

July 14, 2009

**NEBRASKA FOLLOWS FEDERAL NET OPERATING LOSS (NOL) CARRYBACK PERIODS  
FOR INDIVIDUAL OR FIDUCIARY, BUT NOT FOR CORPORATE TAXPAYERS**

**Issue:**

The recent federal *American Recovery and Reinvestment Act of 2009* provides that eligible small businesses can elect a three, four, or five-year carryback period for certain 2008 NOLs. Will Nebraska follow these federal changes?

**Conclusion:**

Yes, but only in the case of losses claimed by **individual** taxpayers or on fiduciary tax returns. Individual small business taxpayers (including those with losses from pass-through entities) who federally elect an extended carryback period for a 2008 tax year NOL are to use the same carryback period for Nebraska income tax filing purposes. Corporate taxpayers, however, can only carry NOLs forward under Nebraska law.

**Analysis:**

[Neb. Rev. Stat. §77-2716\(2\)](#) provides that state NOLs of individual taxpayers consistent with "...the laws of the United States..." are to be allowed. Accordingly, if a federal carryback period for NOLs is extended by an election of an alternative carryback period by the taxpayer, then the Nebraska carryback period is also extended for the same period, and in the same manner.

Affected taxpayers carrying back the NOL to an earlier year should attach to their Nebraska return a copy of their Federal Form 1045, 1040X, or another return or other documentation indicating the taxpayer has elected an extended carryback period for eligible small business losses. The amended return can be filed only after the taxpayer has filed a 2008 Nebraska Individual Income Tax Return, or 2008 Nebraska Fiduciary Income Tax Return, and [Form NOL, Nebraska Net Operating Loss Worksheet](#), to establish the Nebraska NOL. If the 2008 return was filed without the Form NOL, attach the Form NOL to the amended return carrying back the loss.

Alternately, [Neb. Rev. Stat. §77-2734.07](#) only allows corporate taxpayers to carry forward an NOL for each of the five taxable years after the year of the loss. Therefore, the recent change in federal carryback periods is not applicable to corporate taxpayers.

APPROVED:



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