

E Tax Alert

February 26, 2010

Subject line: Missing W-2s and NOL carrybacks

We know that you are busy with tax season but here are two pieces of news that might help.

1. **Missing W-2.** If your client cannot get a W-2 from his or her employer, the IRS will help. The taxpayer can call the IRS at 800-829-1040 (their general tax number). The taxpayer must have available (1) the employer's name, address, city and state, zip code and phone number, (2) dates of employment (3) an estimate, based on a final pay stub, of the wages earned, the federal income tax withheld, and (4) the dates worked for that employer during 2009. The IRS help will take the form of a letter to the employer requesting that the employer provide a W-2 to the employee. A few more details are at [Four Steps to Follow If You Are Missing a W-2](#).

2. **NOL Carryback.** The IRS recently posted to its website a question and answer page explaining the 2008 and 2009 five-year NOL carryback rules which were extended and expanded by the [Worker, Homeownership and Business Assistance Act of 2009](#) (WHBAA).

What wording is required in the NOL election? The IRS provides this example. *“The ABC Company is electing to apply Section 172(b)(1)(H) under Rev. Proc. 2009-52. ABC Company is not a TARP recipient and was not an affiliate of a TARP recipient during 2008 or 2009. We are electing a four-year (for example) carryback period.”*

When is the NOL election due? The election must be made by the due date (including extensions) for filing the tax return for the taxpayer's last taxable year beginning in 2009. This is true whether the election is for losses incurred in 2008 or 2009.

Note. This extends the 2008 NOL election deadline for an individual to October 15, 2011 (was October 15, 2010). So, if you, the tax practitioner, missed making a 2008 NOL election (or you wish you had done something different), you have a reprieve.

More. The deadline for filing a tentative carryback application, using Form 1045 or 1139 has also been extended. WHBAA allows you to make the 2008 election and file a tentative carryback application by the due date (including extensions) of the 2009 federal income tax return. So instead of a December 31, 2009 deadline for filing Form 1045, the WHBAA deadline is April 15, 2010 (or up to October 15, 2010, if an extension is filed).

If the taxpayer previously filed a five-year ARRA carryback for losses he or she had in 2008, can the taxpayer take advantage of WHBAA for 2009 net operating losses? An eligible small business that made a timely ARRA election for tax year 2008 may also make a WHBAA election for tax year 2009.

Warning. But remember, if the taxpayer did not file timely for the 2008 NOL five-year carryback, you must choose between 2008 and 2009. The extended carryback election is

only valid for one of the years. In other words, if the taxpayer now makes an election to carryback his 2008 NOL for five years (or four or three years), he will be limited to the “normal” two-year carryback for the 2009 NOL.

For many more details see [Questions and Answers for The Worker, Homeownership, and Business Assistance Act of 2009 5-year Net Operating Loss \(NOL\) Carryback.](#)