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## Congress Poised to Provide Real Estate Industry Tax Relief

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**Phillip L. Jelsma**  
Partner  
619.699.2565  
pjelsma@luce.com  
www.luce.com/phillipjelsma

On November 4, 2009, the Senate passed the Worker, Ownership and Business Assistance Act of 2009 ("Act") which includes two important provisions that benefit the real estate industry. The House is expected to take up the Act next week.

First, Congress would extend and modify the first time homebuyer credit. Second, Congress intends to expand the 5-year carryback of net operating losses.

Under existing law, a first time homebuyer is allowed a refundable tax credit equal to the lesser of \$8,000 (\$4,000 for married filing separately), or 10% of the purchase price of a principal residence. The credit is due to expire on December 1, 2009. The credit phases out for individual taxpayers with adjusted gross income between \$75,000 and \$95,000 (\$150,000 and \$170,000 for joint filers). An individual is considered first time homebuyer if he or she did not own a principal residence during the 3-year period prior to the purchase of the home. For homes purchased on or before December 31, 2008, the credit is recaptured ratably over 15 years beginning in the second year after the taxable year in which the home is purchased. For homes purchased in 2009, the credit is only recaptured if the taxpayer disposes of the home within 36 months of the date of purchase.

The Act extends the first time homebuyer credit to April 30 2010 and creates a second credit for long-term residents of the same principal residence. If an individual has maintained the same principal residence for any 5-year period during the 8-year period ending on the date of purchase of a new home, he or she is entitled to a reduced credit of \$6,500 (\$3,250 for married individual filing separately). The Act also raises the income limits to qualify for the credit. The credit phases out for individual taxpayers with adjusted gross income between \$125,000 and \$145,000 (\$225,000 and \$245,000 for joint filers). No credit is allowed for any residence if the purchase price exceeds \$800,000.

The Act also expands the carryback of net operating losses incurred in either 2008 or 2009. Taxpayers can elect to carry a loss back up to 5 years if the loss is incurred in either 2008 or 2009. The amount of a loss that may be carried back to the 5th preceding year is limited to 50% of the taxable income for that year.

The Act also suspends the 90% limitation on the use of an alternative tax NOL deduction attributable to the carryback period.

The Act eliminates this year's Stimulus Bill requirement that the 5-year carryback is only available to a taxpayer having less than \$15 million of gross receipts. The taxpayer must make the election whether to carryback the 2008 or 2009 loss by the extended due date of its 2009 return and the election, once made, is irrevocable.

*If you would like any additional information on either of these provisions, please contact Phil Jelsma at 619.699.2565 or e-mail [pjelsma@luce.com](mailto:pjelsma@luce.com).*