

5-Year NOL Carryback

The Worker, Homeownership and Business Assistance Act of 2009, P.L. 111-92, which became law on November 6, 2009, among other things, modified the rules for the carryback of net operating losses. In general, taxpayers may elect to carryback the net operating losses to five preceding years from any one year that ends after December 31, 2007 and begins before January 1, 2010.

Taxpayers that have fiscal years ending on January 31 could choose between 2008, 2009 or 2010, because all three years begin or end in 2008 or 2009.

The losses that are carried back to the fifth preceding year may not exceed 50% of the taxpayer's taxable income for such preceding year. The 50% limitation does not apply to eligible small businesses that have an election to carryback losses for five years under the law before the passage of the WHBAA.

If a taxpayer is eligible as a small business, the WHBAA would allow the taxpayer to continue to carryback two years of losses for five years. To be an eligible small business, the average annual gross receipts for the business for the preceding 3-taxable-year period must not exceed \$15,000,000.

An adjustment to the alternative minimum tax would make the special carryback offset alternative minimum taxable income.

A similar change was made to the rules for the carryback of losses of life insurance companies. The WHBAA provides an election for life insurance companies to increase the carryback from three years to five years, subject to a 50% of taxable income limitation in the fifth year.

A taxpayer will not be eligible for the extended carryback if the Federal Government acquired an equity interest or a warrant for an equity interest in the taxpayer or an affiliate pursuant to the Emergency Economic Stabilization Act of 2008. Taxpayers, other than financial institutions, may also be disqualified for the extended carryback if they or an affiliate received funds from the Federal Government under the Emergency Economic Stabilization Act of 2008.

If you would like to discuss any of the issues addressed in this Client Alert or would simply like to find out more about Chapman, please contact your Chapman counsel, Parul Carman at carman@chapman.com or visit us at www.chapman.com.

This summary cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. This summary is being used to support the promotion or marketing of transactions related to the issues discussed herein.

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material. © 2009 Chapman and Cutler LLP. All Rights Reserved.

Chapman and Cutler LLP is an Illinois limited liability partnership that has elected to be governed by the Illinois Uniform Partnership Act (1997). Attorney advertising.