

Internal Revenue Code Section 172(b)(3)

Net operating loss deduction.

- (a) Deduction allowed. There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.
- (b) Net operating loss carrybacks and carryovers.
 - (1) Years to which loss may be carried.
 - (A) General rule. Except as otherwise provided in this paragraph, a net operating loss for any taxable year—
 - (i) shall be a net operating loss carryback to each of the 2 taxable years preceding the taxable year of such loss, and
 - (ii) shall be a net operating loss carryover to each of the 20 taxable years following the taxable year of the loss.
 - (B) Special rules for REIT's.
 - (i) In general. A net operating loss for a REIT year shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss.
 - (ii) Special rule. In the case of any net operating loss for a taxable year which is not a REIT year, such loss shall not be carried back to any taxable year which is a REIT year.
 - (iii) REIT year. For purposes of this subparagraph, the term "REIT year" means any taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) apply to the taxpayer.
 - (C) Specified liability losses. In the case of a taxpayer which has a specified liability loss (as defined in subsection (f)) for a taxable year, such specified liability loss shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss.
 - (D) Bad debt losses of commercial banks. In the case of any bank (as defined in section 585(a)(2)), the portion of the net operating loss for any taxable year beginning after December 31, 1986, and before January 1, 1994, which is attributable to the

deduction allowed under section 166(a) shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of the loss and a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

(E) Excess interest loss.

(i) In general. If—

(I) there is a corporate equity reduction transaction, and

(II) an applicable corporation has a corporate equity reduction interest loss for any loss limitation year ending after August 2, 1989, then the corporate equity reduction interest loss shall be a net operating loss carryback and carryover to the taxable years described in subparagraph (A), except that such loss shall not be carried back to a taxable year preceding the taxable year in which the corporate equity reduction transaction occurs.

(ii) Loss limitation year. For purposes of clause (i) and subsection (h), the term "loss limitation year" means, with respect to any corporate equity reduction transaction, the taxable year in which such transaction occurs and each of the 2 succeeding taxable years.

(iii) Applicable corporation. For purposes of clause (i), the term "applicable corporation" means—

(I) a C corporation which acquires stock, or the stock of which is acquired in a major stock acquisition,

(II) a C corporation making distributions with respect to, or redeeming, its stock in connection with an excess distribution, or

(III) a C corporation which is a successor of a corporation described in subclause (I) or (II).

(iv) Other definitions.

For definitions of terms used in this subparagraph, see subsection (h).

(F) Retention of 3-year carryback in certain cases.

(i) In general. Subparagraph (A)(i) shall be applied by substituting "3 taxable years" for "2 taxable years" with respect to the portion of the net operating loss for the taxable year which is an eligible loss with respect to the taxpayer.

(ii) Eligible loss. For purposes of clause (i), the term "eligible loss" means—

(I) in the case of an individual, losses of property arising from fire, storm, shipwreck, or other casualty, or from theft,

(II) in the case of a taxpayer which is a small business, net operating losses attributable to federally declared disasters (as defined by subsection (h)(3)(C)(i)), and

(III) in the case of a taxpayer engaged in the trade or business of farming (as defined in section 263A(e)(4)), net operating losses attributable to such federally declared disasters.

Such term shall not include any farming loss (as defined in subsection (i)) or qualified disaster loss (as defined in subsection (j)).

(iii) Small business. For purposes of this subparagraph, the term "small business" means a corporation or partnership which meets the gross receipts test of section 448(c) for the taxable year in which the loss arose (or, in the case of a sole proprietorship, which would meet such test if such proprietorship were a corporation).

(iv) Coordination with paragraph (2). For purposes of applying paragraph (2), an eligible loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(G) Farming losses. In the case of a taxpayer which has a farming loss (as defined in subsection (i)) for a taxable year, such farming loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.

(H) Carryback for 2008 or 2009 net operating losses.

(i) In general. In the case of an applicable net operating loss with respect to which the taxpayer has elected the application of this subparagraph—

(I) subparagraph (A)(i) shall be applied by substituting any whole number elected by the taxpayer which is more than 2 and less than 6 for "2",

(II) subparagraph (E)(ii) shall be applied by substituting the whole number which is one less than the whole number substituted under subclause (I) for "2", and

(III) subparagraph (F) shall not apply.

(ii) Applicable net operating loss. For purposes of this subparagraph, the term "applicable net operating loss" means the taxpayer's net operating loss for a taxable year ending after December 31, 2007, and beginning before January 1, 2010.

(iii) Election.

(I) In general. Any election under this subparagraph may be made only with respect to 1 taxable year.

(II) Procedure. Any election under this subparagraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009. Any such election, once made, shall be irrevocable.

(iv) Limitation on amount of loss carryback to 5th preceding taxable year.

(I) In general. The amount of any net operating loss which may be carried back to the 5th taxable year preceding the taxable year of such loss under clause (i) shall not exceed 50 percent of the taxpayer's taxable income (computed without regard to the net operating loss for the loss year or any taxable year thereafter) for such preceding taxable year.

(II) Carrybacks and carryovers to other taxable years. Appropriate adjustments in the application of the second sentence of paragraph (2) shall be made to take into account the limitation of subclause (I).

(III) Exception for 2008 elections by small businesses. Subclause (I) shall not apply to any loss of an eligible small business with respect to any election made under this subparagraph as in effect on the day before the date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009.

(v) Special rules for small business.

(I) In general. In the case of an eligible small business which made or makes an election under this subparagraph as in effect on the day before the date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009, clause (iii)(I) shall be applied by substituting "2 taxable years" for "1 taxable year".

(II) Eligible small business. For purposes of this subparagraph, the term "eligible small business" has the meaning given such term by subparagraph (F)(iii), except that in applying such subparagraph, section 448(c) shall be applied by substituting "\$ 15,000,000" for "\$ 5,000,000" each place it appears.

(I) Transmission property and pollution control investment.

(i) In general. At the election of the taxpayer for any taxable year ending after December 31, 2005, and before January 1, 2009, in the case of a net operating loss for a taxable year ending after December 31, 2002, and before January 1, 2006, there shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss to the extent that such loss does not exceed 20 percent of the sum of the electric transmission property capital expenditures and the pollution control facility capital expenditures of the taxpayer for the taxable year preceding the taxable year for which such election is made.

(ii) Limitations. For purposes of this subsection—

(I) not more than one election may be made under clause (i) with respect to any net operating loss for a taxable year, and

(II) an election may not be made under clause (i) for more than 1 taxable year beginning in any calendar year.

(iii) Coordination with ordering rule. For purposes of applying subsection (b)(2), the portion of any loss which is carried back 5 years by reason of clause (i) shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(iv) Special rules relating to credit or refund. In the case of the portion of the loss which is carried back 5 years by reason of clause (i)—

(I) an application under section 6411(a) with respect to such portion shall not fail to be treated as timely filed if filed within 24 months after the due date specified under such section, and

(II) references in sections 6501(h), 6511(d)(2)(A), and 6611(f)(1) to the taxable year in which such net operating loss arises or results in a net operating loss carryback shall be treated as references to the taxable year for which such election is made.

(v) Definitions. For purposes of this subparagraph—

(I) Electric transmission property capital expenditures. The term "electric transmission property capital expenditures" means any expenditure, chargeable to capital account, made by the taxpayer which is attributable to electric transmission property used by the taxpayer in the transmission at 69 or more kilovolts of electricity for sale. Such term shall not include any expenditure which may be refunded or the purpose of which may be modified at the option of the taxpayer so as to cease to be treated as an expenditure within the meaning of such term.

(II) Pollution control facility capital expenditures. The term "pollution control facility capital expenditures" means any expenditure, chargeable to capital account, made by an electric utility company (as defined in section 2(3) of the Public Utility Holding Company Act (15 U.S.C. 79b(3)), as in effect on the day before the date of the enactment of the Energy Tax Incentives Act of 2005) which is attributable to a facility which will qualify as a certified pollution control facility as determined under section 169(d)(1) by striking "before January 1, 1976," and by substituting "an identifiable" for "a new identifiable". Such term shall not include any expenditure which may be refunded or the purpose of which may be modified at the option of the taxpayer so

as to cease to be treated as an expenditure within the meaning of such term.

(J) Certain losses attributable federally declared disasters. In the case of a taxpayer who has a qualified disaster loss (as defined in subsection (j)), such loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.

(2) Amount of carrybacks and carryovers. The entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the "loss year") shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (5) thereof, and

(B) by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter, and the taxable income so computed shall not be considered to be less than zero.



(3) Election to waive carryback. Any taxpayer entitled to a carryback period under paragraph (1) may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year. Such election shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be in effect. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

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