

"Worker, Homeownership and Business Assistance Act of 2009"

Summary of Tax Provisions

First-Time Homebuyer Credit Changes (See Chapter 9.14 for Other Details)

The Act extends and liberalizes the \$8,000 First-Time Homebuyer Credit (FTHTC), Code Sec 36(h)).

Qualifying Period Extended:

- For a principal residence purchased by a qualifying taxpayer **before May 1, 2010**. (Act Sec. 11(a))
- For a principal residence acquired **before July 1, 2010 where the taxpayer had entered into a written binding contract before May 1, 2010**. (Act Sec. 11(a)(1)(C))
- Service Members Special Extension and Recapture Waiver - Credit provisions are extended for one additional year for members of the uniformed services, U.S. Foreign Service, or an employee of the intelligence community (and, if married, the individual's spouse) who serves on qualified official extended duty service outside of the U.S. for at least 90 days during the period beginning after Dec. 31, 2008, and ending before May 1, 2010:
 - Qualifying Period Extension – Extends the credit provisions one year, through April 30, 2011 (June 30, 2011, in the case of an individual who enters into a written binding contract before May 1, 2010, to close on the purchase of a principal residence before July 1, 2011) for any of the following on qualified official extended duty. (Act Sec. 11(f))
 - Recapture Waiver – In the case of a disposition of a principal residence by an individual (or a cessation of use of the residence that otherwise would cause recapture) after Dec. 31, 2008, in connection with Government orders received by the individual (or the individual's spouse) for qualified official extended duty service, no recapture applies by reason of the disposition of the residence, and any 15-year recapture with respect to a home acquired before Jan. 1, 2009, ceases to apply in the tax year of the disposition. (Act Sec. 11(e))

Provisions Taking Effect AFTER the Enactment Date:

- Credit Phase-Out AGI - (AGI for year of purchase) increased (Act Sec 11(c)(2)):
 - **Joint Filers:** Between **\$225,000 and \$245,000** (was \$150K and \$170K)
 - **Single Filers:** Between **\$125,000 and \$145,000** (was \$75K and \$95K)
- First-Time Homebuyer Definition – Is amended to include "**long-time residents**" – defined as any individual (and spouse if married, i.e. both must meet qualifications) who has owned the same principal residence for any **5 consecutive years during the 8-year period** ending on the date of purchase of a subsequent principal residence. However, the credit allowed for "long time residents" is **limited to \$6,500** (\$3,250 if married filing separate). (Act Secs. 11(b) and 11(c))
- Limitation on Home Price – No credit is allowed if the home purchase price exceeds \$800,000. (Act Sec. 11(d)) **CAUTION:** There is no phase-out. If the home costs \$1 over the \$800K maximum, then no credit is allowed.
- Anti-Abuse Provisions –
 - Age 18 - Credit cannot be taken by a taxpayer unless the taxpayer is age 18 on the date of purchase. If married, only one needs to meet the age requirement. (Act Sec. 12(a))
 - Dependent of Another – Credit cannot be claimed if a taxpayer is claimed as a dependent of another. (Act Sec. 11(g))
- Documentation Requirements – The credit is not allowed unless the taxpayer has attached a properly-executed copy of the settlement statement. (Act Sec. 12(b))
- Mathematical or Clerical Error - Credit administration is treated as a mathematical or clerical error so the IRS can assess without issuing a Notice of Deficiency otherwise required in case of:
 - Omission of tax resulting from recapture.
 - Usage of the TIN of a taxpayer under age 18.
 - Information from at least one of the two preceding years indicating ineligibility for the credit.
 - Failure to attach settlement statement.

General Provisions:

- Claim on Prior Year Return - For purchases after 2008, a taxpayer may elect to treat a current year's purchase as being made on December 31 of the prior year. **CAUTION:** The phase-out AGI will be for the year in which the credit is taken.
- Limitation on District of Columbia Credit – The DC credit is not allowed to a taxpayer where the National credit is available to the taxpayer.

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 Dec. 31, 2009, is increased to \$195 per partner or shareholder (was \$89). (Code Sec. 6698(b)(1) and Code Sec. 6699(b)(1), as amended by Act Sec. 16)

NOL Carryback

The Act provides an election for most taxpayers (not just small businesses) to increase the carryback period for an applicable NOL to 3, 4, or 5 years from 2 years. (Code Sec. 172(b)(1)(H)(i)(I), as amended by Act Sec. 13(a))

An applicable NOL means the taxpayer's NOL for any tax year ending after Dec. 31, 2007, and beginning before Jan. 1, 2010. (Code Sec. 172(b)(1)(H)(ii), as amended by Act Sec. 13(a)) Generally, an election may be made for only one tax year. (Code Sec. 172(b)(1)(H)(iii)(I), as amended by Act Sec. 13(a)) However, an eligible small business that made or makes an election under the Code as in effect before the date of enactment of this Act may make an election for 2 tax years instead of just 1. (Code Sec. 172(b)(1)(H)(v)(I), as amended by Act Sec. 13(a))

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. (Code Sec. 172(b)(1)(H)(iv)(I), as amended by Act Sec. 13(a))

The amount of the NOL otherwise carried to tax years after the 5th preceding tax year is adjusted to take into account that the NOL could offset only 50% of the taxable income for that 5th preceding tax year. (Code Sec. 172(b)(1)(H)(iv)(II), as amended by Act Sec. 3(a))

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. (Code Sec. 56(d)(1)(A)(ii)(I), as amended by Act Sec. 13(b))

Electronic Filing by Return Preparers

IRS is authorized to issue regs specifying which returns must be filed electronically. There are several limitations on this authority. First, it can only apply to persons required to file at least 250 returns during the calendar year. Second, IRS is prohibited from requiring that income tax returns of individuals, estates, and trusts be submitted in any format other than paper, although these returns may be filed electronically by choice.

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 Dec. 31, 2010, it provides an exception to this rule and mandates that the 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 10 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. (Code Sec. 6011(e), as amended by Act Sec. 17)

There is no sanction for failure to comply with this change.

Additional FUTA Surtax Is Extended Through June of 2011

Under pre-Act law, the Federal Unemployment Tax Act (FUTA) tax was imposed at a rate of 6.2% through 2009 (the total of the permanent 6% tax rate, and a temporary 0.2% surtax rate), and 6.0% for calendar year 2010 and later years.

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. (Code Sec. 3301, as amended by Act Sec. 10) That is, the temporary 0.2% surtax is extended for 1½ years through June 30 of 2011.

Department of Defense Homeowners Assistance Program ("HAP")

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.

Gross income does not include amounts received under the HAP (as in effect on Nov. 11, 2003). Amounts received under the program also are not considered wages for FICA tax purposes (including Medicare). The excludable amount is limited to the reduction in the fair market value of property.

For payments made after Feb. 17, 2009 (ARRA's enactment date), the Act expands the exclusion to HAP payments authorized under ARRA. (Code Sec. 132(n), as amended by Act Sec. 14)