

The Worker, Homeownership, and Business Assistance Act of 2009.

The Worker, Homeownership, and Business Assistance Act of 2009 was signed into law on November 6, 2009. It contains several tax provisions, including a provision that allows businesses with net operating losses (NOLs) for 2008 or 2009 to carry back those losses for up to five years. Dealers may recall that the American Recovery and Reinvestment Act of 2009 (“ARRA” or the “Stimulus Act”) also contained a NOL carryback provision. This provision supersedes the ARRA NOL provision.

Carryback of Net Operating Losses

The loss carryback provision allows businesses greater flexibility in writing off current losses against past profits by allowing them to carry back NOLs for up to five years (from the current-law two years) for losses incurred in taxable years beginning or ending in either 2008 or 2009 — but not both.

Businesses may offset 50 percent of taxable income in the fifth preceding year and 100 percent of taxable income in the remaining four carryback years. If an election is made to carry back an NOL to the fifth year preceding the loss year, the carryback is limited to 50 percent of taxable income. The remaining balance of the NOL generated in the loss year is carried forward to the fourth year preceding the loss year, and so on until the loss is utilized or expired.

Unlike the provision in ARRA, this provision is not limited to small businesses. There is no gross receipts test. The extended carryback provision is available to all taxpayers other than those specifically excluded.

Note also that dealers that were eligible to carry back 2008 losses under the ARRA, and elected to do so, are permitted to carry back losses from 2009. Dealers must make the election by the extended due date for filing the return for the taxpayer’s last taxable year beginning in 2009. The election, once made, is irrevocable.