

SMALL BUSINESSES GET LONGER NOL CARRYBACK PERIOD

Rev. Proc. 2009-26, 2009-19 IRB935, explains how an eligible small business (ESB) may elect to carry back a 2008 net operating loss (NOL) for three, four, or five years to offset income on those prior periods. The Procedure applies to any taxpayer that is an ESB, a partner of a partnership that is an ESB, a shareholder in an S corporation that is an ESB, or a sole proprietor of a business that is an ESB and that incurred an NOL in any tax year ending or beginning in 2008. The Procedure modifies (and to the extent of modifications, it supersedes) Rev. Proc. 2009-19, 2009-14 IRB 747.

Section 172(b)(1)(A)(i) provides for an NOL carryback period of two years. Under Section 172(b)(3), however, a taxpayer may irrevocably elect to relinquish the carryback period with respect to an NOL for any tax year. The American Recovery and Reinvestment Act of 2009 (ARRA) revised these carryback rules by providing in Section 172(b)(1)(H) that an ESB may elect to carry back its applicable 2008 NOL to three, four, or five years preceding the tax year of the NOL.

In general, an ESB is any business for which average annual gross receipts for the three-tax-year period (or shorter period of existence) prior to the NOL year do not exceed \$15 million. Under Section 172(b)(1)(H)(ii), an "applicable 2008 NOL" is the taxpayer's NOL for any tax years ending or (at the taxpayer's election) beginning in 2008.

A taxpayer may make the election under Section 172(b)(1)(H) by attaching a statement to the taxpayer's timely filed income tax return for the tax year in which the applicable 2008 NOL arises. The statement must indicate that the taxpayer is electing to apply Section 172(b)(1)(H) and specify the NOL carryback period (i.e., three, four, or five years) being elected. A taxpayer that failed to make the election using this procedure and that did not elect to renounce the carryback period under Section 172(b)(3)

may make the election under Section 172(b)(1)(H) as follows:

1. File an appropriate form applying the NOL carryback period chosen by the taxpayer. No statement or label is required with the appropriate form. The appropriate form is as follows:

- For corporations, Form 1139, Corporate Application for Tentative Refund, or Form 1120X, Amended Corporation Income Tax Return.
 - For individuals, Form 1045, Application for Tentative Refund, or Form 1040X, Amended U.S. Individual Income Tax Return.
 - For estates or trust, Form 1045 or amended Form 1041, U.S. Income Tax Return for Estates and Trusts.
2. A taxpayer that makes this election by filing an amended return must file the return for the earliest tax year to which the carryback is being applied. The taxpayer should not file an amended return for the applicable 2008 NOL tax year.

The appropriate form must be filed by the later of six months after the due date (without extensions) for filing the taxpayer's return for the applicable 2008 NOL tax year or 4/17/09. If the election is made by filing an appropriate form that amends a prior refund claim, the amendment also applies to a carryback of any alternative tax NOL for the same tax year. For an amended application for a tentative carryback adjustment, the 90-day period described in Section 6411(b) (providing a period for the IRS to make a limited examination of the application to discover omissions and errors of computation, and to determine the decrease in tax attributes to the carryback) begins on the date the amended application is filed.

The Procedure also explains how a taxpayer that elected under Section 172(b)(3) to waive the NOL carryback period for an applicable 2008 NOL for a tax year ending before 2/17/09 (which was the date of enactment of ARRA) may revoke that election and make the election under Section 172(b)(1)(H). This revocation and new election, however, must have been made by 4/17/09.

A partner or S corporation shareholder in an entity that qualifies as an ESB may make the Section 172(b)(1)(H) election for its share of the qualifying ESB income, gain, loss, and deduction that is allowed in calculating the taxpayer's applicable 2008 NOL. In determining whether a partnership, S corporation, or sole proprietorship qualifies as an ESB, the gross receipts test applies at the partnership, corporate, or sole proprietorship level. The NOL carryback amount is limited to the lesser of:

1. The taxpayer's items of income, gain, loss, or deduction that are allowed in calculating the taxpayer's applicable NOL and are from one or more partnerships, S corporations, or sole proprietorships that qualify as ESBs.
2. The taxpayer's applicable 2008 NOL. ■

IRS RELEASES 2009 DEPRECIATION LIMITS FOR AUTOMOBILES

Rev. Proc. 2009-24, 2009-17 IRB 885, lists the maximum depreciation deductions available for passenger automobiles, light trucks, and vans first placed in service during 2009. The applicable deduction ceiling for a vehicle depends on whether the 50% additional first-year depreciation deduction is being claimed. While the dollar amounts for passenger automobiles remain the same as in 2008, the figures for trucks and vans are lower in 2009.

The maximum deductions listed below are based on 100% business use of the vehicle. If the vehicle is put to some personal use, the maximum deductions must be reduced proportionately.

The depreciation limits for autos (other than light trucks and vans) for which the taxpayer has elected out of a bonus depreciation deduction are as follows:

- \$2,960 for the tax year the vehicle is placed in service.
- \$4,800 for the second tax year.
- \$2,850 for the third tax year.
- \$1,775 for each succeeding year.

If the bonus depreciation applies, the depreciation limits for autos (other than light trucks and vans) are as follows:

- \$10,960 for the tax year the vehicle is placed in service.
- \$4,800 for the second tax year.
- \$2,850 for the third tax year.
- \$1,775 for each succeeding year.

The corresponding figures for light trucks and vans (i.e., passenger autos built on a truck chassis, rated at 6,000 pounds gross (loaded) vehicle weight or less) are as follows: if bonus depreciation does not apply:

- \$3,060 (reduced from \$3,160 in 2008) for the tax year the vehicle is placed in service.
- \$4,900 (reduced from \$5,100 in 2008) for the second tax year.
- \$2,950 (reduced from \$3,050 in 2008) for the third tax year.
- \$1,775 (reduced from \$1,875 in 2008) for each succeeding year.

With bonus depreciation, the maximum deductions for light trucks and vans are:

- \$11,060 (reduced from \$11,160 in 2008) for the tax year the vehicle is placed in service.
- \$4,900 (reduced from \$5,100 in 2008) for the second tax year.
- \$2,950 (reduced from \$3,050 in 2008) for the third tax year.
- \$1,775 (reduced from \$1,875 in 2008) for each succeeding year.

Heavier vehicles, such as large SUVs, are not subject to these limitations because they fall outside of the Section 280F(d)(5) definition of a passenger auto. Under Section 179(b)(6), not more than \$25,000 of the cost of a heavy SUV may be expensed under Section 179. The balance of the heavy SUV's cost may be depreciated under the regular rules—including bonus first-year depreciation for 2008—that apply to five-year MACRS property (e.g., a 20% first-year deduction allowance if the half-year convention applies for the year the SUV was placed in service).

Along with the maximum depreciation deduction amounts, the IRS has also issued two sets of tables of inclusion amounts for taxpayers who lease, rather than own, vehicles put to business use. The inclusion amounts are intended to offset the deductible lease payments these taxpayers claim in order to approximate the restrictions on tax benefits received by vehicle owners. The inclusion amount tables apply to only vehicles with values exceeding certain amounts. Bonus first-year depreciation increases the minimum vehicle fair market values at which inclusion amounts apply. Thus, the inclusions affect only those passenger automobiles and trucks or vans with a lease term starting in 2009 that have fair market values above \$18,500. The inclusion amounts, however are slightly higher for passenger automobiles than for trucks or vans. ■