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10 TIPS TO CLAIM NET OPERATING LOSS (NOL)

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In today's issue, let us address a topic that's "in" with the times: Net Operating Losses (NOL). While some sectors (such as the health industry) of the economy are motoring along just fine, some business closures, bankruptcies, and foreclosures continue to slow the pace of recovery. As problems abound, opportunities arise, such as taking advantage of NOLs to offset income from prior or future years.

You see, operating losses can be carried back to good years when you paid a lot of taxes on income, offset those income, and get a refund of the taxes you paid. You may also elect to carry the losses forward to offset income in coming years so you do not end up paying taxes in the good years ahead. With this in mind, let us review 10 rules about Net Operating Losses as it applies to individuals:

1. A Net Operating Loss is defined as the excess of business deductions over gross income. It is often referred to as "NOL."
2. NOLs are caused by the excess of deductions from trade or business, casualty and theft losses, or deductions in connection with your work as an employee. The most common reason, of course, is losses from operating a business.
3. NOLs can be carried back two years (used to be three) or carried forward 20 (used to be 15) years. There is a special 5-year carryback for 2001 and 2002 losses. The big question is: Do you carry back or carry forward?
4. The general rule is to carry back but you may elect to forego the carry back and carry losses forward to future years. The election to carry forward is available only to timely filed returns (including extensions) and is not available for late filed returns. TIP: If you filed a timely return but forgot to attach an election to waive the carryback, file an amended return to attach the statement within 6 months of the due date of the original return (excluding extensions). Write "Filed pursuant to Section 301.9100-2" at the top of the statement.
5. Carry back offers the following advantages:
 - A. It is a quick source of cash from refund of prior years' taxes.
 - B. It may be your last opportunity to recover taxes paid on account of the Statute of Limitations.
 - C. It is advantageous if you were in a higher tax bracket in those prior years.
6. Carry forward offers the following advantages:
 - A. A carry back might generate an Alternative Minimum Tax (AMT) that would nullify any decrease in the regular income tax (resulting in a zero refund).
 - B. Your business might be on the rebound and you see bright years ahead with sizable taxes.
 - C. There might be some adjustments that you do not wish to be disturbed in prior years.
 - D. Carry back of losses might force you to lose exemptions or tax credit of prior years (and reduce your refund).
 - E. You might also lose large itemized deductions of prior years.
 - F. You may also lose IRA, Keogh or SEP tax benefits and would still be required to pay tax on distributions.

10. You must make an election to carry forward by **attaching a statement** to your tax return stating that you elect to forego the carry back under Section 172(b)(3)(c) of the Internal Revenue Code.
7. Claim **refunds** from NOL carry backs by filing Form 1045. Attach pages 1 and 2 of Form 1040, schedules A and D, extensions, and schedule C or F to Form 1045. The IRS must act upon the request within ninety days after the later of the filing date or the last day of the month in which the due date of the loss years' tax return falls.
8. **Individuals and regular C corporations** can claim Net Operating Loss deductions but partnerships and S corporations may not. However, losses of partners and **S shareholders** may generate NOLs on their individual tax returns.
9. I do not mean to be funny but you even have to plan for your NOL before you die. Any unused losses **not carried back are lost forever**. The estate or heirs of the decedent cannot use it. Beneficiaries cannot take the deduction until the termination of the estate or trust. A NOL cannot be carried over to your estate. Therefore it is best to carry back as much as possible.

DEVELOPMENT 1: There is a special 3-year carryback for losses arising from casualty, presidentially declared disasters for small business and farming.

DEVELOPMENT 2: The American Recovery and Reinvestment Act of 2009 permitted an eligible small business to elect to increase the NOL carryback period for an applicable 2008 NOL from 2 years to 3, 4, or 5 years.

DEVELOPMENT 3: Additional carryback periods allowed for individuals and C Corporations:

A. Five Years – The carryback period for **farming losses and GO Zone losses** is 5 years. Only the farming or GO Zone loss portion of the NOL can be carried back 5 years.

B. Ten Years – The carryback period for a specified liability loss is 10 years. Only the specified liability loss portion of the NOL can be carried back 10 years. Generally, a specified liability loss is a loss arising from: Product liability, or an act (or failure to act) that occurred at least 3 years before the beginning of the loss year and resulted in a liability under a federal or state law requiring: 1. Reclamation of land, 2. Dismantling of a drilling platform, 3. Remediation of environmental contamination, or 4. Payment under any workers compensation act.