

### Internal Revenue Code Section 172(b)(1)(H)

#### Net operating loss deduction

(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).

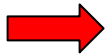
(iv) Other definitions. For definitions of terms used in this subparagraph, see subsection (h).

(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 net operating losses of small businesses.
- (i) In general. If an eligible small business elects the application of this subparagraph with respect to an applicable 2008 net operating loss—
    - (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 2008 net operating loss. For purposes of this subparagraph, the term "applicable 2008 net operating loss" means—

- (I) the taxpayer's net operating loss for any taxable year ending in 2008, or
  - (II) if the taxpayer elects to have this subclause apply in lieu of subclause (I), the taxpayer's net operating loss for any taxable year beginning in 2008.
- (iii) Election. 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 taxpayer's return for the taxable year of the net operating loss. Any such election, once made, shall be irrevocable. Any election under this subparagraph may be made only with respect to 1 taxable year.
- (iv) 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.