

## **WORKER, HOMEOWNERSHIP, & BUSINESS ASSISTANCE ACT OF 2009**

### **First-Time Homebuyer Credit**

Congress included a few tax provisions in its Emergency Unemployment Compensation Extension Act. The most time-sensitive tax provision is the extension of the first-time homebuyer credit. Clients have a few more months to look for a new home and get a bit of help from Uncle Sam toward purchasing that home.

**Time to purchase qualifying home extended through April 30, 2010.** In hopes of stimulating home purchases during the continuing housing market slump, Congress extended and expanded the first-time homebuyer credit (§36(h)). The credit was due to expire November 30, 2009, but has been extended for purchases made before May 1, 2010. A special provision allows a home purchase to qualify for the credit if a binding contract to purchase is in place by April 30, 2010, and the purchase closes before July 1, 2010.

**Long-time resident of same principal residence qualifies for reduced homebuyer credit.** If a homeowner (and, if married, his or her spouse) has owned and used the same home as his or her principal residence for 5 consecutive years of an 8-year period, a subsequent home purchase after November 6, 2009, will qualify for the first-time homebuyer credit. The credit for a long-time resident may not exceed \$6,500 (§36(c)(6) and §36(b)(1)(D)).

**AGI limitation increased.** For purchases after November 6, 2009, the credit phases out at an AGI in the year of purchase between \$125,000 and \$145,000 (\$225,000 to \$245,000 for MFJ) (§36(b)(2)(A)(i)(II)).

**Limit on purchase price of home added to law.** No credit is allowed for the purchase of a home after November 6, 2009, if the purchase price exceeds \$800,000 (§36(b)(3)).

**Warning:** This is not a phaseout but a cliff limitation. If the client purchases a home for \$801,000 he or she does not qualify for a credit but would if he or she purchases a new home for \$799,000.

**Buyer under 18 years of age cannot claim credit.** No credit is allowed unless the taxpayer has attained age 18 as of the date of such purchase. If the taxpayer is married, the taxpayer will be treated as meeting the age requirement if the taxpayer's spouse meets the age requirement (§36(b)(4)).

**Buyer who can be claimed as a dependent of another does not qualify for the credit.** The credit cannot be claimed by a buyer who can be claimed as a dependent of another taxpayer in the year of purchase (§36(d)(3)).

**Settlement statement required to claim the credit.** To claim the credit, the taxpayer must attach to the return claiming the credit a properly executed copy of the settlement statement used to complete the purchase (§36(d)(4)).

**Purchase from family of spouse is not a qualifying purchase.** A married individual purchasing a home from the family of his or her spouse has not made a qualifying purchase for the homebuyer credit (§36(c)(3)(A)(i)). This change basically adds in-laws and stepchildren to the definition of a “close relative.”

**Purchased date extended through April 2011 for extended duty military, foreign service workers, and intelligence community workers.** Military, foreign service workers, and intelligence community workers who are on extended duty outside the United States for at least 90 days are granted a 1-year extension for the purchase of qualifying property. They must complete the purchase of the qualifying home by April 30, 2011. Recapture is also waived in the case of a disposition of a home due to qualified official extended duty service (§36(f)(4)(E)).

**Effective date for changes.** The amendments to §36 made by the Worker, Homeownership, and Business Assistance Act of 2009 are generally effective for purchases after the date of enactment, which is November 6, 2009.

**Example:** Holly bought a home in Massachusetts in May 2000. She lived in the home until her move to California in January 2007. She rented the Massachusetts home until its sale in July 2009. Holly bought a new home October 30, 2009, in Sunnyvale, California. What homebuyer credit does Holly qualify for? Holly is not a “first-time homebuyer” when she buys the Sunnyvale home as she has an interest in a personal residence within the 3 years prior to the purchase, so no \$8,000 credit. Holly doesn’t qualify as a “long-term homeowner” as she purchased the Sunnyvale home before the November 7, 2009, effective date, so no \$6,500 credit. Holly’s credit is \$0.

**First-Time Homebuyer Credit Comparison Chart**

Dates applicable	4/9/08 through 12/31/08	1/1/09 through 11/6/09	11/7/09 through 4/30/10
Maximum credit amount	\$7,500 (\$3,750 MFS)	\$8,000 (\$4,000 MFS)	\$8,000 (\$4,000 MFS)
Maximum home price	N/A	N/A	\$800,000
Recapture	Credit is paid back ratably over 15 years unless house is sold or ceases to be a personal residence during the recapture period	No payback required unless house ceases to be a personal residence in 36 months	No payback required unless house ceases to be a personal residence in 36 months
AGI	\$75,000 to \$95,000	\$75,000 to \$95,000	\$125,000 to \$145,000

phaseout	(\$150,000 to \$170,000 MFJ)	(\$150,000 to \$170,000 MFJ)	(\$225,000 to \$245,000 MFJ)
First-time homebuyer	No ownership in a U.S. personal residence during 3-year period prior to purchase of house	Same	Same
Long-time resident	N/A	N/A	Prior home used consecutive 5 of 8 years. \$6,500 maximum credit (\$3,250 MFS)

### **Five-year Carryback of Net Operating Losses**

Congress included a few tax provisions in its Emergency Unemployment Compensation Extension Act signed into law by the President November 6, 2009. Clients who are experiencing the recession firsthand with losses in their businesses will be relieved by the extension (although modified) of the generous 2008 NOL carryback rules. Tax refunds generated from 2009 NOL carrybacks may be just what's needed to keep a failing business, or its employees, around for another year or two.

**2009 NOLs.** The new law extends the longer carryback period to 2009 NOLs. It also expands the application of the 3-, 4-, or 5-year carryback to all 2009 NOLs, not just eligible small businesses as in the 2008 law.

If the taxpayer so elects, an applicable 2008 or 2009 NOL may be carried back 3, 4, or 5 years (§172(b)(1)(H)(i)(I)). Generally, the election can be made for only 1 tax year; however, an eligible small business that made an election for its 2008 NOL prior to the change in the law may also make an election for 2009 to carryback its 2009 NOL for 3, 4, or 5 years. The election must be made by the due date of the loss-year tax return (including extensions) as prescribed by the IRS.

**Applicable NOL.** Applicable NOL means the taxpayer's NOL for a taxable year ending after December 31, 2007, and before January 1, 2010 (§172(b)(1)(H)(iii)(I)). The special carryback period is no longer limited to small businesses.

**Five-year carryback loss is limited.** Any loss carried back to the fifth taxable year cannot exceed 50% of the fifth taxable year's taxable income (§172(b)(1)(H)(iv)(I)). The 50% limitation does not apply to eligible small business losses where an election was already in place prior to the new law to carryback the NOL to the fifth year (§172(b)(1)(H)(iv)(III)).

**Example:** Tax Inc. has a \$50,000 NOL in 2009. It elects to carryback the 2009 NOL to its 2004 tax year where the corporation had taxable income of \$20,000. Tax Inc. can only use \$10,000 (half of the \$20,000 taxable income in 2004) of its 2009 NOL carryback in 2004. The balance of \$40,000 is carried forward to 2005 and future years until it's fully absorbed.

**Suspension of 90% limitation on AMT NOL.** For tax years ending after 2002, the 90% limitation on the AMT NOL deduction is suspended if the extended carryback period is elected (§56(d)(1)(A)(ii)(I)).

**Late filing penalty for partnerships and S corporations.** For returns filed after December 31, 2009, the late filing penalty for partnerships and S corporations has been increased from \$89 per month per partner or shareholder to \$195 per month (§6698(b)(1) and §6699(b)(1)). That's a \$2,340 penalty for a single-owner S corporation return delinquent for 12 months.

**E-filing requirement.** Any tax return preparer who reasonably expects to file more than 10 individual income tax returns must file with the IRS electronically. "Individual income tax return" for this purpose means any tax return required for individuals, estates, or trusts (§6011(e)). The e-file requirement applies for returns filed after December 31, 2010.

**Note:** Finally the federal government conforms to California. California has been doing this for years.

- Sharon Kreider