



New Law Extends Net Operating Loss Carryback for Small Businesses; IRS To Ensure Refunds Paid Timely

IR-2009-26, March 16, 2009

WASHINGTON — The Internal Revenue Service announced today that small businesses with deductions exceeding their income in 2008 can use a new net operating loss tax provision to get a refund of taxes paid in prior years.

To accommodate the change in tax law, the IRS today updated the instructions for two key forms — Forms [1045](#) and [1139](#) — that small businesses can use to make use of the special carryback provision for tax year 2008. These forms are used to accelerate the payment of refunds.

The new provision, enacted as part of the American Recovery and Reinvestment Act of 2009, enables small businesses with a net operating loss (NOL) in 2008 to elect to offset this loss against income earned in up to five prior years. Typically, an NOL can be carried back for only two years. The IRS released legal guidance today in [Revenue Procedure 2009-19](#) outlining specific details. Some taxpayers must make the election to use this special carryback by April 17, 2009.

“The new net operating loss provisions could throw a lifeline to struggling businesses, providing them with a quick infusion of cash,” said IRS Commissioner Doug Shulman. “We want to make it as easy as possible for small businesses to take advantage of these key tax benefits.”

With the economic downturn and the new law, the IRS expects record numbers of small businesses to be eligible for the refunds. The IRS is putting in special steps to ensure timely processing of these refunds to help small businesses during this difficult period.

Small businesses with large losses in 2008 may be able to benefit fully from those losses now, rather than waiting until claiming them on future tax returns.

The normal two-year carryback remains available if the small business does not elect the special carryback provision. If the loss exceeds the income for the carryback period, the taxpayer can continue to carry forward the remaining balance of the NOL for up to 20 years.

For small businesses that use a fiscal year, this special carryback may be used for an NOL in either a tax year that ends in 2008 or a tax year that begins in 2008. Once a taxpayer makes this election, it may not be changed.

To qualify for the new five-year carryback provision, a small business must have no greater than an average of \$15 million in gross receipts over a three-year period ending with the tax year of the NOL. Businesses with more than \$15 million in gross receipts still qualify to carry back their 2008 NOL for two years.

There are several methods that a small business uses to elect the new provision as detailed in the Revenue Procedure.

If a small business previously elected to waive the carryback of 2008 NOL but now wants to elect this special carryback, the small business may revoke its previous election to waive the carryback. The election revocation must be made on or before April 17, 2009.

Generally small businesses that are not corporations (including sole proprietorships filing schedule C with their Form 1040) may accelerate a refund by using [Form 1045](#), Application for Tentative Refund.

Corporations with NOLs may also accelerate a refund by using [Form 1139](#), Corporation Application for Tentative Refund.



Questions and Answers for ARRA - Section 1211 5-year Net Operating Loss Carryback Election for Small Businesses

Q1: Do I have to carry back my net operating loss (NOL) for the full five year period?

A: No. You can elect to carryback the loss for any number of years from three to five, but remember that this is an irrevocable election.

Q2: Can I waive the carryback period and instead carry the full loss forward for the next 20 years?

A: Yes. You can waive the carryback period and instead carry the full loss forward for the next 20 years, but remember that this is an irrevocable election.

Q3: If my business operates on a fiscal year that ended in the middle of 2008, which year do I use?

A: You may elect for either 2008 or 2009, but not both. Whichever you choose, remember that this is an irrevocable election, and can be made for only one tax year.

Q4: Can you explain what an irrevocable election is?

A: Basically, it means that once you select how you are going to handle your NOL, whether to carry back a certain number of years or to only carry forward the losses, then you may not change this selection.

Q5: I had slightly more than \$15 million in gross receipts last year, am I eligible for the five-year carryback?

A: It depends. To qualify for this particular 5-year carryback election the law says that the business must have an AVERAGE of less than \$15 million in gross receipts over a three-year period ending with the year giving rise to the loss. If your business gross receipts average more than \$15 million over the three-year period, the normal two-year carryback applies.

Q6: I filed my 2008 return already, but now, in light of the new law, I want to amend it, can I do this?

A: If the 2008 return has already been filed, you may still make the election by the later of – (A) six months after the due date of the return (determined without extensions), or (B) April 17, 2009. If you previously elected on that return to waive the normal 2-year NOL carryback, you may revoke that election in order to elect the 3 to 5-year carryback, provided you make your revocation and new election on or before April 17, 2009.

Q7: Can I use this for a 2009 return?

A: The law specifically states that the election is available for the tax year ending in 2008, unless the taxpayer elects this carryback for the tax year beginning in 2008. A calendar year taxpayer can elect only for 2008. A fiscal-year taxpayer whose year ends in 2008 can elect either for its fiscal year ending in 2008 or its fiscal year beginning in 2008 and ending in 2009, but not both.

Q8: When is the deadline for taking advantage of this NOL provision?

A: For a taxpayer who already has filed a return for the year of the loss for which the taxpayer wants to elect the special 2008 NOL carryback, see Q&A #6. If a taxpayer has not filed a return for the year of the loss, the taxpayer has until the later of – (A) the due date (with extensions) of the return for the year of the loss, or (B) April 17, 2009. The law will not allow for any extension of this deadline. After the later of these dates, you will have to use the current law provision of a two-year carryback.

Q9: How long will this law be in effect?

A: The law is in effect for a taxpayer's NOL for any taxable year ending in 2008, or if elected by the taxpayer, the NOL for any taxable year beginning in 2008. However, any election under this provision may be made only with respect to one taxable year.

Q10: Are there any exceptions for which the IRS will accept an election after the due dates described in Q&A #8?

A: Generally no. However, if the taxpayer has timely filed its return without making the election, an automatic six-month extension from the return due date (excluding extensions) is available.

Q11: Assuming the taxpayer makes an election for the tax period ending January 2008, may the taxpayer make the election for the tax period ending January 2009?

A: No, a taxpayer may make the election for only one tax year, either beginning or ending in 2008.

Q12: If the taxpayer makes an unallowable second election on a tentative carryback what will happen?

A: If the taxpayer makes an unallowable second election on a tentative carryback claim (Form 1139), a letter with specific language will be used to reject the claim.

Q13: What else should the taxpayer do when it makes the election?

A: The taxpayer should attach a statement to the return saying that the taxpayer is electing to apply section 172(b)(1) (H), the length of the carryback period elected (3, 4, or 5 years), and, if applicable, that the election is for the taxpayer's tax year that begins in 2008.

Related Items:

- [News Release 2009-26](#), New Law Extends Net Operating Loss Carryback for Small Businesses; IRS to Ensure Refunds Paid Timely
- [Net Operating Loss Carryback and Other ARRA Business Provisions](#)
- [IRS Information Related to the American Recovery and Reinvestment Act of 2009](#)

Page Last Reviewed or Updated: March 16, 2009

The IRS will be closely monitoring these filings and will provide additional staff as needed to process these forms. The IRS will work to issue refunds within 45 days or even earlier to the degree possible.

In addition, [Questions and Answers](#) have been posted on this Web site. Small businesses that file Form 1040 can also call 1-800-829-1040 with NOL questions. Corporations can contact 1-800-829-4933 with NOL questions.

Form 1045 or Form 1139, whichever the taxpayer uses, generally must be filed within one year after the end of the tax year of the NOL. In addition, the current year's tax return must be filed by the date the Form 1045 or Form 1139 is filed. Form 1045 and Form 1139 are filed at the same place the taxpayer's return is filed, as listed on the return instructions.

Accelerated refunds paid via Form 1045 or Form 1139 is described as "tentative" because the applications for refunds are potentially subject to review at a later date. [Form 1045 Instructions](#) and [Form 1139 Instructions](#) provide more information on the accelerated refund option.

Related Items:

- [IRS Information Related to the American Recovery and Reinvestment Act of 2009](#)

[Subscribe to IRS Newswire](#)

Page Last Reviewed or Updated: March 16, 2009