By-Lined Article

EFFECTS OF THE WORKER, HOMEOWNERSHIP AND BUSINESS ASSISTANCE ACT OF 2009

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On Nov. 6, President Obama signed into law the Worker, Homeownership and Business Assistance Act of 2009. The new law affects many businesses and individuals by extending unemployment benefits, extending and expanding the first-time home buyer tax credit, allowing for a net operating loss carryback for all U.S. businesses, as well as a number of other changes and initiatives.

To help fund these new provisions, the new law also includes provisions to raise revenue, such as mandating electronic filing of individual tax returns by tax return preparers, delaying implementation of the worldwide interest allocation, increasing the penalties for failing to file partnership and S corporation tax returns, and accelerating estimated tax payments for certain large corporations. As you review the provisions below, consider the applicability to you and your clients' individual or business tax situations and consider consultation with a qualified tax professional prior to implementation of some of the more intricate provisions. The IRS will no doubt be watching closely how taxpayers apply these provisions.

Tax Incentives and Extensions

Unemployment Benefits Extended

The new law extends unemployment benefits for an additional 14 weeks for workers in all 50 states. Unemployed workers in states with an unemployment rate of at least 8.5 percent as a three-month average, including California, New Jersey, New York and Pennsylvania, are eligible for an additional six weeks for a total of 20 extended weeks. The existing tax provision, which excludes the first $2,400 of unemployment benefits, has not been extended and will remain available for 2009 only.

First-Time Homebuyer Credit

The tax credit for purchasing a first home has been extended and expanded. The Housing and Economic Recovery Act of 2008 established a tax credit for first-time homebuyers in the amount of $7,500 for homes purchased in 2008. The credit resembled a no-interest loan and repayments in 15 equal, annual installments, were required beginning in the 2010 tax year. The American Recovery and Reinvestment Act of 2009 expanded the credit by increasing the amount to $8,000 for purchases made between January 1, 2009 and November 30, 2009, and eliminated the repayment requirement. While the program has had its share of critics as it has cost the government approximately $15 billion to date, it has also provided evidence of success. To date, the credit has been claimed by more than 1.4 million taxpayers and total existing home sales were up 23.5% in October 2009 over October 2008, evidencing some impact on economic recovery.

The existing home buyer tax credit, which was set to expire Nov. 30, has been extended and expanded. The credit for first-time buyers, defined as anyone who has not owned a principal residence in the past three years, remains at 10 percent of the purchase price, limited to $8,000. The new law extends the expiration date of the credit to April 30, 2010. If a binding contract is entered into before May 1, 2010, with a closing date on a principal residence to occur before July 1, 2010, the credit will be treated as not expiring until July 1, 2010.

Under the new law, the income thresholds have been increased, allowing more taxpayers to take advantage of the credit. Previously, the credit phased out for married couples filing jointly with modified adjusted gross income, or MAGI, between $150,000 and $170,000 and all other filers with MAGI between $75,000 and $95,000. The new law raises the phase-out ranges for joint filers with MAGI between $225,000 and $245,000 and MAGI of $125,000 to $145,000 for all other filers.

If the home ceases to be a principal residence within 36 months of the date of purchase the credit may have to be repaid. However, the new law contains a measure to protect certain service members from having to repay the credit. Members of the U.S. uniformed services, U.S. Foreign Service and intelligence community who are called to duty before 36 months after the date of purchase will not have to repay the credit. Additionally, the new law extends the credit for individuals on qualified official extended duty outside the United States to purchases made before May 1, 2011, or before July 1, 2011, if a contract is entered into before May 1, 2011. If none of the above exceptions apply, the full amount of the credit received becomes due on the return for the year the home ceases to be a principal residence.

The changes in the home buyer credit rules also add some restrictions effective on purchases made after Nov. 6, 2009. The credit is now limited to personal residences with a purchase price of $800,000 or less and is available only to those age 18 and older. Taxpayers claimed as dependents on their parents' returns do not qualify. Additionally, taxpayers cannot claim the credit if the residence was purchased from any individual related to the taxpayer's spouse, including ancestors and lineal descendents. Taxpayers must attach a copy of the signed settlement statement to their tax return and the IRS now has authority to automatically assess tax and begin collection proceedings in cases where fraud is suspected, retroactive to April 9, 2008.

Non-First-Time Homebuyer Credit

Effective for purchases entered into after Nov. 6, 2009, the credit is no longer restricted to only first-time home buyers. Longtime homeowners who purchase a replacement principal residence may also claim a tax credit for 10 percent of the purchase price, up to $6,500. To qualify, the buyer must have lived in the same principal residence for any five-consecutive-year period during the eight-year period prior to the purchase of the new home.

Below is a chart summarizing the First-Time and Non-First Homebuyer Credit.

Homebuyer Credit	Recovery Act (Old Law)	Homeownership Act (New Law)
First-Time Homebuyer credit	10% of purchase price up to $8,000	10% of purchase price up to $8,000
Non-First Time/Long-Time homebuyer credit	N/A	10% of purchase price up to $6,500
Purchase price limit	Unlimited	$800,000
Minimum age	Any age	18 and up
AGI phase-out range: joint filers	$150k - $170k	$225k - $245k
AGI phase-out range: all other filers	$75k - $95k	$125 - $145k
Expiration date	November 30, 2009	April 30, 2010*
Expiration date for service members on extended duty outside the U.S.	November 30, 2009	April 30, 2011**

* June 30, 2010 if contract is entered into before April 30, 2010

** June 30, 2011 if contract is entered into before April 30, 2011

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Net Operating Loss (NOL) Carryback

Expanded NOL carryback rules now apply to all U.S. companies. The American Recovery and Reinvestment Act of 2009, or ARRA, made it possible for small businesses with average gross receipts of $15 million or less to carry back net operating losses from 2008 for up to five years, rather than the standard two. The new law extends this benefit to all U.S. businesses regardless of gross receipts. All U.S. businesses, including the largest corporations, may carry back a 2008 or 2009 net operating loss up to five years.

The carryback in the fifth year is limited to 50 percent of taxable income for that year. For example, if a business is carrying back a $100 million loss and has taxable income of $50 million in the fifth prior year, the loss carried back to that year is limited to $25 million. This 50 percent loss limitation does not apply to small businesses that elected to carry back a 2008 NOL, however, it does apply to its 2009 NOL.

The expanded election applies to net operating losses for 2008 or 2009, but not both. However, small businesses that previously elected to carry back a 2008 NOL are eligible to make the election for both years, and may elect to carry back a 2009 NOL.

Military Exclusion

Armed Forces members and Defense Department employees will not be taxed on Homeowner's Assistance Program, or HAP, payments. Earlier this year the ARRA expanded HAP to assist individuals whose property values were affected by the current real estate slowdown, including wounded Armed Forces members, civilian Department of Defense and Coast Guard employees, and Armed Forces members permanently reassigned from an area at or near a military installation. HAP provides payments to certain Defense Department employees and members of the Armed Forces to offset the adverse effects on housing values that result from a military base realignment or closure. These payments are excluded from the recipient's gross income and are not subject to Social Security or Medicare tax. The new law expands the exclusion from income to cover HAP payments authorized under ARRA, effective for payments made after February 17, 2009.

Offsets to Increase Tax Revenues

Electronic Filing

The days of mailing paper returns to the IRS are coming to an end for most paid preparers. To offset the cost of the new law, there are several revenue raising provisions. One such revenue booster requires all paid tax return preparers who file at least 10 individual income tax returns to file electronically. The new e-file requirement applies to any individual, estate or trust return filed after December 31, 2010. Requiring mandatory electronic filing is expected to increase e-filing by nearly 27 percent, saving the IRS time and money on manual intake and review of paper returns. The IRS recently reported that about 67 percent of individual income tax returns were filed electronically during the 2009 filing season. Expect to see this number increase during the forthcoming filing season.

Taxpayers who don't already e-file through their preparers can expect a slight change in procedures. After the return is completed by the tax preparer, a summary of the return is provided to the taxpayer on Form 8879. This form must be signed and returned to the preparer before the tax return can be electronically transmitted to the IRS.

Penalties

Partnerships and S corporations that do not file a tax return, no matter what the reason, will face much larger penalties. Another revenue raising provision within the new law is an increase in the penalty for failure to timely file a partnership or S corporation return. Effective for tax years beginning after December 31, 2009, the penalty applied to each shareholder or partner for failing to file a partnership or S corporation return will increase from $89 to $195, for each month that the failure continues, up to 12 months. These increased penalties are expected to raise about $1.2 billion over 10 years.

Corporate Estimated Tax

Many larger corporations will be required to pay higher estimated tax payments. An additional revenue raiser contained in the new law is aimed at large corporations with $1 billion or more in assets. For these large corporations, the new law increases the required payment of estimated tax due in July, August or September of 2014 by 33 percent. The amount of the next required installment will be appropriately reduced to reflect the amount of the increase in the earlier installment.

FUTA Surtax

Change in new law does not affect the Federal Unemployment Tax Act, or FUTA. The FUTA surtax of 0.20 percent was first enacted in 1976. It was most recently extended through the end of 2009 in the Emergency Economic Stabilization Act of 2008. The new law extends the 0.20 surtax through June 30, 2011, keeping the FUTA tax rate at 6.2 percent. After June 30, 2011, the FUTA tax is scheduled to drop to 6 percent. Companies that utilize payroll services should be aware of this.

Worldwide Interest

Multinational companies will be waiting at least another seven years for a tax break on worldwide interest. The American Jobs Creation Act of 2004 made it possible for consolidated groups of corporations to make a one-time election to determine the foreign source of income of the group by allocating and apportioning the domestic members' interest expense on a worldwide basis, as if all members of the group were a single entity. Post-2004 legislation delayed the effective date of the provision until tax years beginning after December 31, 2010. The new law delays the provision even further, to tax years beginning after December 31, 2017. This delayed effective date is expected to save the federal government about $20 billion over 10 years. Those who advise companies affected by this should be aware of tax planning issues and related foreign compliance requirements.

Conclusion

Given the recent economic turmoil, most taxpayers are likely to benefit from certain provisions of the new law, however, taxpayers must use caution not to misinterpret, and, as a result, misapply the provisions. Be sure to contact a qualified tax professional to determine how the provisions of the new act can be applied to achieve the best result for your individual or business tax situation or for those of your clients.

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