

2009 Recovery Act: NOL Carryback Period Extended

As you may know, NOLs can generally be carried back two years and forward 20 years. The carryback and carryover periods are determined by the law applicable to the year in which the NOL arises, rather than any of the years to which it is carried back or forward. An NOL that is not utilized within its statutory timeframe expires without providing any tax benefit.

The *American Recovery and Reinvestment Tax Act of 2009* (2009 Recovery Act) provides relief for small businesses by extending the maximum carryback period for 2008 net operating losses (NOLs) from two years to any number of years greater than two and less than six (i.e., three, four, or five years). The number of years selected for the carryback is discretionary within these parameters, but the election must be properly executed in a timely manner and cannot be revoked.

Fiscal-year businesses can apply these rules either to NOLs generated in tax years ending in 2008, or to NOLs generated in tax years *beginning* in 2008. If a small business has already waived an NOL carryback for the applicable 2008 tax year, the election can be revoked in order to obtain NOL carryback relief under the 2009 Recovery Act provisions. However, the prior election must be revoked and the new election executed within 60 days of the legislation's enactment.

Because you sustained an NOL this tax year, these provisions present an opportunity for an immediate refund of prior year taxes paid. Please call us at your earliest convenience to discuss the various alternatives that can be used to optimize your tax savings and cash flow.