

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2278

To permit certain air carriers to immediately utilize accumulated net operating losses.

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IN THE HOUSE OF REPRESENTATIVES

MAY 26, 1993

Mr. OBERSTAR (for himself, Mr. RAMSTAD, Mr. CARR, Mr. LEVIN, and Mr. KYL) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To permit certain air carriers to immediately utilize accumulated 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. SPECIAL PROVISION RELATING TO AIR CAR-**  
4 **RIERS WITH NET OPERATING LOSSES.**

5 (a) GENERAL RULE.—Notwithstanding any limita-  
6 tion on the use of net operating loss carryforwards under  
7 section 382 of the Internal Revenue Code of 1986, if a  
8 qualified air carrier makes an election under this section  
9 for its 1st taxable year beginning after December 31,  
10 1991, with respect to any portion of its existing NOL

1 carryforwards, the amount determined under subsection  
2 (b) shall be treated as a payment against the tax imposed  
3 by chapter 1 of the Internal Revenue Code of 1986 for  
4 such 1st taxable year made by such carrier on the later  
5 of—

6 (1) the date its return under such chapter 1 for  
7 such 1st taxable year is filed, or

8 (2) the date such election is made.

9 (b) AMOUNT.—For purposes of subsection (a), the  
10 amount determined under this subsection shall be the less-  
11 er of—

12 (1) 34 percent of the portion of the qualified air  
13 carrier's existing NOL carryforwards to which the  
14 election under subsection (a) applies, or

15 (2) the aggregate transportation excise taxes  
16 deposited by such carrier during calendar year 1992.

17 (c) DATE FOR PAYMENT BY SECRETARY.—Any over-  
18 payment of tax by reason of this section shall be paid by  
19 the Secretary of the Treasury not later than the 30th day  
20 after the date the payment referred to in subsection (a)  
21 is treated as made.

22 (d) CARRIER MAKING ELECTION MAY NOT USE  
23 SAME AMOUNTS UNDER SECTION 172.—

24 (1) IN GENERAL.—Except as provided in para-  
25 graph (2), in the case of a qualified air carrier which

1 makes an election under subsection (a), the portion  
2 of such carrier's existing NOL carryforwards to  
3 which such election applies shall not be taken into  
4 account under section 172 of the Internal Revenue  
5 Code of 1986 for any taxable year beginning after  
6 December 31, 1992. Such election shall be treated  
7 as made with respect to net operating loss  
8 carryovers in the order in which they arose, begin-  
9 ning with the earliest loss year.

10 (2) MINIMUM TAX NOT AFFECTED.—Section  
11 53, and part VI of subchapter A of chapter 1, of the  
12 Internal Revenue Code of 1986 shall be applied as  
13 if this section had never been enacted.

14 (e) DEFINITIONS.—For purposes of this section—

15 (1) QUALIFIED AIR CARRIER.—The term  
16 “qualified air carrier” means an air carrier that is  
17 certificated under section 401 of the Federal Avia-  
18 tion Act, that is operating in the commercial car-  
19 riage of passengers or freight for hire as of January  
20 1, 1993, and that is required by law to collect and  
21 deposit transportation excise taxes.

22 (2) EXISTING NOL CARRYFORWARDS.—The  
23 term “existing NOL carryforwards” means the ag-  
24 gregate net operating loss carryovers under section  
25 172 of the Internal Revenue Code of 1986—

1 (A) available for the 1st taxable year of  
2 the qualified air carrier beginning after Decem-  
3 ber 31, 1992, and

4 (B) from taxable years preceding such 1st  
5 taxable year.

6 If the qualified air carrier is a member of an affili-  
7 ated group (within the meaning of section 1502 of  
8 the Internal Revenue Code of 1986) filing consoli-  
9 dated tax returns, the existing NOL carryovers shall  
10 be the consolidated net operating loss carryovers  
11 under such section 172 of such affiliated group de-  
12 termined as of the beginning of such 1st taxable  
13 year.

14 (3) TRANSPORTATION EXCISE TAXES.—The  
15 term “transportation excise taxes” means the aggre-  
16 gate of—

17 (A) the taxes imposed by section 4261 of  
18 the Internal Revenue Code of 1986, and

19 (B) the taxes imposed by section 4271 of  
20 the Internal Revenue Code of 1986.

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