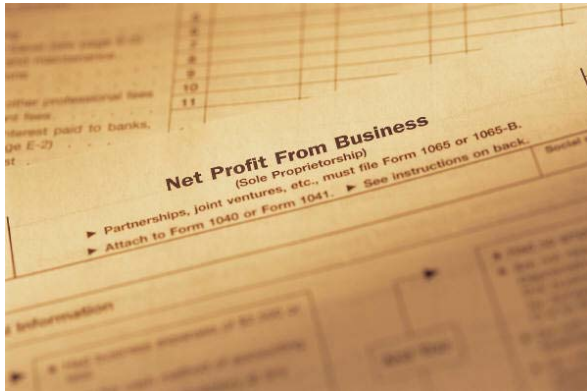


Net Operating Losses. A key provision of the Act is the expansion of the net operating loss (“NOL”) carry-back provisions. The American Recovery and Reinvestment Act (“ARRA”), which was passed earlier this year, allowed an “eligible small business” to carry back an NOL arising in 2008 for three, four, or five taxable years, rather than the two-year period otherwise applicable. Under the ARRA provision, a taxpayer with a fiscal year, *i.e.*, other than a calendar year, was entitled to choose the extended carry-back period for the taxable year that began or ended in 2008.

The Act allows all taxpayers (without regard to their gross receipts) to carry back an NOL arising in either 2008 or 2009 (but not both years) for three, four, or five years. Like the comparable ARRA provision, a taxpayer with a fiscal year may effectively choose from among three taxable years, *i.e.*, any taxable year beginning or ending in 2008 or 2009, as the loss year eligible for the extended carry-back period. If the loss is carried back



for five taxable years, it may only offset 50 percent of the taxable income in that fifth preceding taxable year. The remaining NOL is carried forward from the fifth preceding year until it is utilized. There is no limitation on the amount of income that may be offset by an NOL in any other year. In addition, the Act suspends the 90-percent limitation on the use of an alternative tax NOL deduction attributable to carry-backs for which the extended carry-back period is elected.

An eligible small business that has timely made or timely makes an election to carry back a 2008 NOL under the ARRA can also elect to carry back a 2009 loss under the new provisions.

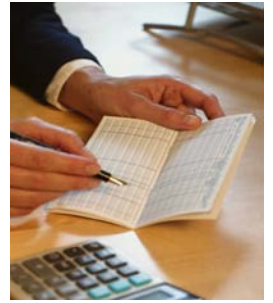
A similar extended carry-back period is available for the loss from operations of a life insurance company. The extended carry-back period may not be used by certain taxpayers that have received or will receive financial assistance under the Emergency Economic Stabilization Act of 2008 in the form of an equity infusion or acquisition of a warrant (or other right).

The election to carry back an NOL for three, four, or five years is made by the due date (with extension) for filing the tax return for the taxpayer’s last taxable year beginning in 2009. In addition, affected taxpayers have an identical period of time in which to revoke a prior election under section 172(b)(3) to forgo the entire NOL carry-back period for the loss year.

Extension of FUTA Surtax. To pay for the extension of unemployment benefits, the Act extends the 0.2-percent FUTA surtax through June 30, 2011.

Mandatory Electronic Filing of Tax Returns. The Act requires tax return preparers who prepare more than 10 tax returns for individuals, trusts, or estates to electronically file the tax returns. This provision is effective for tax returns filed after December 31, 2010.

Increased Penalties for Failure to File Partnership and S Corporation Returns. Under current law, the penalty for the failure to file a partnership or S corporation return is \$89 per partner or shareholder for each month or portion of a month the return is not filed, up to a maximum of 12 months. The penalty may also be imposed for incomplete returns or Schedules K-1. The Act increases the penalty to \$195 per partner or shareholder. This provision is effective for returns for taxable years beginning after December 31, 2009.



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