

Stapp Accounting Tax Letter

Stapp Accounting Services, PLLC

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Worker, Homeownership, and Business Assistance Act of 2009

On 11/6/09, President Obama signed the new Worker, Homeownership, and Business Assistance Act of 2009 (the WHBAA) into law. The main reason for the legislation was to extend federal unemployment benefits. However, the WHBAA also includes important tax changes that affect individuals and businesses. This letter summarizes what we think are the key tax changes.

Homebuyer Credit Is Extended and Liberalized

The familiar first-time homebuyer credit was previously scheduled to expire on 11/30/09. The WHBAA extends the deadline for another five months, to cover qualified purchases of U.S. principal residences that close by 4/30/10. However, if your new home is under contract on 4/30/10, the deadline to close the deal is extended to 6/30/10.

As was the case under prior law, the extended credit is still available to so-called first-time homebuyers, which means someone who has not owned a U.S. principal residence during the three-year period ending on the purchase date for the home that will serve as your new principal residence. If you're married, both you and your spouse must pass the three-year test. Also, the extended credit for a first-time homebuyer still equals the lesser of: (1) \$8,000 (\$4,000 if you use married filing separate status), or (2) 10% of the new principal residence purchase price.

“Long-time” Homeowners Can Now Qualify for Smaller Credits. The WHBAA effectively creates a new but less-lucrative credit for so-called long-time residents who buy replacement U.S. principal residences after 11/6/09. The new *long-time homeowner credit* equals the lesser of: (1) 10% of the replacement principal residence purchase price, or (2) \$6,500 (\$3,250 if you use married filing separate status). To qualify, you must have owned and used the same home as your principal residence for at least five consecutive years during the eight-year period ending on the purchase date for the replacement principal residence. If you're married, both you and your spouse must pass this test.

The new long-time homeowner credit is only available for a purchase that closes after 11/6/09 and by no later than 4/30/10 (or by 6/30/10 if your new home is under contract on 4/30/10).

Phase-out Rules Are Liberalized. Both the familiar first-time homebuyer credit and the new long-time homeowner credit are phased out as your income increases. However, the WHBAA significantly raises the phase-out ranges for purchases after 11/06/09.

The new phase-out range for unmarried individuals and married persons who file separately is between Modified Adjusted Gross Income (MAGI) of \$125,000 and \$145,000 (versus \$75,000–\$95,000 before the new law). The new phase-out range for married joint filers is between MAGI of \$225,000 and \$245,000 (versus \$150,000–\$170,000 before the new law).



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Credits Can Be Claimed on Prior-year Returns. As under prior law, you can claim the credit (either the familiar first-time homebuyer credit or the new long-time homeowner credit) for a 2009 purchase on your 2008 Form 1040 (although that would usually require filing an amended return at this point). You can also claim the credit for a 2010 purchase on your 2009 Form 1040.

Homes Costing over \$800,000 Are Now Ineligible. For purchases after 11/6/09, no credit is allowed for a home that costs over \$800,000.

No More Credits for Youngsters or Dependents. For purchases after 11/6/09, the homebuyer must be at least 18 years old on the purchase date to qualify for a credit. Also, a buyer who can be claimed as a dependent on someone else's Form 1040 for the year of purchase cannot claim the credit.

New Anti-fraud Protections. Under the new law, homebuyers must support credits claimed on 2009 and 2010 returns by attaching properly executed real estate settlement sheets to their returns. Also, the IRS can now automatically deny credits that appear to be claimed in error.

Five-year Carryback Privilege for Business Losses Is Extended and Liberalized

The American Recovery and Reinvestment Act of 2009 (ARRA) that passed earlier this year allowed an eligible small business taxpayer to carry back a Net Operating Tax Loss (NOL) for either three, four, or five years. This is a beneficial exception to the two-year carryback rule that usually applies. However, the expanded NOL carryback privilege was only allowed to an *Eligible Small Business* (ESB) for a calendar year 2008 NOL or for an NOL generated in a fiscal tax year that began or ended in 2008. To be an ESB, the business must have had average annual gross receipts of no more than \$15 million for the three-year period that ended with the loss year.

The new WHBAA now gives a similar expanded NOL carryback privilege to virtually all businesses, large and small alike. Specifically, the new expanded carryback deal is allowed for an NOL that is generated in a tax year that ends after 2007 and begins before 2010 (which means 2008 and 2009 for a calendar-year taxpayer). An NOL generated in one of these years can be carried back for three, four, or five years. Once again, this is a beneficial exception the two-year carryback rule that applies to most NOLs. However, the new election generally can only be made for one tax year that ends after 2007 and begins before 2010.

An election to take advantage of the new expanded NOL carryback privilege must be made by the due date (including any extension) of the return for the taxpayer's tax year that begins in 2009. Once made, the election is irrevocable.

Small Businesses Can Use Expanded NOL Carryback Privilege for Two Years. Say an eligible small business taxpayer took advantage of the prior-law expanded NOL carryback privilege (allowed by the ARRA) for its calendar-year 2008 NOL. If the business also has an NOL for calendar-year 2009, it can take advantage of the new expanded carryback privilege allowed by the new law for its 2009 NOL. In other words, the taxpayer can benefit twice from the expanded NOL carryback privilege: once with the prior-law deal for its 2008 NOL and again with the new deal for its 2009 NOL.

Limitation on NOL Carried Back to Fifth Preceding Year. If your business makes a new election under the WHBAA to carry back an NOL to the fifth preceding tax year, the amount carried back to that year is limited to 50% of the taxable income for that year.

FUTA Tax Surcharge Extended

Through the end of 2009, the Federal Unemployment Tax Act (FUTA) imposes a maximum FUTA tax rate of 6.2% on the first \$7,000 of an employee's annual wages. The 6.2% rate actually has two parts: a permanent 6% rate plus a temporary surtax of .2%. The WHBAA extends the .2% surtax for another 18 months, through 6/30/11.

Higher Failure-to-file Penalties for Partnerships and S Corps

The WHBAA hikes the penalty for failing to file a partnership return on Form 1065, or failing to provide required information on Form 1065, from the current \$89 per partner per month to \$195 per partner per month. The penalty can be assessed for up to 12 months. The higher penalty applies to Forms 1065 required for tax years beginning after 12/31/09.

The WHBAA also hikes the penalty for failing to file an S corporation return on Form 1120S, or failing to provide required information on Form 1120S, from the current \$89 per shareholder per month to \$195 per shareholder per month. The penalty can be assessed for up to 12 months. The higher penalty applies to Forms 1120S required for tax years beginning after 12/31/09.

Contact Us for More Information and Expect More Tax Changes Soon

This letter only summarizes what we think are the most important tax changes in the Worker, Homeownership, and Business Assistance Act of 2009. Please contact us if you want the full story or if you have questions about what we've talked about here.

Finally, be aware that we will almost certainly see additional tax legislation between now and year-end. At a minimum, Congress must address a long list of expiring tax breaks plus what will happen with the federal estate tax in 2010. So stay tuned, and please get in touch if you want more information.

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