



True Insights

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New Legislation Provides Extended Net Operating Loss Carryback Period

Highlights

Under the Worker, Homeownership, and Business Assistance Act of 2009 signed into law by President Obama on November 6, 2009, taxpayers may elect to carry back net operating losses arising in a 2008 or 2009 tax year for up to 5 years. A similar election was created for certain small business taxpayers as part of the Emergency Economic Stabilization Act of 2008 but was only available to a limited number of taxpayers.

Now, any business (with limited exceptions) regardless of its size qualifies for an extended carryback period of 5 years. The new legislation applies to net operating losses of a taxpayer for any taxable year ending after December 31, 2007, and beginning before January 1, 2010. The carryback election, however, may be made only with respect to one taxable year within such period.

Benefits

The extended carryback period allows businesses to immediately claim cash refunds from the IRS for prior years' tax payments, which can be instantly re-invested in ongoing business operations.

Companies should consider a thorough review of their tax accounting methods in order to maximize current deductions. Acceleration of current deductions will generate an increased net operating loss that can be carried back, resulting in a larger cash refund.

Common Automatic Accounting Method Changes that should be considered with the filing of the 2009 tax returns are:



- Depreciation
- Repairs and Maintenance
- Certain Uniform Capitalization Changes
- Research and Experimental Expenditures
- Software Development
- Intangibles (i.e. Prepaid Expenses)
- Acquisition & Other Transaction Costs
- Certain Recurring Item Exceptions
- Certain IPIC & Other LIFO Changes
- Advance Payments
- Self Insured Medical Liabilities

Additionally, for financial statement purposes, the provision will allow many companies to immediately recognize previously deferred net operating loss tax benefits.

Extended Net Operating Loss Carryback Election

A taxpayer that makes an election under the new legislation may extend the net operating loss carryback to 3, 4, or 5 years. If the taxpayer elects a 5-year carryback period, however, the net operating loss carryback for the fifth taxable year preceding the taxable year of the loss will be limited to 50% of the taxpayer's taxable income for such preceding year. This limitation does not apply to net operating losses carried back to the fourth preceding or earlier taxable years.

A taxpayer that makes a carryback election under the new legislation generally will be able to apply the net operating loss carryback against the taxpayer's regular taxable income and alternative minimum taxable income for each year in the carryback period (other than the fifth preceding taxable year), limited only by the amount of the net operating loss that is carried back to such year.

The alternative minimum tax restriction that normally limits a net operating loss carryback to 90% of a taxpayer's alternative minimum taxable income in each carryback year is eliminated for net operating losses with respect to which a taxpayer makes a carryback election under the new legislation.

Excluded Taxpayers

The new legislation does not apply to certain recipients of the Troubled Asset Relief Program ("TARP"). In addition, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and members of their affiliated groups, may not make a carryback election under the new legislation.

Contact information

Please feel free to contact either one of us to discuss this new legislation and how it might potentially apply to your particular facts and circumstances.

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