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**ACCOUNTANCY CORPORATION**

*Certified Public Accountants & Consultants*

EXCEEDING EXPECTATIONS SINCE 1926

# SPECIAL EDITION TAX ALERT

## Worker, Homeownership, and Business Assistance Act of 2009 (The Act)

### **Businesses:**

#### **Five-Year Carryback of NOLs Extended to Include 2009 NOLs**

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 twenty years. The benefit to a business is that after they carry back the loss they can receive a federal tax refund.

The NOL is first carried back 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 taxpayer may elect to forego the entire carryback period for an NOL and instead carry it forward. For purposes of the alternative minimum tax (AMT), a taxpayer's NOL deduction cannot reduce the taxpayer's alternative minimum taxable income (AMTI) by more than 90% of the AMTI.

**New Law:** The Act provides an election for most taxpayers (not just small businesses) to increase the carryback period from 2 years to up to 5 years. An applicable NOL means the taxpayer's NOL for any tax year ends after December 31, 2007, and begins before January 1, 2010.

The amount of the NOL that can be carried back to the 5th tax year before the loss year **may not be more than 50%** of the taxpayer's taxable income for that 5th preceding tax year before the NOL carryback.

#### **Suspension of 90% Limitation on NOL for AMT purposes**

For tax years ending after 2002, the Act suspends the 90% limitation on the use of any alternative tax NOL deduction attributable to the carryback of an applicable NOL for which the extended carryback period is elected.

#### **Additional FUTA Surtax Is Extended Through June of 2011**

Under pre-Act law, the Federal Unemployment Tax Act (FUTA) tax was imposed at a rate of 6.2% through 2009 (the total of the permanent 6% tax rate, and a temporary 0.2% surtax rate,) and 6.0% for calendar year 2010 and later years.

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**New Law:** The Act extends the temporary 0.2% surtax portion of the 6.2% FUTA tax rate for 1-1/2 years through June 30 of 2011. The 6.0% permanent tax rate portion applies for the remainder of the calendar year 2011 and for later years.

### **Estimated Tax Payments for Large Corporations Increased For 2014**

In general, corporations must make quarterly estimated tax payments of their current year income tax liabilities. For a corporation whose tax year is a calendar year, these estimated tax payments must be made by April 15th, June 15th, September 15th, and December 15th. Fiscal year taxpayers make quarterly payments on “corresponding” dates (i.e., the due dates are 3-1/2, 5-1/2, 8-1/2, and 11-1/2 months, respectively, after the fiscal year beginning date).

The “Corporate Estimated Tax Shift Act of 2009” provides that for large corporations (those with assets of not less than \$1 billion as of the end of the preceding tax year), the amount of the required estimated tax payment that is otherwise due in July, August, or September 2014 will be 100.25% of the amount otherwise due. Then the amount of the next required installment is appropriately reduced to reflect the amount of the increase to 100.25% in the earlier installment.

**New Law:** The Act provides that for large corporations (as defined above), the required payment of estimated tax otherwise due in July, August, or September of 2014 under the “Corporate Estimated Tax Shift Act of 2009” will be increased by 33% to 133.3%. The amount of the next required installment will be appropriately reduced to reflect the amount of the increase in the earlier installment.

### **Increased Penalty for Failure to File Partnership or S Corporation Returns**

Penalties apply for failure to file a partnership or S corporation return. The penalty is \$89 per partner or shareholder for each month (or fraction of a month) that the failure continues, up to a maximum of 12 months for returns required to be filed after December 31, 2008.

**New Law:** Under the Act, the base amount on which a penalty is computed for a failure with respect to filing either a partnership or S corporation return for a tax year beginning after December 31, 2009 is increased to \$195 per partner or shareholder.

### **Individuals:**

#### **Homebuyer Credit Extended and Liberalized**

A refundable tax credit is available for qualifying first-time home purchases after April 8, 2008, and before December 1, 2009. For homes bought in 2009, the maximum first time homebuyer tax credit (FTHTC) is equal to the lesser of \$8,000 (\$4,000 for a married individual filing separately) or 10% of the principal residence's purchase price (for purchases before 2009, the dollar limits are \$7,500 or \$3,750 for married filing separately). The FTHTC phases out for individual taxpayers with modified adjusted gross income (AGI) between \$75,000 and \$95,000 (\$150,000 and \$170,000 for joint filers) for the year of purchase.

A first-time homebuyer is an individual (and spouse, if married) who had no ownership interest in a principal residence in the United States during the 3-year period before the purchase of the home. A taxpayer who buys a qualifying residence after December 31, 2008, and before December 1, 2009, may elect to be treated as having bought the home on December 31, 2008, so that he may claim the credit on his 2008 income tax return. In addition, recapture rules apply for homes bought on or before December 31, 2008.

**New Law:** The Act extends the FTHTC and liberalizes it by making it available to

- (1) higher-income taxpayers, and
- (2) to existing homeowners who are qualifying “long-time residents” and who buy another principal residence. However, for the first time, there will be a dollar cap on residences qualifying for the FTHTC.

***FTHTC extended.*** Under the Act, the FTHTC is extended to apply to a principal residence purchased by the taxpayer before May 1, 2010. The FTHTC also applies to the purchase of a principal residence before July 1, 2010 by any taxpayer who enters into a written binding contract before May 1, 2010 to close on the purchase of a principal residence before July 1, 2010.

***FTHTC available to higher-income taxpayers.*** For purchases after the enactment date, the FTHTC phases out for individual taxpayers with modified adjusted gross income (AGI) between \$125,000 and \$145,000 (\$225,000 and \$245,000 for joint filers) for the year of purchase.

***FTHTC available for existing homebuyers who are “long-time residents.”*** For purchases after the enactment date, any individual (and, if married, the individual's spouse) who has maintained the same principal residence for any 5-consecutive-year period during the 8-year period ending on the date of the purchase of a subsequent principal residence is treated for FTHTC purposes as a first-time homebuyer of that subsequent principal residence. The maximum allowable credit for such taxpayers is \$6,500 (\$3,250 for a married individual filing separately).

***New limitation on home price for FTHTC.*** For purchases after the enactment date, the FTHTC cannot be claimed for buying a residence if its purchase price exceeds \$800,000.

The Act includes the following “housekeeping” changes to conform the general FTHTC rules to the above changes:

- A taxpayer may elect to treat a qualifying home purchase after 2008 as made on December 31 of the calendar year preceding the purchase for purposes of claiming the credit on the prior year's tax return.

### **New Anti-Abuse Provisions for Homebuyer Credit**

The Act makes the following changes to help prevent abuse of the FTHTC.

- For purchases after the enactment date, the FTHTC cannot be claimed unless the taxpayer has attained 18 years of age as of the date of purchase. Married taxpayers are treated as meeting the age requirement as long as one of them is 18 years of age.
- For purchases after the enactment date, the FTHTC cannot be claimed if the taxpayer can be claimed as a dependent by another taxpayer for the tax year of purchase.
- For returns for tax years ending after the enactment date, the FTHTC is not allowed unless the taxpayer attaches to the relevant tax return a properly executed copy of the settlement statement used to complete the purchase.
- For purchases after the enactment date, the definition of a qualifying purchase for FTHTC purposes is amended to exclude property acquired from a person related to the person acquiring the property or the spouse of the person acquiring the property, if married.
- For returns for tax years ending after April 8, 2008, the Act expands the definition of mathematical or clerical error for purposes of administration of the credit by the IRS so that the IRS may assess additional tax without issuance of a notice of deficiency as otherwise required in the case of:
  - an omission of any increase in tax required by the recapture provisions of the FTHTC;
  - information from the person issuing the taxpayer identification number (TIN) of the taxpayer that indicates that the taxpayer does not meet the age requirement of the credit;
  - information provided to the IRS on an income tax return for at least one of the two preceding tax years that is inconsistent with eligibility for such credit; or
  - failure to attach to the return a properly executed copy of the settlement statement used to complete the purchase.

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