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On November 6, 2009, President Obama signed into law the "Worker, Homeownership, and Business Assistance Act of 2009" (the 2009 Assistance Act). In addition to providing an extension of unemployment benefits for the long-time jobless, the 2009 Assistance Act includes tax changes for individuals, namely changes extending and generally liberalizing the first-time homebuyer tax credit.

Homebuyer Credit Extended and Liberalized

You may remember that the stimulus package enacted earlier this year included an up-to-\$8,000 tax credit for first-time homebuyers. This credit was scheduled to expire on November 30, 2009. The new law extends and expands the first-time homebuyer credit by:

- ***Extending deadlines for purchasing and closing on a home.*** Under the 2009 Assistance Act, an eligible taxpayer must buy, or enter into a binding contract to buy, a principal residence on or before April 30, 2010 and close on the home by June 30, 2010. For qualifying purchases in 2010, taxpayers have the option of claiming the credit on either their 2009 or 2010 return.
- ***Authorizing the credit for long-time homeowners buying a replacement principal residence.*** For the first time, long-time homeowners who buy a replacement principal residence may also claim a homebuyer credit of up to \$6,500 (up to \$3,250 for a married individual filing separately). They must have lived in the same principal residence for any five-consecutive-year period during the eight-year period that ended on the date the replacement home is purchased. One key point is that the replacement home must be a principal residence—vacation homes aren't eligible.
- ***Raising the income limitations for homeowners claiming the credit.*** People with higher incomes can now qualify for the credit. The new law raises the income limits for homes purchased after November 6, 2009. The credit phases out for individual taxpayers with modified adjusted gross income (MAGI) between \$125,000 and \$145,000 or between \$225,000 and \$245,000 for joint filers. The pre-2009 Assistance Act MAGI phase-outs of \$75,000 to \$95,000 or \$150,000 to \$170,000 for joint filers still apply to purchases on or before November 6, 2009.
- ***Providing additional homebuyer liberalizations for service members.*** The 2009 Assistance Act ensures that recapture of the credit will not apply to service members (including members of the U.S. uniformed services, Foreign Service, and intelligence community) who dispose of a principal residence or cease using a home as a principal residence after December 1, 2008, in connection with Government orders received by the individual or the individual's spouse for qualified official extended duty service. Additionally, in the case of service members serving outside the United States for at least 90 days during the period beginning after December 31, 2008, and ending before May 1, 2010, the credit is extended for one year. This means that the purchase must occur before May 1, 2011 (or July 1, 2011, for taxpayers with binding contracts). This change will allow service members stationed overseas to take advantage of the credit when they return.

The 2009 Assistance Act also adds new restrictions on the
first-time homebuyer tax credit by:

- Imposing an \$800,000 purchase-price limitation. For purchases after November 6, 2009, the credit cannot be claimed for buying a residence for more than \$800,000. There is no phaseout mechanism. A purchase price that exceeds the \$800,000 threshold by even a single dollar will cause the loss of the entire credit.
- Requiring a minimum age of 18 to claim the credit.
- Prohibiting dependents from claiming the credit.
- Denying the credit for purchases from parties related to the taxpayer's spouse.
- Requiring taxpayers to attach a signed copy of their settlement statement to their return.

Giving IRS the authority to automatically assess tax and begin collection proceedings in cases where they suspect fraud (thus shortening the time it takes for IRS to collect additional tax through the normal deficiency procedures). This IRS authority (called "math error authority") is retroactive to April 9, 2008, thus giving IRS the ability to quickly address any erroneous refund claims that have been previously filed.

In addition to providing an extension of unemployment benefits for the longtime jobless, the 2009 Assistance Act includes tax changes for businesses, including liberalized rules for net operating losses and toughened penalties for partnerships and S corporations.

Five-Year Carryback of NOLs Extended to Include 2009 NOLs and to
Apply to Most Businesses

Background. A net operating loss (NOL) is the excess of business deductions (computed with certain modifications) over gross income in a particular tax year. The loss can be deducted, through an NOL carryback or carryover, 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 back to the earliest tax year for which it's allowable as a carryback or a carryover, and is then carried to the next earliest tax year. A taxpayer may elect to forego the entire carryback period for an NOL and instead carry it forward.

Stimulus legislation passed earlier this year allowed eligible small businesses (with average annual gross receipts of \$15 million or less for 2006-2008) to elect to carry back NOLs from 2008 for 3, 4 or 5 years rather than the standard 2 years. A taxpayer with a fiscal year (i.e., other than a calendar year) was entitled to choose the extended carryback period for the tax year that began or ended in 2008.

New law. The 2009 Assistance Act provides an election for most taxpayers (not just small businesses) to increase the carryback period for an applicable NOL to 3, 4, or 5 years from 2 years. An applicable NOL means the taxpayer's NOL for any tax year ending after Dec. 31, 2007, and beginning before Jan. 1, 2010. A taxpayer with a fiscal year may effectively choose from among three taxable years, i.e., any taxable year beginning or ending in 2008 or 2009, as the loss year eligible for the extended carryback period.

Taxpayers electing a 5-year carryback can use the NOL to offset up to 50% of taxable income for the 5th tax year preceding the loss year, and 100% of taxable income in the

remaining 4 carryback years. 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 the 5th year. That is to say, unlike previous versions of this proposal which were not included in the final legislation, there is no "haircut" for the amount by which the NOL is limited in the 5th preceding year.

In addition, the Act suspends the 90% limitation on the use of an NOL deduction for alternative minimum tax purposes, for alternative tax NOLs attributable to carrybacks for which the extended carryback is elected.

Generally, an extended carryback period election may be made for only one tax year. However, small businesses that have already elected an extended carryback for a 2008 NOL may also elect to extend the carryback for NOLs from 2009.

A similar extended carryback period is available for the loss from operations of a life insurance company.

The election of an extended carryback period must be made by the due date (with extensions) for filing the tax return for the taxpayer's last tax year beginning in 2009. Once made, the election is irrevocable. If the taxpayer had previously elected to forego the carryback of an NOL from a tax year ending before Nov. 6, 2009, the taxpayer may revoke that election before the due date (including extensions) for filing the taxpayer's 2009 return.

The right to elect an extended carryback period does not apply to any taxpayer that has received or will receive financial assistance under the Emergency Economic Stabilization Act of 2008 in the form of an equity infusion or acquisition of a warrant (or other right).

Increased Penalty for Failure to File Partnership or S Corporation Returns

Under pre-Act law, the penalty for the failure to file a partnership or S corporation return is \$89 per partner or shareholder for each month or portion of a month the return is not filed, up to a maximum of 12 months. The Act increases the penalty to \$195 per month per shareholder or partner, effective for returns for tax years beginning after December 31, 2009.

Additional FUTA Surtax Is Extended Through June of 2011

The Act provides that the 6.2% FUTA tax rate continues to apply through June of 2011, and the 6.0% rate applies for the remainder of calendar year 2011 and for later years. That is, the temporary 0.2% surtax is extended for 11/2 years through June 30 of 2011.