



Tax Alert

Worker, Homeownership and Business Assistance Act of 2009

NOVEMBER 2009

Earlier this month, Congress enacted the “Worker, Homeownership, and Business Assistance Act of 2009” (the Act). While much of the media spotlight was on the extension of up to 20 weeks of unemployment benefits, there are a handful of tax related provisions which were part of the Act. This Alert will address some of these tax provisions.

Individuals

Extension and Revision of Homebuyer Tax Credit. Under the first time homebuyer tax credit, a refundable credit was available for first time homebuyers who purchased a home after April 8, 2008 and before December 1, 2009. The credit was equal to the lesser of \$8,000 or 10% of the principal residence’s purchase price. The Act will extend this credit through April 30, 2010 for first-time homebuyers, allowing 60 days to close, provided that the homes are under a binding contract by that date. The Act also makes the credit available to higher-income taxpayers, with an increased phase-out threshold starting from \$125,000 for individuals and \$225,000 for joint filers. This Act will also provide existing homeowners who have resided in their current residence for five or more consecutive years a lesser of: \$6,500 or 10% of purchase price tax credit under a new “long-time residents” category.

Planning Point: Since the credit is now expanded to include existing homeowners, more taxpayers should qualify for this version of the credit.

Businesses

Five-Year NOL Carryback Period. Under pre-Act law, net operating losses (NOLs) may be carried back to the two years before the year that the loss arises and carried forward to each of the succeeding twenty years after the year that the loss arises. Small businesses with gross receipts of \$15 million or less were allowed a carryback period from two years to five years for 2008 NOLs. The Act expands and extends the five-year carry back period to allow most businesses, not just small businesses, to carry back new operating losses for up to five years for losses incurred in either 2008 or 2009 (not both). However, the amount of NOL that can be carried back to the 5th tax year will be restricted to 50% of the taxable income in that year.

Planning Point: Since many businesses are operated as S corporations or Limited Liability Companies (LLCs), any net operating loss will be recognized by the S corporation

Wilkin &
Guttenplan, P.C.
certified public accountants
and consultants

1200 Tices Lane
East Brunswick, NJ 08816

T 732.846.3000
F 732.846.0618

www.wgcpas.com

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shareholder or LLC member. In these cases, the individual shareholder or member may be able to take advantage of these carry back rules.

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Extension of FUTA Surtax. Under pre-Act law, the Federal Unemployment Tax Act (FUTA) tax was imposed at a rate of 6.2% through 2009 and 6.0% for calendar year 2010 and later years. The Act provides that 6.2% FUTA tax is extended to apply through June of 2011 and 6.0% for rate applies for the remainder of calendar year 2011 and for later years.

Increased Penalty for Failure to File Partnership or S Corporation Returns. Under pre-Act law, civil penalties applied for failure to file partnership and S corporation returns. The penalty was \$89 per partner or shareholder for each month that the failure continued, up to a maximum of 12 . Under the Act, the amount increased to \$195 per partner or shareholder effective for tax years beginning after December 31, 2009.

Planning Point: This change in the law makes the late filing of a partnership or S corporation tax return an expensive proposition.

While the full details of the Act are beyond the scope of this Alert, your Wilkin & Guttenplan advisor can help you determine how these provisions may benefit you.

Any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

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Guttenplan, P.C.**

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and consultants

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