November 18, 2009

New Legislation Extends Carryback of Net Operating Losses up to Five Years

Author: Jeffrey A. Mannisto

On November 6, 2009, President Obama signed into law the Worker, Homeownership, and Business Assistance Act of 2009 (the "Act"). Among other things, the Act generally allows taxpayers to make a special election to extend the net operating loss ("NOL") carryback period from two to as many as five years for NOLs arising in 2008 and 2009. Earlier this year, the American Recovery and Reinvestment Act of 2009 ("ARRA") extended the NOL carryback period from two to up to five years for NOLs arising in 2008 for certain "eligible small businesses" (defined as any corporation or partnership with average gross receipts over the previous three years of $15 million or less). The NOL carryback provisions of the Act in essence expand the relief provided under ARRA to most businesses, and expand the time period to include NOLs arising in 2009.

An NOL generally represents an amount by which a taxpayer's business deductions exceed its gross income. Under present law, taxpayers may generally carry back NOLs up to two years and carry forward NOLs up to twenty years to offset taxable income in such years.

The Act allows taxpayers to make a special election to carry back NOL deductions for three, four, or five years, rather than the two-year maximum afforded under present law, subject to the following rules and limitations:

A taxpayer is ineligible to make the special election if it or an affiliate received funds under the Troubled Asset Relief Program (TARP).

The special election is limited to NOLs arising in one taxable year (i.e., only NOLs arising in either 2008 or 2009, but not both), except

Newsletter Editors

Donald W. Meaders
Partner
dmeaders@manatt.com
310.312.4345

Donald J. Fitzgerald
Partner
dfitzgerald@manatt.com
415.291.7420

Our Practice

The Tax, Employee Benefits & Global Compensation professionals at Manatt counsel corporations, partnerships and individuals on a broad range of federal, state, local and international tax matters. They have considerable experience providing long-range business tax planning ... more

Practice Group Overview
Practice Group Members

Info & Resources

Subscribe
Unsubscribe
Newsletter Disclaimer
Manatt.com

eligible small businesses that previously elected to carry back NOLs under ARRA are allowed to make the special election under the Act for NOLs arising in 2009.

The special election, once made, is irrevocable and must be made by the due date (including available extensions of time) for filing the return for the taxpayer's last taxable year, beginning in 2009.

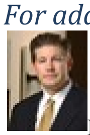
Except with respect to eligible small businesses, any NOL carryback to the fifth year is limited to 50% of the taxpayer's taxable income in that year.

For alternative minimum tax purposes, an NOL reduction cannot reduce the taxpayer's alternative minimum taxable income ("AMTI") by more than 90% of the AMTI. Under the Act, this 90% limitation is suspended in respect of any alternative minimum tax NOL deduction attributable to an NOL carryback made pursuant to the extended carryback period under the Act.

Finally, the Act also provides a similar extension for life insurance companies, extending the carryback period for "losses from operations" up to five years. The Act also limits any "loss from operations" carryback to the fifth year to 50% of the life insurance company's taxable income in that year.

The IRS will be releasing guidance regarding this new special election in the near future. For more information concerning this new legislation, taxpayers are encouraged to contact their tax advisors.

For additional information on this issue, contact:



Jeffrey A. Mannisto Mr. Mannisto is Co-Chair of the Firm's Tax, Employee Benefits and Global Compensation practice group. He has a broad-based tax practice in corporate, partnership and individual income tax, including choice of entity considerations, mergers and acquisitions, transactional matters, employment tax issues, tax ruling requests, and tax controversies.