

111TH CONGRESS
1ST SESSION

S. 823

To amend the Internal Revenue Code of 1986 to allow a 5-year carryback of operating losses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 2, 2009

Ms. SNOWE (for herself, Mr. BAUCUS, Mr. HATCH, Ms. STABENOW, Mr. ENSIGN, Mrs. LINCOLN, Ms. CANTWELL, and Mr. NELSON of Florida) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow a 5-year carryback of operating losses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Net Operating Loss
5 (NOL) Carryback Act”.

6 **SEC. 2. 5-YEAR CARRYBACK OF OPERATING LOSSES.**

7 (a) IN GENERAL.—Subparagraph (H) of section
8 172(b)(1) of the Internal Revenue Code of 1986 is amend-
9 ed to read as follows:

1 “(H) CARRYBACK FOR 2008 AND 2009 NET
2 OPERATING LOSSES.—

3 “(i) IN GENERAL.—In the case of an
4 applicable 2008 or 2009 net operating loss
5 with respect to which the taxpayer has
6 elected the application of this subpara-
7 graph—

8 “(I) subparagraph (A)(i) shall be
9 applied by substituting any whole
10 number elected by the taxpayer which
11 is more than 2 and less than 6 for ‘2’,

12 “(II) subparagraph (E)(ii) shall
13 be applied by substituting the whole
14 number which is one less than the
15 whole number substituted under sub-
16 clause (I) for ‘2’, and

17 “(III) subparagraph (F) shall not
18 apply.

19 “(ii) APPLICABLE 2008 OR 2009 NET
20 OPERATING LOSS.—For purposes of this
21 subparagraph, the term ‘applicable 2008
22 or 2009 net operating loss’ means—

23 “(I) the taxpayer’s net operating
24 loss for any taxable year ending in
25 2008 or 2009, or

1 “(II) if the taxpayer elects to
2 have this subclause apply in lieu of
3 subclause (I), the taxpayer’s net oper-
4 ating loss for any taxable year begin-
5 ning in 2008 or 2009.

6 “(iii) ELECTION.—Any election under
7 this subparagraph shall be made in such
8 manner as may be prescribed by the Sec-
9 retary, and shall be made by the due date
10 (including extension of time) for filing the
11 taxpayer’s return for the taxable year of
12 the net operating loss. Any such election,
13 once made, shall be irrevocable.

14 “(iv) COORDINATION WITH ALTER-
15 NATIVE TAX NET OPERATING LOSS DEDUC-
16 TION.—In the case of a taxpayer who
17 elects to have clause (ii)(II) apply, section
18 56(d)(1)(A)(ii) shall be applied by sub-
19 stituting ‘ending during 2001 or 2002 or
20 beginning during 2008 or 2009’ for ‘end-
21 ing during 2001, 2002, 2008, or 2009’.”.

22 (b) ALTERNATIVE TAX NET OPERATING LOSS DE-
23 DUCTION.—Subclause (I) of section 56(d)(1)(A)(ii) is
24 amended to read as follows:

1 “(I) the amount of such deduc-
 2 tion attributable to the sum of
 3 carrybacks of net operating losses
 4 from taxable years ending during
 5 2001, 2002, 2008, or 2009 and
 6 carryovers of net operating losses to
 7 such taxable years, or”.

8 (c) LOSS FROM OPERATIONS OF LIFE INSURANCE
 9 COMPANIES.—Subsection (b) of section 810 is amended
 10 by adding at the end the following new paragraph:

11 “(4) CARRYBACK FOR 2008 AND 2009 LOSSES.—

12 “(A) IN GENERAL.—In the case of an ap-
 13 plicable 2008 or 2009 loss from operations with
 14 respect to which the taxpayer has elected the
 15 application of this paragraph, paragraph (1)(A)
 16 shall be applied, at the election of the taxpayer,
 17 by substituting ‘5’ or ‘4’ for ‘3’.

18 “(B) APPLICABLE 2008 OR 2009 LOSS FROM
 19 OPERATIONS.—For purposes of this paragraph,
 20 the term ‘applicable 2008 or 2009 loss from op-
 21 erations’ means—

22 “(i) the taxpayer’s loss from oper-
 23 ations for any taxable year ending in 2008
 24 or 2009, or

1 “(ii) if the taxpayer elects to have this
2 clause apply in lieu of clause (i), the tax-
3 payer’s loss from operations for any tax-
4 able year beginning in 2008 or 2009.

5 “(C) ELECTION.—Any election under this
6 paragraph shall be made in such manner as
7 may be prescribed by the Secretary, and shall
8 be made by the due date (including extension of
9 time) for filing the taxpayer’s return for the
10 taxable year of the loss from operations. Any
11 such election, once made, shall be irrevocable.

12 “(D) COORDINATION WITH ALTERNATIVE
13 TAX NET OPERATING LOSS DEDUCTION.—In the
14 case of a taxpayer who elects to have subpara-
15 graph (B)(ii) apply, section 56(d)(1)(A)(ii) shall
16 be applied by substituting ‘ending during 2001
17 or 2002 or beginning during 2008 or 2009’ for
18 ‘ending during 2001, 2002, 2008, or 2009’.”.

19 (d) ANTI-ABUSE RULES.—The Secretary of Treasury
20 or the Secretary’s designee shall prescribe such rules as
21 are necessary to prevent the abuse of the purposes of the
22 amendments made by this section, including anti-stuffing
23 rules, anti-churning rules (including rules relating to sale-
24 leasebacks), and rules similar to the rules under section

1 1091 of the Internal Revenue Code of 1986 relating to
2 losses from wash sales.

3 (e) EFFECTIVE DATES.—

4 (1) IN GENERAL.—Except as otherwise pro-
5 vided in this subsection, the amendments made by
6 this section shall apply to net operating losses aris-
7 ing in taxable years ending after December 31,
8 2007.

9 (2) ALTERNATIVE TAX NET OPERATING LOSS
10 DEDUCTION.—The amendment made by subsection
11 (b) shall apply to taxable years ending after 1997.

12 (3) LOSS FROM OPERATIONS OF LIFE INSUR-
13 ANCE COMPANIES.—The amendment made by sub-
14 section (d) shall apply to losses from operations aris-
15 ing in taxable years ending after December 31,
16 2007.

17 (4) TRANSITIONAL RULE.—In the case of a net
18 operating loss (or, in the case of a life insurance
19 company, a loss from operations) for a taxable year
20 ending before the date of the enactment of this
21 Act—

22 (A) any election made under section
23 172(b)(3) or 810(b)(3) of the Internal Revenue
24 Code of 1986 with respect to such loss may

1 (notwithstanding such section) be revoked be-
2 fore the applicable date,

3 (B) any election made under section
4 172(b)(1)(H) or 810(b)(4) of such Code with
5 respect to such loss shall (notwithstanding such
6 section) be treated as timely made if made be-
7 fore the applicable date, and

8 (C) any application under section 6411(a)
9 of such Code with respect to such loss shall be
10 treated as timely filed if filed before the appli-
11 cable date.

12 For purposes of this paragraph, the term “applica-
13 ble date” means the date which is 60 days after the
14 date of the enactment of this Act.

15 (f) EXCEPTION FOR TARP RECIPIENTS.—The
16 amendments made by this section shall not apply to—

17 (1) any taxpayer if—

18 (A) the Federal Government acquires, at
19 any time, an equity interest in the taxpayer
20 pursuant to the Emergency Economic Stabiliza-
21 tion Act of 2008, or

22 (B) the Federal Government acquires, at
23 any time, any warrant (or other right) to ac-
24 quire any equity interest with respect to the
25 taxpayer pursuant to such Act,

1 (2) the Federal National Mortgage Association
2 and the Federal Home Loan Mortgage Corporation,
3 and

4 (3) any taxpayer which at any time in 2008 or
5 2009 is a member of the same affiliated group (as
6 defined in section 1504 of the Internal Revenue
7 Code of 1986, determined without regard to sub-
8 section (b) thereof) as a taxpayer described in para-
9 graph (1) or (2).

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