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Governor

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Director

Treatment of 2008 Federal Net Operating Losses Carried Back Based on the American Recovery and Reinvestment Act of 2009 [issued September 17, 2009]

1. **Has Arizona conformed to the provisions of the American Recovery and Reinvestment Act of 2009 which allows eligible small businesses to carry back 2008 net operating losses up to five years?**

No. The computation of an individual's Arizona taxable income starts with the individual's federal adjusted gross income computed under the internal revenue code. However, Arizona Revised Statutes (A.R.S.) § 43-105 provides the definition of "internal revenue code" that is to be used for any given taxable year.

Each year the Arizona legislature considers whether to amend A.R.S. § 43-105 to conform to changes made to the internal revenue code during the prior year. On April 6, 2009 the Governor signed Senate Bill 1185 which incorporated the federal changes made in 2008 into Arizona's definition of "internal revenue code." However, the adoption of federal changes made in 2009, including the American Recovery and Reinvestment Act of 2009, are not likely to be considered by the Arizona legislature until the spring of 2010. Therefore, Arizona does not currently have any authority to allow a carry back of net operating losses beyond the period that was allowed under the internal revenue code prior to the American Recovery and Reinvestment Act of 2009.

2. **I filed amended federal individual income tax returns to carry back my 2008 net operating loss for an extended period (5, 4, or 3 years) pursuant to the American Recovery and Reinvestment Act of 2009. Until the Arizona legislature decides whether or not to incorporate into Arizona's definition of internal revenue code the changes made by the American Recovery and Reinvestment Act of 2009, what is the simplest way to handle amending my Arizona individual income tax returns?**

The easiest way to handle the Arizona amendments is to hold off filing any Arizona amended returns for the carry back of the net operating loss until the Arizona legislature decides whether or not to adopt the changes in the American Recovery and Reinvestment Act of 2009 (likely sometime in the spring of 2010). By waiting you avoid having to redo your amended returns, if the legislature decides on a method different from the method you would have used in your returns.

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3. **What choice do I have if I do not want to wait until the Arizona legislature decides whether or not to adopt the changes in the American Recovery and Reinvestment Act of 2009?**

Amended Arizona individual income tax returns could be prepared based on the internal revenue code as it existed at the end of 2008. In most cases, unless you elected otherwise, the federal carry back period prior to the American Recovery and Reinvestment Act of 2009 was 2 years (3 years for certain theft losses). Therefore, if you would have only been allowed a 2 year carry back (3 years for certain theft losses), you would file amended Arizona returns as if you had only carried the federal net operating loss back 2 years (3 years for certain theft losses). However, if you file in this manner, you will need to file new amended returns if the legislature decides to either adopt the provisions of the American Recovery and Reinvestment Act of 2009 or to adopt some other method of handling the losses.

4. **I have already prepared amended Arizona individual income tax returns based on the extended carry back (5, 4 or 3 years) provisions under the American Recovery and Reinvestment Act of 2009. What will happen if I file the amended returns without waiting for Arizona's legislature to adopt the provisions of the act?**

Some of the amended returns filed for the carry back period will be denied. You will need to file an appeal (protest) of the denial within ninety days from the date the notice of denial was mailed. You may request that the appeal be held in abeyance until the legislature decides whether or not to adopt the changes in the American Recovery and Reinvestment Act of 2009. You may use the form provided at the end of this document for your appeal. Send the appeal (protest) to the following address:

Arizona Department of Revenue
Individual Income Tax Appeals Section
1600 West Monroe
Phoenix, AZ 85007

When the legislature decides whether to adopt the changes in the American Recovery and Reinvestment Act of 2009, you will be notified.

5. **I already filed amended returns as specified in number 4 but I missed the deadline for filing an appeal. Am I precluded from receiving the refunds for the years that were denied even if the legislature decides to conform?**

Not necessarily. If the years that were denied are within the statutes of limitations, you will need to file new amended returns.

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A.R.S. § 42-1106 provides that the period for filing a claim for refund is the same as the period for which the department may make an assessment under A.R.S. § 42-1104. In general, refund requests must be filed within four years of the date the original return was required to be filed or four years from the date the return was filed, whichever expires later. However, the following exceptions may apply:

- A. A.R.S. § 42-1104(6) provides that if you filed an amended federal return and within 90 days filed an Arizona amended return, the period for filing an assessment or claiming a refund with regards to the changes in the federal return will be open for six months from when the amended return was filed with the department unless the general limitation period (mentioned above) is longer.
- B. A.R.S. § 42-1104(5) provides that if you filed an amended federal return and did not file an Arizona amended return within 90 days, the period for filing an assessment or claiming a refund with regards to the changes in the federal return will be open for four years from when the federal amended return was filed unless the general limitation period (mentioned above) is longer.

6. **What about corporations?**

Arizona does not allow net operating loss carry backs for corporations. Arizona requires corporations to add back all net operating losses taken on their federal returns. The corporations are then allowed a subtraction for Arizona basis net operating losses which are carried forward 5 years

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INCOME TAX AUDIT SECTION

NOTICE OF PROTEST

NAME _____ SSN: _____

SPOUSE _____ SSN: _____

ADDRESS _____

CITY _____ ST _____ ZIP _____

Your daytime telephone number: _____

ISSUE

Amount of tax, penalty and interest in dispute: _____

Year(s) for which assessment is protested: _____

Please explain the facts supporting your position (if additional sheets are necessary, please attach them to this document).

To indicate how you want to proceed, please check the appropriate box below.

() I request an informal hearing with a representative from the Income Tax Audit Section. I will provide additional documents or information to support my claim.

() I wish to bypass the informal conference, and request that the Hearing Office schedule a formal hearing.

Taxpayer's Signature Date

Spouse's Signature Date