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# NOL Carrybacks Extended to Five Years

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The Worker, Homeownership and Business Assistance Act of 2009, which became effective on November 6, 2009, provides that taxpayers may elect to carry back net operating losses for the 2008 and 2009 tax years for up to five years.

Generally, net operating loss can only be carried back two years preceding the loss year (three years in the case of losses that arose before August 6, 1997). The Act could enable businesses that have had significant losses from the recent recession to carry back losses from the current recession for up to five years and receive a tax benefit from prior taxes paid.

Here are some highlights of the Act:

- The Act generally applies to all taxpayers; however, the Act does not generally apply to certain TARP recipients, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation.
- A taxpayer who makes this election may extend the net operating loss carryback period up to three, four, or five years. If a taxpayer elects a five-year carryback period, the net operating loss carryback deduction for the fifth taxable year will be limited to 50% of the taxpayer's taxable income for such preceding year. Losses not utilized by the carrybacks may still be carried forward.
- The alternative minimum tax limitation that normally limits a net operating loss to 90% of a taxpayer's alternative minimum taxable income is eliminated with respect to the election under the Act.
- A similar election was available under the Emergency Economic Stabilization Act of 2008 (EESA), but only to taxpayers with gross receipts of $15 million or less. Taxpayers who benefited from the EESA may have a carryback with respect to two separate taxable years due to an overlap between the EESA and the Act.