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**THE WORKER, HOME OWNERSHIP, AND
BUSINESS ASSISTANCE ACT OF 2009**

Business Net Operating Losses

The Worker, Homeownership, and Business Assistance Act of 2009 (the Act), which was signed into law on November 6, 2009, makes it easier for most businesses to recover taxes paid in prior years. It does so by allowing certain net operating losses (NOLs) to be carried back to earlier, more profitable years. In these tough economic times, that's good news for businesses who have suffered losses recently after better years when high taxes were paid.

Background on NOLs. An NOL is the excess of business deductions over gross income in a particular tax year. The loss can be deducted in another tax year in which gross income exceeds business deductions. In general, NOLs may be carried back two years and forward 20 years. The NOL is first carried to the earliest tax year for which it is allowable as a carryback or a carryover, and is then carried to the next earliest tax year. A business may forego the entire carryback period and instead carry the NOL forward.

New law allows longer carryback period for most businesses. The Act generally permits any business to increase the carryback period for an applicable NOL to 3, 4, or 5 years from 2 years. An applicable NOL is a business's NOL for 2008 and 2009. Generally, an election may be made for only one tax year.

The amount of the NOL that can be carried back to the 5th tax year before the loss year can't be more than 50% of a business's taxable income for that 5th preceding tax year. The amount of the NOL otherwise carried to tax years after the 5th preceding tax year is adjusted to take into account that the NOL could offset only 50% of the taxable income for that 5th preceding tax year.

For example, assume ACE Corp has an NOL of \$5 million for its tax year ending August 31, 2009. In its tax year ending August 31, 2004, it had taxable income of \$6 million. If ACE elects to carry back its NOL to the 2004 tax year, then

it may apply only \$3 million of that loss against its taxable income for 2004. In determining the amount of the NOL that ACE can carry over to years ending after August 31, 2004, the NOL is reduced by only the \$3 million that was offset for the 2004 tax year.

NOL transition rules to watch out for. The Act's transition rules allow a business to revoke any election to waive the carryback period for an applicable NOL or an applicable loss from operations for a tax year ending before November 6, 2009. The election can be revoked by the extended due date for filing the tax return for the business's last tax year beginning in 2009. Similarly, any application for a tentative carryback adjustment to gain an immediate refund for such a loss is treated as timely filed if filed by the extended due date for filing the tax return for the business's last tax year beginning in 2009. Normally, an election to waive the carryback period cannot be revoked. The transition rules afford an opportunity to undo a waiver for an applicable NOL, or an applicable loss from operations for a tax year ending before November 6, 2009.

Federal Unemployment Tax

Scheduled drop in FUTA tax rate is deferred. Before the Act, the Federal Unemployment Tax (FUTA) rate was scheduled to drop from 6.2% to 6% after 2009. Under the Act, the 6.2% FUTA tax rate continues to apply through June of 2011, and afterwards a 6.0% rate will apply.

Penalty for Late Filing Partnership and S Corporation Return

Pass-through penalties increased. The base amount on which a penalty is computed for a failure to file either a partnership or S corporation return for a tax year beginning after December 31, 2009, is increased to \$195 per partner or shareholder.

Homebuyer Credit

The new law makes four important changes to the homebuyer credit:

- (1) *Credit period extended.* The homebuyer credit is extended to apply to a principal residence bought before May 1, 2010. The homebuyer credit also applies to a

principal residence bought before July 1, 2010 by a person who enters into a written binding contract before May 1, 2010, to close on the purchase of the principal residence before July 1, 2010.

(2) *The homebuyer credit may be claimed by existing homeowners who are "long-time residents."* For purchases after November 6, 2009, you can claim the homebuyer credit if you (and, if married, your spouse) maintained the same principal residence for any 5-consecutive year period during the 8-years ending on the date that you buy the subsequent principal residence.

For example, if you and your spouse are empty nesters who have lived in your home for the past eight years, you are potentially eligible for the credit if you "move down" and buy a smaller home. There is no requirement for your current home to be sold in order to qualify for a homebuyer credit on the replacement principal residence. Thus, the replacement residence can be bought to beat the new deadlines (explained above) before the old home is sold. For that matter, you can hold on to your prior principal residence in the hope of achieving a better selling price later on.

The maximum allowable homebuyer credit for qualifying existing homeowners is \$6,500 (\$3,250 for a married individual filing separately), or 10% of the purchase price of the subsequent principal residence, whichever is less.

(3) *The homebuyer credit is available to higher income taxpayers.* For purchases after November 6, 2009, the homebuyer credit phases out over much higher income levels, making the credit available to a much bigger pool of buyers. For individuals, the phase-out range is between \$125,000 and \$145,000, and for those filing a joint return, it's between \$225,000 and \$245,000.

(4) *There's a new home-price limit for the homebuyer credit.* For purchases after November 6, 2009, the homebuyer credit cannot be claimed for a home if its purchase price exceeds \$800,000. It's important to note that there is no phase-out mechanism. A purchase price that exceeds the \$800,000 threshold by even a single dollar will cause the loss of the entire credit.

The new purchase price limitation applies whether you are buying a first-time principal residence or are a qualifying

existing homeowner purchasing a replacement principal residence.

Other homebuyer credit changes. The new law includes a number of new anti-abuse rules to prevent taxpayers from claiming the homebuyer credit even though they don't qualify for it. The most important of these are as follows:

- Beginning with the 2010 tax return, the homebuyer credit can't be claimed unless the taxpayer attaches to the return a properly executed copy of the settlement statement used to complete the purchase of the qualifying residence.
- For purchases after November 6, 2009, the homebuyer credit can't be claimed unless the buyer has attained 18 years of age as of the date of purchase (a married person is treated as meeting the age requirement if he or his spouse meets the age requirement).
- For purchases after November 6, 2009, the homebuyer credit can't be claimed by a buyer if he can be claimed as a dependent by another taxpayer for the tax year of purchase. It also can't be claimed for a home bought from a person related to the buyer or the spouse of the buyer, if married.
- Beginning with 2009 returns, the new law makes it easier for the IRS to go after questionable homebuyer credit claims without initiating a full-scale audit.

What hasn't changed? The tax law still gives you the extraordinary opportunity to get your hands on homebuyer credit cash without waiting to file your tax return for the year in which you buy the qualifying principal residence. Thus, if you buy a qualifying principal residence in 2009 you can treat the purchase as having taken place this past December 31, file an amended return for 2008 claiming the credit for that year, and get your homebuyer credit cash relatively quickly via a tax refund. Similarly, you can treat a qualifying principal residence bought in 2010 (before the new deadlines) as having taken place on December 31, 2009, and file an original or amended return for 2009 claiming the credit for that year.

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Referrals are greatly appreciated.



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