

111TH CONGRESS  
1ST SESSION

# S. 1835

To amend the Internal Revenue Code of 1986 to allow a 5-year carryback of operating losses, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 22, 2009

Mr. BROWNBACK introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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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