

Summary of Worker, Homeownership, and Business Assistance Act of 2009

On Nov. 6, President Obama signed into law the Worker, Homeownership, and Business Assistance Act of 2009. The legislation expands both the first-time homebuyer credit and a special net operating loss carry back provision. The House voted 403-12 Nov. 5 after the Senate approved the measure Nov. 4, 98-0. The following is a summary of the tax provisions of the Act.

Extension and Modification of First-Time Homebuyer Credit

The Act expands the first-time homebuyer credit by extending the December 1, 2009, expiration date of the first-time homebuyer credit to taxpayers who enter into a written binding contract to purchase a home before May 1, 2010, and who close before July 1, 2010. Thus, taxpayers have until April 30, 2010 (June 30, 2010 to close) to purchase a home and receive the first-time homebuyer credit.

Further, the Act increases the income limitations from \$75,000 to \$125,000 for individuals, and from \$150,000 to \$225,000 for joint filers.

The Act continues to allow taxpayers to elect to treat a home purchase as having occurred in the year prior to the year of purchase in order to expedite any refund.

The Act also expands the first-time homebuyer definition to include homebuyers who are long-time residents of the same principal residence. The Act allows for a \$6,500 (\$3,250 for married filing separately) credit for homebuyers who have been in their current residence for five consecutive years out of the last eight years and who purchase another residence.

The Act also places a limit on the purchase price of the home to \$800,000 for either the first-time homebuyer credit or its expanded version for long-time residents.

The Act places limitations on who is eligible for the credit. Pursuant to the Act, individuals who can be claimed as a dependent of another taxpayer for the taxable year that the credit is claimed are ineligible for the credit. Also, the Act requires that the taxpayer or the taxpayer's spouse be 18 or over to claim the first-time homebuyer credit.

The Act also waives the current recapture rules for individuals on qualified official extended duty, including members of the military, foreign services, and intelligence community employees.

The Act allows military personnel (including Foreign Service members and intelligence community members) serving outside the United States for at least 90 days in 2009 or before May 1, 2010, one additional year to qualify for the credit.

Thus, pursuant to the Act, taxpayers who are members of military, intelligence community, or Foreign Service have until May 1, 2011, to purchase a house and until July 1, 2011, to close.

The application of the expanded homebuyer credit, the change in the income limitations, the \$800,000 purchase price limit, and the age and dependent limits are effective for purchases after Nov. 6, 2009. The extension of the credit, the binding contract exception, and the extension of the credit for military personnel are effective for purchases after Nov. 30, 2009. The recapture rules regarding individuals on official extended duty are effective for dispositions after Dec. 31, 2008.

Five-Year Carry back of Operating Losses

The Act extends the NOL carry back period from two to up to five years for tax years beginning in or ending in 2009.

The American Recovery and Reinvestment Act of 2009 (2009 ARRA) extended the NOL carry back period from two to up to five years for tax years beginning in or ending in 2008. However, the 2009 ARRA extension only applied to small businesses with gross receipts of \$15 million or less.

The Act allows all businesses to carry back NOLs for up to five years for losses incurred in taxable years beginning after December 31, 2007 and beginning before January 1, 2010, but can only elect for one taxable year, not two. Pursuant to the Act, businesses are able to offset 50% of the available income from the fifth taxable year preceding the loss, and 100% of all income in the remaining four carry back years.

Pursuant to the Act, eligible small businesses that previously elected to carry back an "applicable 2008 NOL" (please keep in mind that under 2009 ARRA taxpayers were given the election to carry back NOLs for taxable years that began or ended in 2008, but not both) under 2009 ARRA are allowed to elect to carry back the "applicable 2008 NOL" (under 2009 ARRA) and are not limited to the 50% limitation applicable to the fifth taxable year preceding the loss with respect to the "applicable 2008 NOL."

The Act imposes special rules for life insurance company net operating losses, and the alternative tax net operating loss deduction. The Act also provides an exception to these provisions for TARP recipients.

Effective for net operating losses occurring after December 31, 2007.

Increase in Penalty for Failure to File a Partnership or S Corporation Return

Pursuant to the Act, the amount of the penalty for a failure with respect to filing either a partnership or S corporation return is increased from \$89 to \$195 per partner or shareholder. The penalty applies to any partner or shareholder who held such status during any part of the taxable year.

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Effective for returns for taxable years beginning after December 31, 2009.

Certain Tax Return Preparers Required to File Returns Electronically

The Act requires electronic filing by specified tax return preparers. Pursuant to the Act, "specified tax return preparers" are all return preparers except those who reasonably expect to file 10 or fewer individual income tax returns in a calendar year. The Act also defines the term "individual income tax return" to include returns for estates and trusts as well as individuals.

Effective for tax returns filed after December 31, 2010.

0.2 Percent FUTA Surtax

The Act extends from 2009 through June 30, 2011, the overall 6.2% tax on employers under the Federal Unemployment Tax Act (FUTA). This tax consists of the 6% permanent tax rate and the temporary 0.2% surtax rate. The Act delays the repeal of the temporary surtax.

Effective for wages paid after December 31, 2009.