITY FOR EXTENDED NET OPERATING LOSS CARRY BACKS

DECEMBER 14, 2009

BE IN A POSITION OF STRENGTHSM

The American Recovery and Reinvestment Act of 2009 (the Act) allowed eligible small businesses, with an average gross receipts of 15 million dollars or less, to elect to carry back net operations losses (NOLs) from 2008 for three, four, or five years rather than the standard two years.

The Worker, Homeownership, and Business Assistance Act, signed into law on November 6, 2009, provides a similar election to all U.S. businesses of every size to carry back NOLs up to five years but with a 50-percent income limitation on NOL offsets in the fifth year. Also added has been language to address Insurance companies, Alternative Minimum Tax issues (AMT) and the Trouble Asset Relief Program (TARP).

The new expanded election is available for NOLs incurred in either 2008 or 2009, but not for both years. However, an eligible small business that elected under the Act to carry back 2008 NOLs may make an election for an additional year enabling the qualified small business to carry back NOLs from both 2008 and 2009 for up to five years.

Under the new election, an NOL carried back to the fifth year before the loss year is limited to 50-percent of the available taxable income for the year, with any remaining NOL being used to offset taxable income in the remaining four carry back years. The 50 -percent limitation does not apply to an eligible small business that elected to carry back its 2008 NOL under the original 2009 recovery act; however it does apply to its 2009 NOLs. This is a major expansion of the NOL rules, and gives businesses that carry back a fast refund which provides additional cash that the business can use to pay expenses, maintain operations, and make new investments.

NEW TAX LAW CHANGES BROADEN THE OPPORTUNITY FOR THE THREE, FOUR OR FIVE YEAR NOL CARRY-BACK PERIOD.

Questions or comments?
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Insurance companies normally can carry back NOLs up to three years, however with the new law in place they are now able to have a similar election to carry back 2008 or 2009 NOLs for either four or five years, with the same 50-percent limit applying to carry backs of an insurance company's fifth year preceding the loss year.

Another addition of the new law is that it suspends the 90-percent income limitation on the use of NOLs for determining the alternative minimum tax for the extended carry back year.

The election is not available to companies receiving assistance under the trouble asset relief program if the federal government acquired stock, or the right to acquire stock in the company before the date of enactment of the new law, or if the federal government provides funds to the company in exchange for a stock interest after the date of enactment of the new law.

The election to take advantage of the new law's NOL provision must be made by the due date, including extensions, for the tax return filed for the taxpayer's last taxable year beginning in 2009. Once made, the election is irrevocable. If the taxpayer had previously elected not to carry back an NOL from a tax year ending before the date of enactment of the new law, the taxpayer may revoke that election before the due date, including extensions, for filing the taxpayer's 2009 return. The election is available for a tax year ending after December 21, 2007 and beginning before January 1, 2010.

If you have any questions, please contact the WS+B Tax Service Group.



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