



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

August 16, 2010

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Dear _____ :

This letter responds to your request for information dated August 06, 2010. In particular, you ask whether a taxpayer who has made an election to carry back a 2008 or 2009 net operating loss (NOL) can amend the election to change the carryback period.

Section 172(b)(1)(A)(i) of the Internal Revenue Code (Code) provides that an NOL for any taxable year generally must be carried back to each of the 2 years preceding the taxable year of the NOL. Section 13 of the Worker, Homeownership, and Business Assistance Act of 2009 amended section 172(b)(1)(H) of the Code to allow taxpayers to elect to carry back a 2008 or 2009 NOL for a period of 3, 4, or 5 years.

An election to carry back a 2008 or 2009 NOL for one of the available periods (3, 4, or 5 years) is irrevocable (section 172(b)(1)(H)(iii)(II) of the Code). Thus, a taxpayer cannot change the carryback period once the taxpayer has made the election.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2010-1, §2.04, 2010-1 I.R.B. 1 (Jan. 4, 2010). If you have any additional questions, please contact our office at _____.

Sincerely,

Michael J. Montemurro
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)