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THE WORKER, HOMEOWNER, AND BUSINESS ASSISTANCE ACT OF 2009 - BUSINESS PROVISIONS By Victor Sy, CPA

President Obama signed the “Worker, Homeownership, and Business Assistance Act of 2009” into law on November 6, 2009. The Act increases penalties for partnerships and S corporations for failure to file tax returns and liberalizes rules for net operating losses (NOL).

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 was \$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 1½ years through June 30 of 2011. New law reduces the FICA portion from 6.2% to 4.2% for employees and self-employed for 2011 only.

Expansion of Magnetic Media Filing by Return Preparers. The Act mandates that IRS require tax return preparers who reasonably expect to file more than ten income tax returns for individuals, trusts, or estates to file the tax returns on magnetic media, effective for tax returns filed after December 31, 2010.

Corporate Estimated Tax Payments.

The Act provides that for large corporations, the required payment of estimated tax otherwise due in July, August, or September of 2014 will be **increased by 33%**. The amount of the next required installment will be appropriately reduced to reflect the amount of the increase in the earlier installment. This will have the effect of accelerating government revenue for the affected fiscal year.

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

Prior legislation 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.

The new 2009 Assistance Act provides an election for most taxpayers (not just small businesses) to **increase the carryback period** for an applicable NOL from 2 years to 3, 4, or 5 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.

The Act also 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.