



PINNACLE LAW GROUP LLP

# PINNACLE NEWS

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## **NOLs Carried Back to 2003: There's Still Time!**

by *David Herzog, Associate*

In my [April 15 2009 tax newsletter](#), I told you that you had two days left to elect a Net Operating Loss ("NOL") carryback for your business (your "NOL Business"), to take advantage of using 2008's losses, and writing them off against the NOL Business's better years, all the way back to 2003. Such a carryback could and would produce a refund under the right circumstances. You had until April 17 2009 to make that election. April 17 2009 has come and gone. That deadline applied if the NOL Business previously elected to waive the NOL carryback. Likely the NOL Business would have waived the NOL carryback election if 2006 and 2007 were also loss years. But wait!

### **What If You Didn't Waive The Election?**

If the NOL Business did not make that original waiver, it STILL has time to carryback 2008's loss to 2003 (or any years since then). The IRS has published guidance to tell you (and your tax preparers) how to make the election, and what the deadline is. The details of the election are in the publication, and are not difficult to follow. However, you need to know your deadlines.

### **How Long Do You Have?**

Generally speaking, if the NOL Business has already filed its return for tax year 2008, and elected to carryback the NOL for the previously allowed two years, the NOL Business has six months from the due date of the return (*excluding* extensions) to file the applicable paperwork to carryback passed the two years. Thus, for example, if your NOL Business is a corporation, and it's a calendar year taxpayer, then the return was due on March 15, 2009. The election to carryback its NOL is due September 15, 2009, (even though the paperwork you or your tax preparer is going to use customarily has a one-year deadline for filing).

If no previous election was made, the election must be made on or before the due date (*including* extensions of time) for the taxpayer's return.

So take a deep breath. Unless your business made an active election to waive its NOL carryback, you still have time to take advantage of this silver lining in what might have otherwise been a stormy year.

*This article is intended as a general guideline. The rules are complex, and changing continually. Please consult your tax advisor.*

*Please be advised that, based on current IRS rules and standards, the advice above was not intended or written to be used, and it cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer. If this message is provided in any manner to another taxpayer they cannot use the advice and should seek advice based on their own particular circumstances from an independent tax advisor.*

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