

111TH CONGRESS
1ST SESSION

S. 1937

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

OCTOBER 27, 2009

Mr. BROWNBACK 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. 5-YEAR CARRYBACK OF OPERATING LOSSES.**

4 (a) IN GENERAL.—Subparagraph (H) of section
5 172(b)(1) of the Internal Revenue Code of 1986 is amend-
6 ed to read as follows:

7 “(H) CARRYBACK FOR 2008 AND 2009 NET
8 OPERATING LOSSES.—

9 “(i) IN GENERAL.—In the case of an
10 applicable 2008 or 2009 net operating loss

1 with respect to which the taxpayer has
2 elected the application of this subpara-
3 graph—

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

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

13 “(III) subparagraph (F) shall not
14 apply.

15 “(ii) APPLICABLE 2008 OR 2009 NET
16 OPERATING LOSS.—For purposes of this
17 subparagraph, the term ‘applicable 2008
18 or 2009 net operating loss’ means—

19 “(I) the taxpayer’s net operating
20 loss for any taxable year ending in
21 2008 or 2009, or

22 “(II) if the taxpayer elects to
23 have this subclause apply in lieu of
24 subclause (I), the taxpayer’s net oper-

1 ating loss for any taxable year begin-
2 ning in 2008 or 2009.

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

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

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

22 “(I) the amount of such deduc-
23 tion attributable to the sum of
24 carrybacks of net operating losses
25 from taxable years ending during

1 2001, 2002, 2008, or 2009 and
2 carryovers of net operating losses to
3 such taxable years, or”.

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

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

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

14 “(B) APPLICABLE 2008 OR 2009 LOSS FROM
15 OPERATIONS.—For purposes of this paragraph,
16 the term ‘applicable 2008 or 2009 loss from op-
17 erations’ means—

18 “(i) the taxpayer’s loss from oper-
19 ations for any taxable year ending in 2008
20 or 2009, or

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

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

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

15 (d) ANTI-ABUSE RULES.—The Secretary of Treasury
16 or the Secretary’s designee shall prescribe such rules as
17 are necessary to prevent the abuse of the purposes of the
18 amendments made by this section, including anti-stuffing
19 rules, anti-churning rules (including rules relating to sale-
20 leasebacks), and rules similar to the rules under section
21 1091 of the Internal Revenue Code of 1986 relating to
22 losses from wash sales.

23 (e) EFFECTIVE DATES.—

24 (1) IN GENERAL.—Except as otherwise pro-
25 vided in this subsection, the amendments made by

1 this section shall apply to net operating losses aris-
2 ing in taxable years ending after December 31,
3 2007.

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

7 (3) LOSS FROM OPERATIONS OF LIFE INSUR-
8 ANCE COMPANIES.—The amendment made by sub-
9 section (d) shall apply to losses from operations aris-
10 ing in taxable years ending after December 31,
11 2007.

12 (4) TRANSITIONAL RULE.—In the case of a net
13 operating loss (or, in the case of a life insurance
14 company, a loss from operations) for a taxable year
15 ending before the date of the enactment of this
16 Act—

17 (A) any election made under section
18 172(b)(3) or 810(b)(3) of the Internal Revenue
19 Code of 1986 with respect to such loss may
20 (notwithstanding such section) be revoked be-
21 fore the applicable date,

22 (B) any election made under section
23 172(b)(1)(H) or 810(b)(4) of such Code with
24 respect to such loss shall (notwithstanding such

1 section) be treated as timely made if made be-
2 fore the applicable date, and

3 (C) any application under section 6411(a)
4 of such Code with respect to such loss shall be
5 treated as timely filed if filed before the appli-
6 cable date.

7 For purposes of this paragraph, the term “applica-
8 ble date” means the date which is 60 days after the
9 date of the enactment of this Act.

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

12 (1) any taxpayer if—

13 (A) the Federal Government acquires, at
14 any time, an equity interest in the taxpayer
15 pursuant to the Emergency Economic Stabiliza-
16 tion Act of 2008, or

17 (B) the Federal Government acquires, at
18 any time, any warrant (or other right) to ac-
19 quire any equity interest with respect to the
20 taxpayer pursuant to such Act,

21 (2) the Federal National Mortgage Association
22 and the Federal Home Loan Mortgage Corporation,
23 and

24 (3) any taxpayer which at any time in 2008 or
25 2009 is a member of the same affiliated group (as

1 defined in section 1504 of the Internal Revenue
2 Code of 1986, determined without regard to sub-
3 section (b) thereof) as a taxpayer described in para-
4 graph (1) or (2).

5 (g) TRANSFERS TO THE GENERAL FUND.—From
6 time to time, the Secretary of the Treasury shall transfer
7 to the general fund of the Treasury an amount equal to
8 the reduction in revenues to the Treasury resulting from
9 the amendments made by subsections (a) through (f). Not-
10 withstanding section 5 of the American Recovery and Re-
11 investment Act of 2009 (Public Law 111–5), such
12 amounts shall be transferred from the amounts appro-
13 priated or made available and remaining unobligated
14 under such Act.

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