



CCH

a Wolters Kluwer business

The Professional's First Choice

## IRS Agrees With CCH Interpretation of New Tax Law

Recently passed legislation allows an eligible small business to carry back 2008 net operating losses (NOLs) for three, four or five years instead of just two. This is great news for businesses in need of a quick cash infusion, which may be able to seek immediate refunds based on the carryback provision.

As you know, an "eligible small business" is one which meets a \$15 million three year average annual gross receipts test. But, how do you apply this gross receipts test? CCH interprets the new law to mean that the years used in applying the gross receipts test are the three years ending with the year in which the NOL arises.

Other tax research services, however, originally steered tax practitioners in a different direction, stating that the test should be applied by measuring the average gross receipts for the three years *prior* to the NOL year.

The difference in these approaches is significant. Under CCH's interpretation more businesses will be eligible for the up-to-five-year carryback because a loss year is likely one in which the taxpayer also has lower gross receipts. This will, therefore, reduce the three year average of the taxpayer's gross receipts.

**Example:** Acme Inc., a C corporation which uses a calendar year, has annual gross receipts of \$17 million for 2005, \$15 million for 2006, \$14 million for 2007, and \$13 million for 2008. It has an NOL in 2008. Applying the gross receipts test using CCH's interpretation, Acme is an eligible small business for 2008 because its average gross receipts for 2006, 2007 and 2008 are \$14 million ( $\$42 \text{ million}/3$ ). Other tax research services would have concluded Acme is *not* an eligible small business, and therefore cannot take advantage of the extended carryback period, because its average annual gross receipts for 2005, 2006 and 2007 exceed \$15 million ( $\$46 \text{ million}/3$ ).

### **The IRS has now resolved the confusion in just-issued guidance!**

IRS News Release 2009-26 and Rev. Proc. 2009-19 confirms that CCH's analysis is correct - - the years to consider in applying the gross receipts test are the three years ending with the year in which the NOL arises. This will benefit many corporations, like Acme in the above example, whose average gross receipts in previous years barely exceed the \$15 million mark, and who therefore would otherwise miss out on the extended carryback period.

Please see [IR-2009-26](#) and [Rev. Proc. 2009-19](#) on CCH's Tax Research Network for more information. You can find detailed analysis of NOLs in CCH's Standard Federal Tax Reporter starting at ¶12.014.001 and CCH's Tax Research Consultant starting at NOL-103. You can also find thorough explanations of this and other provisions enacted as part of the American Recovery and Reinvestment Act of 2009 in CCH's [Law, Explanation and Analysis](#).

Please give me a call if you have any questions about the content in this email or any of our products.

Gratefully yours,