

**The Worker, Homeownership,  
and Business Assistance  
Act of 2009**

# The Worker, Homeownership, and Business Assistance Act of 2009

The Worker, Homeownership, and Business Assistance Act of 2009 primarily aims at providing additional percentages of regular compensation and average weekly benefits used to calculate second-tier unemployment benefits, establish a third-tier benefit structure with an extended benefit period for such benefits when the second-tier benefits run out, and a different structure for fourth-tier benefits. However, it includes a number of important tax provisions.

## A. FUTA tax rate

The FUTA .2 percent surtax is extended for another 18 months through the first six months of 2011, before the tax rate reverts from 6.2 percent to 6 percent.

## B. First-time homebuyer credit (FTHBC)

The Act makes several important modifications to the first-time homebuyer credit. It generally extends the application through purchases made before May 1, 2010 and also includes purchases closed before July 1, 2010 if the taxpayer had entered into a written binding contract for the purchase of the principal residence before May 1, 2010.<sup>1</sup> As before, the taxpayer may elect to treat such purchase as made on December 31 of the calendar year preceding such purchase, so the taxpayer purchasing during the eligibility period during 2010 may elect to treat the purchase as occurring in 2009 for purposes of claiming the credit. This applies to purchases made after November 30, 2009.

### **Note:**

Taxpayers who were ineligible under the old rules may be eligible for the credit under the new rules. In the case of an individual (and, if married, such individual's spouse) who has owned and used the same residence as such individual's principal residence for any five-consecutive-year period during the eight-year period ending on the date of the purchase of a subsequent principal residence, such individual shall be treated as a first-time homebuyer for purposes of this section with respect to the purchase of such subsequent residence.<sup>2</sup> In this case, however, the maximum credit is \$6,500 (\$3,250 for married filing separately) for such taxpayers.<sup>3</sup> The phase out of the credit starts at \$125,000 (\$225,000 for married filing jointly) and ends at \$145,000 (\$245,000) of MAGI.<sup>4</sup> No credit is allowed for the purchase of any residence if the purchase price of such residence exceeds \$800,000.<sup>5</sup> This applies to purchases made after November 6, 2009.

<sup>1</sup> In the case of any individual who serves on qualified official extended duty service outside the United States for at least 90 days during the period beginning after December 31, 2008, and ending before May 1, 2010, and, if married, such individual's spouse, the May 1, 2010 limitation is extended to May 1, 2011 and the July 1, 2010 limitation is extended to July 1, 2011.

<sup>2</sup> I.R.C. §36(c)(6).

<sup>3</sup> I.R.C. §36(b)(1)(D).

<sup>4</sup> I.R.C. §36(b)(2)(A)(i)(II).

<sup>5</sup> I.R.C. §36(b)(3).

- In the case of the disposition of a principal residence by an individual (or a cessation after December 31, 2008, in connection with government orders received by such individual, or such individual's spouse, for **qualified official extended duty service** neither the acceleration of the recapture nor the prohibition on taking the credit when the residence is disposed of or ceases to be the principal residence apply to such disposition (or cessation), and if such residence was acquired before January 1, 2009, the recapture shall not apply to the taxable year in which such disposition (or cessation) occurs or any subsequent taxable year.
- The Act adds a provision that denies any credit to the taxpayer with respect to the purchase of the principal residence if a personal exemption deduction is allowable to another taxpayer for such taxable year.<sup>6</sup>

### C. FTHBC compliance

The Service has become aware of the extensive tax fraud that apparently has been perpetrated with respect to the first-time homebuyer credit and now has several tools to police the use of these provisions that are applicable to all returns for taxable years ending on or after April 9, 2009.

- The first, not so much a fraud as a misuse of the credit in light of the purposes the Congress sought to promote, is to deny any credit to a taxpayer who has not attained age 18 as of the date of such purchase. However, in the case of any taxpayer who is married, the taxpayer is deemed as meeting the age requirement if the taxpayer or the taxpayer's spouse meets such age requirement.<sup>7</sup>
- The second, however, will impact ordinary taxpayers who otherwise qualify for the credit. Applicable to returns for taxable years ending after November 6, 2009, a taxpayer will not be allowed the credit if the taxpayer fails to attach a properly executed copy of the settlement statement used to complete such purchase to the return of tax for such taxable year.<sup>8</sup> **This immediately impacts all 2009 tax returns.**
- The property will not be considered purchased, and thus not eligible for the credit, if the property is acquired from a person related to the person acquiring the property (**or, if married, such individual's spouse**).<sup>9</sup>
- With respect to the immediate assessment of reporting and non-reporting, the Service may treat as mathematical or clerical errors both an omission to report a recapture of the credit and an entry on a return claiming the credit if either the Service obtains information from the person issuing the TIN of the taxpayer that indicates that the taxpayer does not meet the age requirement, the information provided by the taxpayer on an income tax return for at least one of the two preceding taxable years is inconsistent with eligibility for such credit, or the taxpayer fails to attach to the return the copy of the settlement statement.

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<sup>6</sup> I.R.C. §36(d)(3).

<sup>7</sup> I.R.C. §36(b)(4).

<sup>8</sup> I.R.C. §36(d)(4).

<sup>9</sup> I.R.C. §36(c)(3)(A)(i).

### Summary of changes to first-time homebuyer credit

Extension through 4/30/10	Purchases after 11/30/09
Extension of waiver of recapture	Purchases after 11/30/09
Extension of credit to long-time residents	Purchases after 11/06/09
Maximum credit for long-time residents	Purchases after 11/06/09
Phase out limitation change	Purchases after 11/06/09
Limitation on purchase price	Purchases after 11/06/09
Waiver of recapture for taxpayer on qualified official extended duty	Dispositions and cessations after 1/1/09
Extension to qualified official extended duty outside the United States	Purchases after 11/30/09
Prohibition of dependent	Purchases after 11/06/09
Prohibition of purchasing from a party related to taxpayer's spouse	Purchases after 11/06/09
Mathematical error category for omission of recapture or claim of credit contradicted by other data	Returns for taxable years ending after April 9, 2008
Minimum age requirement	Purchases after 11/06/09
Provision of settlement statement with the tax return	Purchases in taxable years ending after 11/06/09

#### D. NOL carryback period

The special carryback provisions of the American Recovery and Reinvestment Act of 2009 have been retroactively amended by the Worker, Homeownership, and Business Assistance Act of 2009 to apply to the taxpayer's net operating loss for a taxable year ending after December 31, 2007, and beginning before January 1, 2010,<sup>10</sup> but the election may be made only with respect to one taxable year,<sup>11</sup> and made in such manner as may be prescribed by the Service, and shall be made by the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009. Any such election, once made, shall be irrevocable.<sup>12</sup> The election permits the taxpayer to elect a carryback period of between three and five years. There is generally no limitation based on the size of the business.

- An additional limitation in this legislation is that the amount of any net operating loss that may be carried back to the fifth taxable year preceding the taxable year of such loss shall not exceed 50 percent of the taxpayer's taxable income (computed without regard to the net operating loss for the loss year or any taxable year thereafter) for such preceding taxable year.<sup>13</sup> This rule does not apply, however, to any loss of an eligible small business with respect to any election made under this subparagraph as in effect on November 6, 2009.<sup>14</sup>
- Treasury is authorized to prescribe such rules as are necessary to prevent the abuse of the purposes of the amendments made by this section, including anti-stuffing rules, anti-churning rules (including rules relating to sale-leasebacks), and rules similar to the rules relating to losses from wash sales.
- In general, the amendments apply to net operating losses arising in taxable years ending after December 31, 2007; they also apply to alternative tax net operating loss deduction to taxable years ending after December 31, 2002.

<sup>10</sup> I.R.C. §172(b)(1)(H)(ii).

<sup>11</sup> I.R.C. §172(b)(1)(H)(v)(I) permits an eligible small business under the ARRA definition to make the election with respect to two taxable years. An eligible small business is a corporation or partnership that has average annual gross receipts of such entity for the three-taxable-year period ending with such prior taxable year does not exceed \$15,000,000 for the taxable year in which the loss arose (or, in the case of a sole proprietorship, which would meet such test if such proprietorship were a corporation).

<sup>12</sup> I.R.C. §172(b)(1)(H)(iii).

<sup>13</sup> I.R.C. §172(b)(1)(H)(iv)(I).

<sup>14</sup> I.R.C. §172(b)(1)(H)(iv)(III).

- In the case of any net operating loss for a taxable year ending before November 6, 2009, any election made to waive the carryback with respect to such loss be revoked before the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009, and application for a tentative carryback adjustment with respect to such loss shall be treated as timely filed if filed before such due date.
- This change does not apply to any taxpayer if the federal government acquired before November 6, 2009 an equity interest in the taxpayer, any warrant (or other right) to acquire any equity interest with respect to the taxpayer, or gave the taxpayer funds in exchange for such interest in taxpayer after November 6, 2009, pursuant to the Emergency Economic Stabilization Act of 2008. It also does not apply to FNMA and FHLA, or to any affiliate of any such taxpayer.

## **E. Late filed S corporation and partnership returns**

The Act also increases the penalty for the late filing of Form 1065 or Form 1120S from \$89 to \$195 per partner or shareholder<sup>15</sup> for each month (or fraction thereof) during which such failure continues (but not to exceed 12 months), unless it is shown that such failure is due to reasonable cause, effective for returns for taxable years beginning after December 31, 2009.

## **F. Mandatory e-filing**

In addition, tax return preparers who reasonably expect to file more than 10 individual tax returns<sup>16</sup> must file electronically on magnetic media,<sup>17</sup> beginning with returns filed after December 31, 2010. For these purposes, an individual income tax return includes any income tax return imposed on individuals, trusts, or estates.<sup>18</sup>

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<sup>15</sup> This number counts everyone who was an equity owner during any part of the taxable year.

<sup>16</sup> I.R.C. §6011(e)(3)(B).

<sup>17</sup> I.R.C. §6011(e)(3)(A).

<sup>18</sup> I.R.C. §6011(e)(3)(C).