

111TH CONGRESS  
1ST SESSION

# S. 293

To provide for a 5-year carryback of certain net operating losses and to suspend the 90 percent alternative minimum tax limit on certain net operating losses.

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IN THE SENATE OF THE UNITED STATES

JANUARY 21, 2009

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

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## A BILL

To provide for a 5-year carryback of certain net operating losses and to suspend the 90 percent alternative minimum tax limit on certain net operating losses.

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. CARRYBACK OF CERTAIN NET OPERATING**  
4 **LOSSES ALLOWED FOR 5 YEARS; TEMPORARY**  
5 **SUSPENSION OF 90 PERCENT AMT LIMIT.**

6 (a) IN GENERAL.—Subparagraph (H) of section  
7 172(b)(1) of the Internal Revenue Code of 1986 is amend-  
8 ed to read as follows:

1           “(H) 5-YEAR CARRYBACK OF CERTAIN  
2           LOSSES.—

3           “(i) TAXABLE YEARS ENDING DURING  
4           2001 AND 2002.—In the case of a net oper-  
5           ating loss for any taxable year ending dur-  
6           ing 2001 or 2002, subparagraph (A)(i)  
7           shall be applied by substituting ‘5’ for ‘2’  
8           and subparagraph (F) shall not apply.

9           “(ii) TAXABLE YEARS BEGINNING OR  
10           ENDING DURING 2007, 2008, AND 2009.—In  
11           the case of a net operating loss for any  
12           taxable year beginning or ending during  
13           2007, 2008, or 2009—

14                   “(I) subparagraph (A)(i) shall be  
15                   applied by substituting ‘5’ for ‘2’,

16                   “(II) subparagraph (E)(ii) shall  
17                   be applied by substituting ‘4’ for ‘2’,  
18                   and

19                   “(III) subparagraph (F) shall not  
20                   apply.”.

21           (b) TEMPORARY SUSPENSION OF 90 PERCENT LIMIT  
22           ON CERTAIN NOL CARRYBACKS AND CARRYOVERS.—

23           (1) IN GENERAL.—Section 56(d) of the Internal  
24           Revenue Code of 1986 is amended by adding at the  
25           end the following new paragraph:

1           “(3) ADDITIONAL ADJUSTMENTS.—For pur-  
2           poses of paragraph (1)(A), the amount described in  
3           clause (I) of paragraph (1)(A)(ii) shall be increased  
4           by the amount of the net operating loss deduction  
5           allowable for the taxable year under section 172 at-  
6           tributable to the sum of—

7                   “(A) carrybacks of net operating losses  
8                   from taxable years beginning or ending during  
9                   2007, 2008, and 2009, and

10                   “(B) carryovers of net operating losses to  
11                   taxable years beginning or ending during 2007,  
12                   2008, or 2009.”.

13           (2) CONFORMING AMENDMENT.—Subclause (I)  
14           of section 56(d)(1)(A)(i) of such Code is amended by  
15           inserting “amount of such” before “deduction de-  
16           scribed in clause (ii)(I)”.

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

25           (d) EFFECTIVE DATES.—

1 (1) SUBSECTION (a).—

2 (A) IN GENERAL.—Except as provided in  
3 subparagraph (B), the amendments made by  
4 subsection (a) shall apply to net operating  
5 losses arising in taxable years beginning or end-  
6 ing in 2007, 2008, or 2009.

7 (B) ELECTION.—In the case of a net oper-  
8 ating loss for a taxable year beginning or end-  
9 ing during 2007 or 2008—

10 (i) any election made under section  
11 172(b)(3) of the Internal Revenue Code of  
12 1986 may (notwithstanding such section)  
13 be revoked before November 1, 2009, and

14 (ii) any election made under section  
15 172(j) of such Code shall (notwithstanding  
16 such section) be treated as timely made if  
17 made before November 1, 2009.

18 (2) SUBSECTION (b).—The amendments made  
19 by subsection (b) shall apply to taxable years ending  
20 after December 31, 2006.

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