

# ***IRS Hot Topics***

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## *Certain AMT NOLs may be carried forward to offset AMTI by 100%*

Recently, many taxpayers have benefitted from an election pursuant to IRC § 172(b)(1)(H) to expand the carryback period of amounts attributable to net operating losses (NOLs) for tax years beginning in either 2008 or 2009. The election allowed taxpayers to carryback regular and alternative minimum tax (AMT) NOLs up to five years.<sup>1</sup>

Pursuant to the election, the expanded carryback suspended the 90-percent limitation<sup>2</sup> on the use of any AMT NOL deduction attributable to carrybacks of the applicable NOL for which an extended carryback period was elected. Because of the election, an AMT NOL not fully utilized after the expanded carryback remains exempt from the 90-percent limitation and may be carried forward to entirely

offset alternative minimum taxable income (AMTI) in future tax years.

As a result of the adjustments to the AMT NOL deduction computation in IRC § 56(d)(2), any amount of AMT NOL available for carryforward may offset AMTI prior to utilizing AMT NOL amounts attributable to tax years beginning in 2008 or 2009 for which a taxpayer made the § 172(b)(1)(H) election. This unusual ordering rule for AMT NOLs may allow a taxpayer to offset 100% of its AMTI for multiple tax years.

### ***Example:***

Pursuant to IRC § 172(b)(1)(H), ABC Corporation elected to expand the carryback period of its AMT NOL attributable to the 2009 tax year to offset AMTI in earlier years and



<sup>1</sup> Specifically, the Worker, Homeownership, and Business Assistance Act of 2009 amended §§ 172(b)(1)(H) and 810(b) to provide a three-, four-, or five-year carryback period for NOLs from one tax year ending after December 31, 2007, and beginning before January 1, 2010.

<sup>2</sup> IRC § 56(d)(1)(A).

suspend the 90-percent limitation to fully offset AMTI. ABC Corporation was unable to fully utilize the AMT NOL in the carryback period, and as a result, has an AMT NOL attributable to 2009 in the amount of \$1,000,000 to carryforward.

ABC Corporation also has AMT NOL carryforwards attributable to tax years 2007 and 2008 in the amount of \$400,000 and \$700,000, respectively.

In 2010, ABC Corporation generated a loss and, as a result, has an AMT NOL of \$2,000,000 that can be carried forward.

In 2011, ABC Corporation has AMTI in the amount of \$1,500,000. Under the ordering rules set forth in § 56(d)(2), ABC Corporation may offset its entire 2011 AMTI through the utilization of AMT NOL carryforward amounts from its prior loss years in the following order: 2007, 2008, 2010, and finally 2009.

<b>2011 AMTI</b>	<b>\$1,500,000</b>
2007 AMT NOL Carryforward Applied (No 90% limitation)	(\$400,000)
2008 AMT NOL Carryforward Applied (No 90% limitation)	(\$ <u>700,000</u> )
<b>Remaining 2011 AMTI</b>	<b>\$400,000</b>
2010 AMT NOL Carryforward Applied <i>Utilized up to 90% of 2011 AMTI</i>	(\$250,000)
2009 AMT NOL Carryforward Applied <i>Utilized to offset remaining 10% of 2011 AMTI</i>	(\$ <u>150,000</u> )
<b>2011 AMTI</b>	<b>\$ <u>0</u></b>
2010 Remaining AMT NOL to Carryforward	\$ <u>1,750,000</u>
2009 Remaining AMT NOL to Carryforward <i>Available to offset AMTI in future tax years using similar calculation.</i>	\$ <u>850,000</u>

Under the ordering rules set forth in § 56(d)(2), ABC Corporation is required to utilize any available AMT NOL carryforwards to offset up to 90-percent of AMTI, regardless of the year in which the loss(es) arose, before applying the AMT NOL subject to the § 172(b)(1)(H) election. This unusual ordering rule may allow some taxpayers to preserve the AMT NOL subject to the § 172(b)(1)(H) election for utilization in future years.

The above calculation and unusual ordering rules for AMT NOLs subject

to the IRC § 172(b)(1)(h) election may yield significant benefits for our clients that were not previously anticipated. In addition, some taxpayers may have felt that AMTI benefits did not justify making the special carryback election. That benefit/effort equation may be shifted given this calculation clarification. In that event, for consolidated corporate groups, it may still be possible to make the carryback election, and therefore obtain the AMTI benefits, pursuant to the relief provisions provided by Treas. Reg. § 301.9100-3.

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*To discuss strategies on how to leverage AMT NOL not fully absorbed in expanded carryback years, contact:*

*Jennifer Kennedy (202) 414-1543 [jennifer.kennedy@us.pwc.com](mailto:jennifer.kennedy@us.pwc.com)*

*Janice Flood (312) 298-2543 [janice.m.flood@us.pwc.com](mailto:janice.m.flood@us.pwc.com)*

*Devin W. Blackburn (312) 298-2521 [devin.w.blackburn@us.pwc.com](mailto:devin.w.blackburn@us.pwc.com)*

*To discuss potential 9100 relief, contact:*

*Jennifer Breen (202) 312-7584 [jennifer.e.breen@us.pwc.com](mailto:jennifer.e.breen@us.pwc.com)*

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