

Tax News

December 2009

The Worker, Homeownership, and Business Assistance Act of 2009 Signed Into Law

Enacted in November 2009, the Worker, Homeownership, and Business Assistance Act of 2009 contains many tax provisions that affect individual and business taxpayers. For individuals, the Act provides an expansion of the first-time homebuyer tax credit by including existing homeowners who are “long-time residents.” A number of other key measures contain changes for businesses, including an important new net operating loss provision.

Homebuyer Tax Credit Under Prior Law

Prior to the new law’s enactment, a refundable federal tax credit of up to \$8,000 (\$4,000 for a married taxpayer filing separately) was allowed for qualifying first-time homebuyers who purchased a home between April 8, 2008, and December 1, 2009. In order to qualify for the credit, a taxpayer must have had no ownership interest in a qualifying principal residence in the U.S. during the three-year period before the purchase of the home.

Under prior law, the allowable credit was phased out for individual taxpayers whose modified adjusted gross income was between \$75,000 and \$95,000 (between \$150,000 and \$170,000 for married taxpayers filing jointly).

Homebuyer Tax Credit Under New Law

The Worker, Homeownership, and Business Assistance Act generally extends the first-time homebuyer credit for contracts to purchase entered before May 1, 2010, and closed before July 1, 2010. The new law also liberalizes the credit by making it available to higher income taxpayers, as well as to those individuals who are not first-time homebuyers.

Generally, existing homeowners who are qualifying “long-time residents” may qualify for the tax credit if they contract to purchase another principal residence before May 1, 2010, and close before July 1, 2010. The Act provides that any individual 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 residence be treated as a “first-time homebuyer.”

However, the maximum credit for long-time residents who qualify under the Act is the lesser of \$6,500 (\$3,250 for married individuals who file separate returns) or 10% of the purchase price of the principal residence.

The credit now phases out for individual taxpayers whose modified adjusted gross income is between \$125,000 and \$145,000 (\$225,000 and \$245,000 for married taxpayers filing joint returns) for the year of purchase.

For purchases after November 6, 2009, the first-time homebuyer tax credit cannot be claimed for the purchase of a principal residence if its purchase price exceeds \$800,000.

Extension of Five-Year NOL Carryback

The Act liberalizes rules relating to business net operating losses (NOLs) by extending the prior law’s temporary five-year carryback of NOLs to apply to 2009 NOLs. The Act also provides an expansion of the five-year carryback’s availability to include generally all businesses, not just eligible small businesses.

Under prior law, for NOLs arising in tax years ending after December 31, 2007, an eligible small business could temporarily elect to increase the NOL carryback period for an applicable 2008 loss from a previous limit of two years to up to five years. (This carryback allows a business to use the loss to offset net income realized in an earlier year, thus qualifying for a refund for that prior year.) Generally, an eligible small business is a trade or business whose average three-year annual gross receipts are \$15 million or less, ending with the tax year in which the loss arises.

The Worker, Homeownership, and Business Assistance Act of 2009 liberalizes the previous NOL provision by extending the five-year election to most businesses, as opposed to limiting it to only eligible small businesses.

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Subject to the “only one election” rule, an applicable NOL arising from a business’s 2008 or 2009 calendar year, or that of a fiscal year beginning in 2007, 2008, or 2009, can be carried back to the third, fourth, or fifth preceding tax year. The NOL carryforward period of 20 years is not modified under the Act.

Limitation on NOL Amount

The Act generally limits the amount of an NOL that can be carried back to the fifth tax year prior to the loss to 50% of the taxpayer’s taxable income for that fifth preceding tax year.

Doeren Mayhew Can Help

The Worker, Homeownership, and Business Assistance Act of 2009 contains other important tax provisions, including modifications to failure-to-file penalties for pass-through entities (such as partnerships), and an extension of the FUTA surtax. Our professionals can help you understand how the new law’s provisions apply to you or your business. Please call Doeren Mayhew today at (248) 244-3000 for more information.



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