

HOMEBUYER & BUSINESS ASSISTANCE ACT OF 2009

In recent news, the President signed H.R. 3548, The “Worker, Homeownership, and Business Assistance Act of 2009,” on November 6, 2009. The Act includes a number of changes for both businesses and individuals.

INDIVIDUALS

Most notably, the Act extends the first time homebuyer tax credit (FTHTC) and liberalizes it by making it available to (1) higher-income taxpayers and (2) to existing homeowners who are qualifying “long-time residents” and who buy another principal residence. However, there is now a dollar cap on the residences qualifying for the FTHTC.

Extension

Under the Act, the FTHTC is extended to apply to a principal residence purchased by the taxpayer before May 1, 2010. As amended, the FTHTC also applies to the purchase of a principal residence before July 1, 2010 by any taxpayer who enters into a written binding contract before May 1, 2010, to close on the purchase of a principal residence before July 1, 2010.

Available to Higher Income Taxpayers

As amended, the FTHTC phases out for individual taxpayers with modified adjusted gross income (AGI) between \$125,000 and \$145,000 (\$225,000 and \$245,000 for joint filers) for the year of purchase.

Available for Existing Homebuyers who are “long-time residents”

For purchases after the enactment date, any individual (and, if married, the individual's spouse) who has maintained the same principal residence for any five-consecutive year period during the eight-year period ending on the date of the purchase of a subsequent principal residence is treated for FTHTC purposes as a first-time homebuyer of that subsequent principal residence. The maximum allowable credit for such taxpayers is \$6,500 (\$3,250 for a married individual filing separately).

New Limitation on Home Price

For purchases after the enactment date, the FTHTC cannot be claimed for buying a residence if the purchase price exceeds \$800,000.

The Act also implements new anti-abuse provisions for the FTHTC, such as: (1) the FTHTC cannot be claimed unless the taxpayer has attained 18 years of age as of the date of purchase, (2) the FTHTC cannot be claimed by a taxpayer if he can be claimed as a dependent by another taxpayer for the tax year of purchase, (3) the FTHTC is not allowed unless the taxpayer attaches to the relevant return a properly executed copy of the settlement statement used to complete the purchase, and (4) the definition of qualifying purchase for FTHTC purposes is amended to exclude property acquired from a person related to the person acquiring the property (or the spouse of the person acquiring the property). The Act also expands the definition of mathematical or clerical error for purposes of administration of the credit by IRS so that IRS may assess additional tax without issuance of a notice of deficiency.

The Act extends the FTHTC for an additional year, and waives recapture provisions, for individuals who are on qualified official extended duty, which means service on official extended duty as a member of the uniformed services, a member of the Foreign Service

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of the United States, or an employee of the intelligence community. Additionally, The Department of Defense Homeowners Assistance Program ("HAP") provides payments to certain employees and members of the Armed Forces to offset the adverse effects on housing values that result from a military base realignment or closure.

BUSINESSES

The Act implemented changes for businesses, return filing, and penalties including liberalized rules for net operating losses and toughened penalties for partnerships and S corporations.

Extension of NOLs

The Act provides an election for most taxpayers (not just small businesses) to increase the carryback period for an applicable net operating loss (NOL) to three, four, or five years from two years. An applicable NOL means the taxpayer's NOL for any tax year ending after Dec. 31, 2007, and beginning before Jan. 1, 2010. Generally, an election may be made for only one tax year; however, an eligible small business that made or makes an election under the Code after the enactment date may make an election for two tax years instead of just one. The amount of the NOL that can be carried back to the 5th tax year before the loss year may not be more than 50% of the taxpayer's taxable income for that 5th preceding tax year determined without taking into account any NOL for the loss year or for any tax year after the loss year.

Suspension of 90% Limitation on NOL for AMT purposes

For tax years ending after 2002, the Act suspends the 90% limitation on the use of any alternative tax NOL deduction attributable to the carryback of an applicable NOL for which the extended carryback period is elected.

Increase in Carryback Period of Life Insurance Companies

For losses from operations arising in tax years ending after December 31, 2007, the Act allows life insurance companies to elect to carry back an applicable loss from operations for four or five years and not just three years as is provided under pre-Act law. An applicable loss from operations is the life insurance company's loss from operations for any tax year beginning or ending in 2008 or 2009. The amount of the loss that can be carried back to the 5th preceding tax year is limited to 50% of the taxable income for such preceding tax year.

Transition Rules

Under transition rules, a taxpayer may revoke any election to waive the carryback period with respect to an applicable NOL or an applicable loss from operations for a tax year ending before November 6, 2009, by the extended due date for filing the tax return for the taxpayer's last tax year beginning in 2009. Similarly, any application for a tentative carryback adjustment with respect to such loss is treated as timely filed if filed by the extended due date for filing the tax return for the taxpayer's last tax year beginning in 2009.

Businesses Ineligible to Elect Extended Carryback Period

The right to elect an extended carryback period does not apply to any taxpayer if: (1) the Federal government acquired an equity interest in that taxpayer under the Emergency Economic Stabilization Act of 2008, (2) the Federal government acquired before November 6, 2009, any warrant (or other right) to acquire any equity interest with respect to the taxpayer under the Emergency Economic Stabilization Act of 2008, and (3) the taxpayer receives after November 6, 2009, funds from the Federal government in exchange for an interest described above under a program established under title I of Division A of the Emergency Economic Stabilization Act of 2008.

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Additional FUTA Surtax is Extended Through June of 2011

The Act provides that the 6.2% FUTA tax rate continues to apply through June of 2011, and the 6.0% rate applies for the remainder of calendar year 2011 and for later years. That is, the temporary 0.2% surtax is extended for 1½ years through June 30 of 2011.

Estimated Payments for Large Corporation Increased for 2014

The Act provides that for large corporations, the required payment of estimated tax otherwise due in July, August, or September of 2014 under the “Corporate Estimated Tax Shift Act of 2009” will be increased by 33%. The amount of the next required installment will be appropriately reduced to reflect the amount of the increase in the earlier installment.

Delay in Application of Worldwide Allocation of Interest

The Act delays the effective date of the worldwide interest allocation rules for seven years, until tax years beginning after December 31, 2017. It also eliminates the special transition rule that applies in the case of the first tax year to which the worldwide interest allocation rules apply. *(Note: The worldwide allocation of interest rule may never go into effect. It was included as a provision in the health reform bill currently working its way through the House but was dropped when included in the Worker, Home Ownership and Business Assistance Act of 2009.)*

Increased Penalty for Failure to File Partnership or S Corporation Returns

Under the Act, the base amount on which a penalty is computed for a failure with respect to filing either a partnership or S corporation return for a tax year beginning after December 31, 2009, is increased to \$195 per partner or shareholder.

Expansion of Electronic Filing by Return Preparers

The Act generally maintains the current rule that regulations may not require any person to file electronically unless the person files at least 250 tax returns during the calendar year. However, for returns filed after December 31, 2010, it provides an exception to this rule and mandates that IRS require electronic filing by “specified tax return preparers.” This term includes all return preparers except those who neither prepare nor reasonably expect to prepare ten or more individual income tax returns in a calendar year. “Individual income tax return” is defined to include returns for estates and trusts as well as individuals.



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