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Client Alert

MACDONALD, ILLIG, JONES AND BRITTON LLP

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NET OPERATING LOSS CARRYBACK PERIOD EXPANDED TO FIVE YEARS

On November 6, 2009, President Obama signed into law the Worker, Homeownership, and Business Assistance Act of 2009 (the "Act"). The Act contained two significant provisions (the other will be discussed in a companion Client Alert). This Client Alert will focus on the new Net Operating Loss ("NOL") Carryback rules.

BRIEF DISCUSSION OF NOL'S IN GENERAL

An NOL arises in a taxable year when a taxpayer (which can be a C corporation, individual, or member, partner, or shareholder of a limited liability company, partnership or S corporation) has allowable deductions that exceed gross income. Traditionally, the taxpayer was entitled to carryback an NOL to the previous two taxable years to offset prior years' income, and to carry any remaining NOL forward twenty years, to offset future income. An NOL carryback enables a taxpayer to immediately receive a refund of taxes paid in prior years.

AMERICAN RECOVERY REINVESTMENT ACT OF 2009

Earlier in 2009, Congress passed the American Recovery Reinvestment Act of 2009 ("ARRA") which extended the NOL carryback period to the previous five taxable years for certain eligible small businesses. To be eligible under the ARRA a business must have had average gross receipts under $15 million dollars. This election was available only for tax years beginning or ending in 2008.

EXPANSION OF NOL CARRYBACK

With the passage of the current Act, the five year carryback period has been extended to all taxpayers provided that they did not receive TARP funds. Additionally, the available period was expanded so that any NOL incurred during any taxable year beginning or ending in 2008 or 2009 is now eligible. The Act permits a taxpayer to offset 100% of its taxable income in the previous four taxable years and 50% of its taxable income in the fifth year. In order to take advantage of this new rule, the taxpayer must make an election by the due date of its 2009 tax return.

For more information, please contact the author of this article, any member of the Business

Transactions Group, or any MacDonald Illig attorney with whom you have worked.

For more information:

James E. Spoden
(814) 870-7710
jspoden@mijb.com