

Worker, Homeownership & Business Assistance Act of 2009

Marvel Betchwars, CPA, Partner

On November 6, President Obama signed the Worker, Homeownership and Business Assistance Act of 2009. The law includes changes for both individual taxpayers and business entities.

The main change for individuals is to the homebuyer tax credit (FTHTC). This Act extends and liberalizes the FTHTC. The new law provides a new expiration date of April 30, 2010. If a taxpayer enters into a binding contract before May 1, 2010 to close on a principal residence before July 1, 2010, the credit will be treated as not expiring until July 1, 2010. The FTHTC allows the taxpayer to elect to treat the purchase of a principal residence in 2009 or before the new deadline in 2010 as made on December 31 of the calendar year preceding the purchase.

Effective for purchases after November 6, 2009, the credit is no longer restricted to first-time homebuyers. Individuals (and, if married, his or her 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 new principal residence is eligible for a maximum \$6,500 tax credit (\$3,250 for a married individual filing separately). For example, if you and your spouse want to downsize and have lived in your home for the required time period, you are potentially eligible for the credit if you move down and buy a smaller townhome. There is no requirement for your current home to be sold in order to qualify for a homebuyer credit on the replacement principal residence. Furthermore, the credit now phases out for taxpayers with modified AGI between \$125,000 and \$145,000 (\$225,000 and \$245,000 for joint filers) for the year of purchase. However, no credit is allowed if the purchase price of the new residence exceeds \$800,000. The credit is not available for rental property, to anyone who qualifies as a dependent of another person, or to anyone under the age of 18 (unless his or her spouse meets the age requirement)..

Major business changes extend the net operating losses (NOLs) carry back period, increase penalties for failure to file a partnership or S corporation return to \$195 per K-1 form per month, and extend the FUTA (unemployment) surtax of 0.20 percent through June 30, 2011.

Earlier legislation allowed eligible small businesses to elect to carry back net operating losses from 2008 for three, four or five years rather than the usual 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 in either 2008 or 2009 but not both years. However, an eligible small business that elected under the earlier law to carry back 2008 NOLs may make the election for an additional year enabling the qualified small business to carry back NOLs from both 2008 and 2009.

