

Worker, Homeownership, and Business Assistance Act of 2009

On November 6th, President Obama signed the Worker, Homeownership, and Business Assistance Act of 2009 (H.R. 3548). This Legislation provides an extension of unemployment benefits, an extension and expansion of the homebuyer credit, and an extension and expansion of the five-year carryback of net operating losses. To pay for these provisions, the legislation includes an increase in the penalties for failure to file partnership and S corporation returns, and expands the requirement for electronic filing by return preparers. There are additional revenue raisers that are beyond the scope of this article.

Unemployment Benefits

This new law extends unemployment benefits by up to 14 weeks. However, it does not extend the existing temporary exclusion from gross income of the first \$2,400 of unemployment benefits received in 2009.

First-Time Homebuyer Credit

Now the homebuyer credit is extended to higher income taxpayers and allows a reduced credit to some non-first-time homebuyers. These changes will only be effective for purchases made after the date of enactment.

The first-time homebuyer credit has been extended to April 30, 2010. To qualify, a taxpayer must enter into a binding contract before May 1, 2010 and close on the purchase of the principal residence before July 1, 2010. Taxpayers can accelerate their claims for the credit by electing to treat the purchase of a principal residence as made by December 31, 2009 and claim the credit on their 2009 return filed in 2010. The credit is 10% of the cost of the new residence up to a maximum of \$8,000.

Non-First-Time Homebuyer Credit

The credit is no longer restricted to first-time homebuyers. An individual, who has owned and used the same residence as his or her principal residence for any five-consecutive years during the previous eight years ending with the date the new residence is purchased, now qualifies for a credit. Their maximum credit is \$6,500 rather than \$8,000.

First-Time and Non-First -Time Homebuyer Credit

For both the first-time homebuyer credit and the non-first-time homebuyer credit, the income thresholds have increased. The credit begins phasing out at \$125,000 for single individuals and \$225,000 for couples filing joint returns.

There is now an \$800,000 ceiling on the purchase price of a residence. These credits will only need to be repaid if the residence ceases to be a principal residence within 36 months from the date of purchase.

Net Operating Loss (NOL) Carryback

The American Recovery and Reinvestment Act of 2009 (2009 Recovery Act) allowed eligible small businesses (with average gross receipts of \$15 million or less) to elect to carry back net operating losses (NOLs) from 2008 for three, four or five years rather than the standard two years. The new law provides a similar election to all U.S. businesses of every size to carry back NOLs up to five years but with a 50-percent income limit on NOL offsets in the fifth year.

The new, expanded election is available for NOLs incurred in either 2008 or 2009, but not for both years. However, an eligible small business that elected under the 2009 Recovery Act to carryback 2008 NOLs may make the election for an additional year, enabling the qualified small business to carry back NOLs from both 2008 and 2009 for up to five years.

Electronic Filing

The new law significantly expands the universe of e-filing by requiring individual returns prepared by paid return preparers to be filed electronically with limited exceptions. The e-file requirement applies to any income tax return filed by individuals, estates, or trusts after December 31, 2010.

The bill maintains the current rule that requires corporations and tax-exempt organizations with assets of \$10 million or more and that file at least 250 returns during a calendar year, including income tax, information, excise tax, and employment tax returns, to e-file their Form 1120 and 1120S income tax returns and Form 990 information returns.

Penalties

Effective for returns for tax years beginning after December 31, 2009, the new law increases the penalties for failure to file a partnership or S corporation return. The penalty for failure to file a partnership return increases from \$89 to \$195. Similarly, the penalty for failure to file an S corporation return increases from \$89 to \$195. The combined increases are expected to raise approximately \$1.2 billion over 10 years.

FUTA Surtax

The 0.20 percent FUTA (unemployment) surtax, first enacted in 1976, was most recently extended in the Emergency Economic Stabilization Act of 2008 through year-end 2009. The new law extends the FUTA surtax through June 30, 2011. The total FUTA tax on employers, therefore, continues to be 6.2 percent.

If you have any questions on the changes in this new law, please contact us.