

Net Operating Loss Carryback Extension Will Save Jobs

Net Operating Loss Carryback – Existing Law

Under existing law, a net operating loss (NOL) generally means the amount by which a taxpayer's business deductions exceed its gross income. For most industries, a NOL may be carried back to the two preceding years and carried forward 20 years to offset taxable income in such years. This allows the taxpayer to recapture a portion of taxes it paid in the prior two years or over the course of the next twenty years. This law recognizes that few business cycles mirror a calendar year and therefore this provision allows income averaging over the course of a full business cycle which is typically several years long. In other words, it provides no incremental benefit, other than changing the timing of when losses can be accounted for. [http://www.hklaw.com/id24660/PublicationId2605/ReturnId31/contentid54023/ - 1](http://www.hklaw.com/id24660/PublicationId2605/ReturnId31/contentid54023/-1)

Extension of the NOL Carryback

Bi-Partisan Legislation is currently under consideration in Congress which would allow taxpayers the election to increase the present carryback period up to a maximum of 5 years for NOLs in tax years beginning or ending in 2008 or 2009. Previously a 5-year carryback has been in place for 2001 and 2002 as a Congressional response to the recession of that period and it worked. It is critically important now because the credit markets have dried up access to credit for most businesses so NOL carry back expansion is the only potential source of much needed liquidity for many businesses.

- The provision applies to all businesses with net operating losses – not just home builders.
- This is not a grant, loan, tax credit or bailout. Rather the provision accelerates to the present – when the resources are needed most – deductions that can, under current law, be claimed in future tax years. In short, it is an “advance” on future tax deductions which are already authorized under law.
- Focusing on a ten-year budget window is misleading as the cost will decline to near zero over a 20-year budget window because the carryback expansion is only a timing change of future deductions.
- An expanded NOL carryback is permanently in place for other cyclical industries and temporary expansions have been utilized in the past; most recently in 2002 as response to the 2001 recession.

Expanded NOL carryback will preserve jobs

- An expansion will provide much needed liquidity to businesses of all types and sizes
- This liquidity will allow them the funds necessary to survive this recession and preserve jobs until the marketplace recovers.
- Business bankruptcies and downsizing continue to jeopardize millions of jobs as employers strive to survive without access to credit
- Job loss is the single largest threat to our economy because job losses lead to foreclosures which drive down home values for everyone else. NOL expansion will help alleviate this pressure on the market by keeping people employed and in their homes.

Economic Facts on the Housing Sector

- The Housing industry is experiencing an historic crisis - total housing starts are at their lowest levels ever.
- The residential construction industry has lost over one million jobs since 2006 and more are being lost each week as builders and contractors of all sizes file for bankruptcy or go out of business.
- Today, there are hundreds, if not thousands, of builders that are on the brink of bankruptcy
- The availability of credit to sustain business operations is virtually non-existent so businesses do not have the working capital to survive or keep workers on the payroll.
- NOL relief is the only option available to return some liquidity to these businesses when they need it most.

Over a 20-year cycle, NOL expansion is a very low cost solution that will provide tangible relief to business of all sizes and in all industries. It will preserve jobs and help provide relief for millions of business and their employees to make it through these challenging economic times.