



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable John P. Sarbanes  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Sarbanes:

This letter responds to your inquiry, dated July 8, 2011, on behalf of your constituent, . He asked about extending the due date for making the net operating loss (NOL) carryback election under section 172(b)(1)(H) of the Internal Revenue Code (the Code). He asks for new legislation or a technical correction to grant relief to taxpayers who missed the due date for making the section 172(b)(1)(H) election.

Taxpayers can take a deduction equal to the aggregate of the NOL carryovers and carrybacks to the taxable year (section 172(a) of the Code). They must carry back an NOL for any taxable year generally to each of the 2 years preceding the taxable year of the NOL (section 172(b)(1)(A)(i) of the Code).

A taxpayer can elect to carry back its applicable NOL to 3, 4, or 5 years preceding the taxable year of the applicable NOL (section 172(b)(1)(H)(i) of the Code). The applicable NOL means the taxpayer's NOL for a taxable year ending after December 31, 2007, and beginning before January 1, 2010 (section 172(b)(1)(H)(ii) of the Code).

The Income Tax Regulations (the Regulations) provide the standards the Commissioner of Internal Revenue uses to determine whether to grant an extension of time to make statutory and regulatory elections (sections 301.9100-1 through 301.9100-3 of the Regulations).

A statutory election is an election whose due date the statute prescribes (section 301.9100-1(b) of the Regulations). The regulations provide a taxpayer with an automatic extension of 6 months from the due date of a timely filed return (excluding extensions) to make a statutory election, provided the taxpayer takes corrective action

within that 6-month period (section 301.9100-2(b) of the Regulations). We do not have the authority to extend the time for making a late statutory election beyond this 6-month period.

I hope this information is helpful. If you have any questions, please contact  
at .

Sincerely,

William A. Jackson  
Chief, Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)