Saul Ewing LLP

TAX PRACTICE GROUP

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"What keeps you up at night?"

Saul Ewing
Tax Practice Group:

Harry Shapiro
Chair

Stimulus bill extends net operating loss carryback period for small businesses

By Harry D. Shapiro and Seth J. Groman

The recently enacted American Recovery and Reinvestment Act of 2009 ("Act") offers small usinesses new options for deducting net operating losses ("NOLs") that could lead to large tax savings.

A NOL occurs when a taxpayer's deductions for a given year exceed the income for the year. Typically, under the Internal Revenue Code, a NOL can be carried back and deducted from taxable income of the two preceding tax years and carried forward and deducted from the taxable income of the next 20 years. A taxpayer also has the ability to waive the carryback period such that NOLs will only be deducted during the carry forward period.

Under the Act, a small business with a NOL in 2008 can elect to extend the carryback period of the loss for up to five years instead of the usual two years. In order to qualify for the extended carryback period, the average gross receipts of the business over a three-year period ending with the tax year of the NOL must not exceed $15 million. If a small business does not make the election, the carryback period for the NOL remains at two years.

A small business must make an affirmative election to extend its carryback period. A taxpayer who has not yet filed a tax return for the 2008 tax year may make the election by including a statement with a timely filed 2008 return. If a taxpayer has already filed a 2008 return and did not elect to waive the carryback period altogether, the taxpayer can still make the election by filing a Form 1139, Form 1045, or an amended return for the earliest tax year to which the 2008 NOL is being applied.

The expansion of the carryback period for 2008 NOLs could lead to tax refunds that were not available under the previous law. This was the purpose for the new provision. To determine whether the election to expand the carryback period is appropriate for your business contact, please contact any of the Saul Ewing tax attorneys listed below.

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