



Certified Public Accountants

As you may have heard, Congress recently passed the Worker, Homeownership, and Business Assistance Act of 2009 (“the 2009 WHBAA”), which extended unemployment insurance for an additional 14 weeks, with six additional weeks for workers in states with unemployment levels over 8.5%. The President signed the bill into law on Nov. 6. The 2009 Act has several tax provisions that may be of interest to you.

The **first-time homebuyer credit** is a refundable tax credit available to taxpayers buying a principal residence for the first time. Under the law in effect before the enactment of the 2009 WHBAA, the credit phases out for individuals with incomes between \$75,000 and \$95,000, and for joint filers with incomes between \$150,000 and \$170,000. Generally, for purchases made on or after January 1, 2009, and before December 1, 2009, the tax credit is \$8,000. If the principal residence is disposed of within 36 months of purchase however, a portion of the credit must be repaid. For purchases made on or after April 9, 2008, and before January 1, 2009, the tax credit is generally \$7,500. Taxpayers purchasing homes in 2008 are required to repay the credit over 15 years.

The 2009 WHBAA extends the expiration date for taxpayers who enter into a written binding contract to purchase a home to before May 1, 2010, and to close before July 1, 2010. Thus, you have until April 30, 2010, to sign a purchase agreement and until June 30, 2010, to close on that purchase agreement in order to receive the first-time homebuyer credit. In addition, the income phase outs are increased to \$125,000 (complete phase out at \$145,000) for individuals and \$225,000 (complete phase out at \$245,000) for joint filers. Please keep in mind that if you closed prior to November 6, 2009, the old income limitations will apply. The \$8,000 credit amount continues to apply to all first-time homebuyers. You can still elect to treat your home purchase as having occurred in the year prior to the year of purchase in order to expedite your refund. The 2009 WHBAA also expanded the first-time homebuyer definition to include homebuyers who are long-time residents of the same principal residence. A \$6,500 (\$3,250 for married filing separately) credit is available to homebuyers who have been in their current residence for five consecutive years out of the last eight years and who purchase another residence. Home purchases of over \$800,000 closing after November 6, 2009, do not qualify for either the first-time homebuyer credit or its expanded version for long-time residents.

In order to curb some of the reported abuses with respect to the first-time homebuyer credit, the Act places certain limitations which apply to purchases made after November 6, 2009. Individuals who can be claimed as a dependent of another taxpayer for the taxable year that the credit is claimed are ineligible for the credit. Also, the taxpayer or the taxpayer's spouse must be 18 or over to claim the credit.

The 2009 WHBAA provides several **tax relief provisions for members of the military**. First, it eliminates the recapture requirement for military personnel, including members of the Foreign Service and intelligence community, who are forced to sell their principal residence as a result of an official extended duty of service. Also, it allows military personnel (including Foreign Service members and intelligence community members) serving outside the United States for at least 90 days in 2009 or before May 1, 2010, one additional year to qualify for the credit. Thus, if you or your spouse is a member of military, intelligence community, or Foreign Service, you have until May 1, 2011, to purchase a house and until July 1, 2011, to close on that purchase agreement. You may remember that the 2009 ARRA expanded the HAP program which provides tax-exempt payments to military personnel who sell homes that declined in value due to a base closure. While the 2009 ARRA expanded the program to include payments made due to permanent reassignments and certain other purposes, it did not provide that those payments are tax-exempt. The 2009 WHBAA makes all HAP payments tax-exempt.

The 2009 WHBBA contains several **tax provisions with respect to businesses**. Most importantly, it extends the NOL carryback period. You will recall that the 2009 ARRA extended the NOL carryback period from two to up to five years for tax years beginning in or ending in 2008. However, the 2009 ARRA extension only applied to small businesses with gross receipts of \$15 million or less. The 2009 WHBBA allows all businesses to carryback an NOL for up to five years for losses incurred either in 2008 or 2009, but not both (at the election of the taxpayer). Businesses are able to offset 50% of the available income from the fifth taxable year preceding the loss, and 100% of all income in the remaining four carryback years. However, eligible small businesses that previously elected (or will elect) to carry back an “applicable 2008 NOL” (which could be for a 2008 or 2009 loss year) under 2009 ARRA are allowed to elect to carry back losses from 2009 or 2010. Further, these eligible small businesses are not limited to the 50% limitation applicable to the fifth taxable year preceding the loss for the “applicable 2008 NOL.”

To pay for the Act, the 2009 WHBBA: (1) increases the penalties for failure to file a partnership or S Corporation return from \$89 to \$195 per partner/shareholder; (2) delays by six-years the implementation of a tax break on worldwide interest allocation slated for use by multinational firms; (3) increases corporate estimated tax payments due July-September 2014 by 33 percentage points for businesses with assets of at least \$1 billion; and (4) requires tax return preparers who expect to file 10 or more returns to use electronic filing on the individual income tax returns they prepare, but would not require that taxpayers also e-pay.