

# American Recovery and Reinvestment Act of 2009

## *ARRA Provisions for Small Business Customers*

Small Business/Self-Employed Division  
Date



# General Overview for Net Operating Loss

- Net operating loss may occur when the business deductions for a year are more than the business income for the year
- Publication 536



# When to Use an NOL

- Carryback to the two tax years before the NOL year
- Deduct it from income you had in those years
- Carry forward any remaining NOL for up to 20 years after the NOL year



# Exceptions to Two-Year Carryback Rule

An Eligible Loss is any part of an NOL that:

- Is from a casualty or theft, or
- Is attributable to a declared disaster for a qualified small business



# NOLs Under the American Recovery and Reinvestment Act of 2009

- Enables small businesses with a net operating loss 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.



# Who can benefit?

- To qualify: 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 carryback their 2008 NOL for two years.



# NOL Questions and Answers

- **Do I have to carry back my 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.

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

A: Yes.



# NOL Questions and Answers

- **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.

- **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 carryback a certain number of years or to only carryforward the losses, then you may not change this selection.



# NOL Questions and Answers

- **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.

- **I had slightly more than \$15 million in gross receipts last year, am I eligible for the five-year carry back?**

A: It depends. If your business gross receipts **average more than \$15 million** over the three-year period, the normal two-year carryback applies.



# NOL Questions and Answers

- 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.



# NOL Questions and Answers

- **Can I use this for a 2009 return?**

A: The election is available for the tax year ending in 2008, unless the taxpayer elects this carryback for the tax year beginning in 2008.

- **When is the deadline for taking advantage of this NOL provision?**

A: If a return, has been filed – the answer on slide 10 (Amended return). 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.



# NOL Questions and Answers

- **How long will this law be in effect?**

A: The law is in effect for an NOL for any taxable year ending in 2008, or if elected by the taxpayer, the NOL for any taxable year beginning in 2008.

- **Are there any exceptions for which the IRS will accept an election after the due dates?**

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.



# NOL Questions and Answers

- **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.**



# NOL Questions and Answers

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

A: A letter with specific language will be used to reject the claim.

- **What else should the taxpayer do when making the NOL 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.



# Section 179 Deduction

- Cost of certain property can be treated as an expense and can be deducted in the year the property is placed in service instead of depreciating it over several years.
- Under ARRA, qualifying businesses can continue to expense up to \$250,000 of section 179 property for tax years beginning in 2009.



# More Help for Small Business

- Reduction of estimated tax payments
- Extension of bonus depreciation deductions through 2009
- Capital gains tax break for investment in small business



# More Information

- [IRS.gov](https://www.irs.gov) – Search: Recovery Act
- Check frequently for the latest updates

