



Internal Revenue Service

Small Business/Self-Employed

IRS Stakeholder Headliners ...and More

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This e-mail is being sent to you for distribution to your organization's members. If you need further assistance please contact your local Taxpayer Education and Communication (TEC) office. The number is available in IRS Publication 3698A ["Small Business/Self-Employed Taxpayer Education and Communication at a Glance."](#)

Practitioner Alert: Extended Net Operating Loss (NOL) Carrybacks - October 31 Deadline to File Claim

If you have already filed for 2001 and/or 2002 and did not take advantage of this increased carryback period it is not too late to do so but you must act soon. You have until 10-31-02 to act to claim the extended NOL for previously filed returns. The Job Creation and Worker Assistance Act of 2002 provides for a 5 year NOL carryback period (two or three in some cases) for any taxable year ending in 2001 or 2002.

NOL Carrybacks /Job Creation & Worker Assistance Act of 2002

1. The **Job** Creation and Worker Assistance Act of 2002 added 172(b)(1)(H) to the Internal Revenue Code to provide a 5-year carryback period (from 2 years, or 3 years for certain cases) for net operating losses (NOLs) for any taxable year ending during 2001 and 2002. The Act also allows an NOL arising in or carried forward to taxable years ending in 2001 and 2002, to offset **100 percent** (from 90 percent) of a taxpayer's Alternative Minimum Taxable Income (AMTI).
2. The five-year carryback provision is effective for NOLs generated in taxable years ending after December 31, 2000. The provision allowing the use of NOL carrybacks and carryforwards to offset 100 percent of AMTI is effective for taxable years ending before January 1, 2003.
3. Revenue Procedures 2002-40 provides qualifying taxpayers who filed returns for a taxable year ending during 2001 and 2002 without taking advantage of the 5-year carryback with a limited opportunity to do so and to apply for a tentative carryback adjustment if they act on or before **October 31, 2002**.

4. If the taxpayer has already filed his Form 1139 or Form 1045, and the twelve (12) month ending date has passed for the filing of his tentative application, then the taxpayer should file an amended application, (Form 1139 or Form 1045) by **October 31, 2002**, to claim the 5 year carryback. Taxpayer should type or print across the top of the appropriate form "**Amended refund claim pursuant to Revenue Procedure 2002-40.**"

5. A taxpayer can **elect to forgo the five-year carryback** period and carry the entire NOL forward for 20 years. This law allows taxpayers that previously elected to forgo their NOL carryback period to revoke their election in order to apply the 5-year carryback period. Also, taxpayers who used a 2 year carryback period for a NOL ending in 2001 or 2002, may file an application /amended return based upon a 5 year NOL carryback, provided these requests are filed by **October 31, 2002.**

- a. The election must be made in writing and attached to the loss year return, amended Forms 1045/1139 or amended Forms 1040X/1120X. Taxpayers should type or print across the top of the appropriate form "**Revocation of NOL carryback waiver pursuant to Rev Proc 2002-40.**"
- b. Any revocation of the election to forgo the NOL carryback period will also apply to a carryback of any AMTI NOL for the same taxable year. A revocation and/or application for a tentative carryback adjustment under this law must be made on or before **October 31, 2002.**
- c. An election made by a parent in a consolidated return is binding for all members of the group.

6. If a taxpayer elected to forgo the carryback period for an NOL incurred in 2001 or 2002 and **does not want to revoke that election in order to use the 5-year carryback period, the taxpayer need not file any additional forms or statement.**

7. This law allows taxpayers that filed returns for a taxable year ending in 2001 or 2002, and who neither elected to forgo the carryback period, nor used the 2 year carryback, to elect to relinquish the 5 year carryback period (and thereby retain the ability to use the 2 year carryback period) if they act on or before **October 31, 2002.**

8. If a taxpayer previously filed a tentative carryback or amended return using a 2-year carryback period for an NOL incurred in taxable year ending in 2001 or 2002, prefers to apply the 2-year carryback period rather than the 5-year carryback period, the taxpayer need not file any form or statement in order to satisfy the requirements to forgo the 5-year carryback period.

9. Taxpayers who incurred an NOL in 2001 or 2002 and did not forgo the carryback period or file for a tentative carryback adjustment or an amended return adjustment using a 2-year carryback, may apply the 2-year carryback period in lieu of the 5-year carryback, by filing an amended application or amended return on or before **October 31, 2002**.

Note: Taxpayers should print or type across the top of the appropriate form, "Amended refund claim pursuant to Rev. Proc. 2002-40. "