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## **Aircraft Bonus Depreciation Available for 5 Year Loss Carryback**

### **WORKER, HOMEOWNERSHIP, AND BUSINESS ASSISTANCE ACT OF 2009 EXTENDS 5 YEAR CARRYBACK FOR 2009 NET OPERATING LOSSES**

A net operating loss is the excess of business deductions over business income in any particular year. A net operating loss can be deducted through carryback and carryover into another year which there is income. In general, net operating losses may be carried back 2 years and forward 20 years.

#### **NEW LAW**

The new law provides for an election for taxpayers to increase the carryback period from the general rule of 2 years to their choice of 3, 4, or 5 years. This new law applies to any net operating loss for a year ending after December 31, 2007 and beginning before January 1, 2010. For calendar year taxpayers, it is therefore available either for 2008 or 2009. For fiscal year taxpayers it applies for years that begin in 2007, 2008, or 2009. In either case, a taxpayer is allowed to elect only 1 year to qualify for this special treatment.

### **BUY A NEW AIRPLANE IN 2009 – QUALIFY FOR BONUS DEPRECIATION – CARRYBACK THE LOSS TO 2004**

These new provisions can be particularly beneficial to taxpayers who have had substantial income in prior years but not sufficient current taxable income to avail of all the bonus depreciation benefits. A taxpayer with more than one year of net operating losses that are eligible to be carried back for the 3, 4, or 5 years should determine where the greatest tax savings will result. The year that is not selected for the election may only be carried back 2 years. Although the election is generally available to all taxpayers, it is not entirely without limitation.<sup>1</sup>

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<sup>1</sup> The amount that can be carried back to the 5<sup>th</sup> year may not be more than 50% of the taxable income of that year before the net operating loss. The provision is not available to companies that received certain assistance from the Federal Government under the Emergency Economic Stabilization Act of 2008.

**MUST BE PLACED IN SERVICE BEFORE JANUARY 1, 2010**

Although there are certain circumstances in which bonus depreciation may be available for 2009 purchases closed in 2010, this provision is limited to 2009 purchases. Bonus depreciation is only available to assets which qualify for the modified accelerated cost recovery system (MACRS). MACRS is limited by both personal use and related party leasing and therefore care should be exercised in the acquisition and operating structure.

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