2010 TAX PLANNING GUIDE UPDATE

The Worker, Homeownership, and Business Assistance Act of 2009 (P.L. 111-92) was signed into law on November 6, 2009, after the *2010 Tax Planning Guide* was published. The Act makes changes to the federal tax law that could affect your 2010 tax planning. Below you will find a summary of key provisions.

HOMEBUYER TAX CREDIT

Existing law provides a tax credit of up to $8,000 for the purchase of a "first" home before December 1, 2009. Individuals who had no ownership in a principal residence in the United States for three years before the purchase date qualify as first-time homebuyers. The credit phases out for taxpayers with modified adjusted gross income (AGI) between $75,000 and $95,000 ($150,000 and $170,000 for joint filers).

The Act extends this tax credit and revises it. Under the Act, the credit applies to purchases of a principal residence before May 1, 2010. Taxpayers also can qualify if they enter a written, binding contract for the purchase of a principal residence before May 1 and close on the purchase before July 1, 2010. The Act raises the income limits for the credit. For purchases made after November 6, 2009, the credit phases out with AGI between $125,000 and $145,000 ($225,000 and $245,000 for joint filers). For purchases after November 6, 2009, the tax credit is not available if a home's purchase price exceeds $800,000.

The revised credit is available not only to first-time homebuyers (described above), but also to "long-time residents" who purchase a home after November 6, 2009. A long-time resident is a person who has maintained the same principal residence for any five-consecutive-year period during the eight-year period ending on the date the new residence is purchased. The maximum credit available to a long-time resident is $6,500 ($3,250 for married individuals filing separately) or 10% of the home's purchase price, if less. The maximum credit for a first-time homebuyer remains $8,000 ($4,000 for married individuals filing separately) or 10% of the purchase price, if less.

NET OPERATING LOSSES

In a provision affecting business taxpayers, the Act provides a longer carryback period for net operating losses (NOLs) arising in any tax year ending after December 31, 2007, and beginning before January 1, 2010. Carrying back an NOL allows a business to offset taxable income from the tax years in the carryback period and recover income taxes paid for those years.

Under the Act, a business may elect to carry back its NOL three, four, or five tax years instead of the two-year carryback period normally allowed. An NOL carried back to the fifth year before the loss year may not exceed 50% of taxable income for that year. Any NOLs that are not absorbed through the carryback may be carried forward for up to 20 years.

The tax law was previously amended in early 2009 to provide eligible small businesses with an election to increase the NOL carryback period for an "applicable 2008 NOL" to three, four, or five years. Unlike the election for applicable 2008 NOLs, the election under the Act is not limited to eligible small businesses. While the new election generally may be made for only one tax year, an eligible small business that made the election for an applicable 2008 NOL under the previous provision may make the new election for two tax years instead of only one.

FUTA SURTAX

Another business provision of the Act deals with unemployment taxes payable under the Federal Unemployment Tax Act (FUTA). The FUTA tax rate is 6%, plus a temporary .2% surtax that had been set to expire at the end of 2009. The Act extends the .2% surtax through June 30, 2011. As a result, the 6.2% FUTA tax rate will continue to apply through June 2011.