



**January 2010**

## **Net Operating Loss Carryback**

**New tax law significantly expands the five-year NOL carryback opportunity enacted earlier this year as part of the stimulus bill. The new legislation allows U.S. companies of all sizes to carry back NOLs incurred in either 2008 or 2009 to the previous five years. This carryback can offset all of the taxpayer's taxable income in the first four carryback years, and 50 percent of the taxable income in the fifth carryback year. Any unused carryback amounts can be carried forward.**

**The legislation would generally allow all taxpayers to elect to carry back a 2008 or 2009 net operating loss (NOL) for up to five years, with several important details:**

- **would be available for any tax year beginning or ending in 2008 or 2009;**
- **election could be made for only one year (unless a qualified small business);**
- **NOL carryback could offset only 50 percent of the income from the fifth year;**
- **election would be irrevocable and would have to be made by the extended filing date of the taxpayer's last tax year beginning in 2009; and**
- **recipients of federal government assistance through the Troubled Asset Relief Program would not be able to participate.**

**The provision also suspends the 90-percent alternative minimum tax (AMT) limitation for the carried back NOL.**

**The new proposal is much broader than the current NOL carryback extension provided by the February stimulus bill. That provision allows qualified small businesses (taxpayers with \$15 million in annual gross receipts) a five-year carryback period for an NOL from a single tax year beginning or ending in 2008. Under the new proposal, these taxpayers would still be able to use the old election, but could also extend the carryback period for an additional year of losses arising in a tax year beginning or ending in 2009.**