

# PKF PERSPECTIVES

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## WORKER, HOMEOWNERSHIP, AND BUSINESS ASSISTANCE ACT OF 2009

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On November 6, 2009, the President signed into law the *Worker, Homeownership, and Business Assistance Act of 2009*. Some key points for:

### HOME BUYERS AND SELLERS

Among other provisions, the new law:

- extends and liberalizes the tax credit for first-time home buyers
- extends the credit to existing homeowners who are "long term residents"
- includes some measures designed to prevent abuse of the credit.

These important changes provide incentives for potential home buyers and home sellers and is designed to stimulate the housing market.

### BUSINESS CHANGES

The new law also makes it easier for most businesses to get immediate tax refunds for net operating losses (NOLs). It does so by allowing certain NOLs to be carried back to earlier, more profitable years. In these tough economic times, that is good news for businesses who have suffered losses recently after better years when high taxes were paid.

On the negative side, the Act defers a scheduled drop in the Federal Unemployment Tax Act (FUTA) tax rate, increases penalties for certain businesses that fail to meet return filing requirements, and boosts estimated taxes for large corporations in 2014.

### HOME BUYERS AND SELLERS

#### Home Buyer Credit Basics

**Before the new law was enacted**, the home buyer credit was only available for qualifying first-time home purchases after April 8, 2008, and before December 1, 2009. The top credit for homes bought in 2009 is \$8,000 (\$4,000 for a married individual filing separately) or 10% of the residence's purchase price, whichever is less.

Only the purchase of a principal residence located in the U.S. qualifies. Vacation homes and rental properties are not eligible.

The home buyer credit reduces one's tax liability on a dollar-for-dollar basis, and if the credit is more than the tax you owe, the difference is paid to you as a tax refund.

For homes bought after December 31, 2008, the home buyer credit is recaptured (i.e., paid back to the IRS) if a person disposes of the home (or stops using it as a principal residence) within 36 months from the date of purchase.

**Before the new law**, the first-time home buyer credit phased out for individual taxpayers with modified adjusted gross income (AGI) between \$75,000 and \$95,000 (\$150,000 and \$170,000 for joint filers) for the year of purchase.

**The new law** makes four important changes to the home buyer credit:

1. Extended time frame for the home buyer credit.

The home buyer credit is extended to apply to a principal residence bought before May 1, 2010. The home buyer credit also applies to a principal residence bought before July 1, 2010 by a person

who enters into a written binding contract before May 1, 2010, to close on the purchase of the principal residence before July 1, 2010.

In general, a home is considered bought for credit purposes when the closing takes place. So the extra two-months (May and June of 2010) helps buyers who find a home they like but cannot close on it before May 1, 2010. For example, the law allows the buyer to enter into contract on the home before May 1, 2010, close on it before July 1, 2010, and get the home buyer credit (if they otherwise qualify).

**Note:** Certain service members away on qualified official extended duty service outside of the U.S. get an extra year to buy a qualifying home and get the credit. They also can avoid the recapture rules under certain circumstances.

## 2. Long-Term Residents.

The home buyer credit may now be claimed by existing homeowners who are "long-time residents."

For purchases after November 6, 2009, a home buyer credit can be claimed by individuals who maintained the same principal residence for any 5-consecutive year period during the 8-years ending on the date that the subsequent principal residence is purchased.

For example, for married couples who are empty nesters that have lived in their suburban home for the past ten years, are potentially eligible for the credit if they "move down" and buy a smaller town home.

There is no requirement for the current home to be sold in order to qualify for a home buyer credit on the replacement principal residence. Thus, the replacement residence can be bought to meet the new deadlines (explained above) before the old home is sold. In fact, taxpayers can hold on to their prior principal residence in the hope of achieving a better selling price later on.

The maximum allowable home buyer credit for qualifying existing homeowners is \$6,500 (\$3,250 for a married individual filing separately), or 10% of the purchase price of the subsequent principal residence, whichever is less.

## 3. Higher Income Individuals.

The home buyer credit is available to higher income taxpayers. For purchases after November 6, 2009, the home buyer credit phases out over much higher modified AGI levels, making the credit available to a larger pool of buyers.

For individuals, the phase out range is between \$125,000 and \$145,000, and for those filing a joint return, it's between \$225,000 and \$245,000.

## 4. New Home Price Limit.

There is a new home price limit for the home buyer credit. For purchases after November 6, 2009, the home buyer credit cannot be claimed for a home if its purchase price exceeds \$800,000.

It is important to note that there is no phase out mechanism. A purchase price that exceeds the \$800,000 threshold by even a single dollar will cause the loss of the entire credit.

The new purchase price limitation applies whether you are buying a first-time principal residence or are a qualifying existing homeowner purchasing a replacement principal residence.

## Other Home Buyer Credit Changes

The new law includes a number of new anti-abuse rules to prevent taxpayers from claiming the home buyer credit even though they do not qualify for it. The most important of these are as follows:

- Beginning with the 2010 tax return, the home buyer credit cannot be claimed unless the taxpayer attaches to the return a properly executed copy of the settlement statement used to complete the purchase of the qualifying residence.
- For purchases after November 6, 2009, the home buyer credit cannot be claimed unless the taxpayer has attained 18 years of age as of the date of purchase (a married person is treated as meeting the age requirement if either spouse meets the age requirement).
- For purchases after November 6, 2009, the home buyer credit cannot be claimed by a taxpayer if he or she can be claimed as a dependent by another taxpayer for the tax year of purchase. It also cannot be claimed for a home bought from a

person related to the buyer or the spouse of the buyer, if married.

- Beginning with 2009 returns, the new law makes it easier for the IRS to go after questionable home buyer credit claims without initiating a full-scale audit.

### **New Version of Form 5405**

Taxpayers who buy a home after November 6, 2009 must use the new version of Form 5405 to claim the first time home buyers tax credit. Additionally, taxpayers claiming the credit on their 2009 returns - no matter when the residence was purchased - must also use the new version of Form 5405. However, a taxpayer who purchased a home on or before November 6, 2009 and elects to claim the credit on an original or amended 2008 return may continue to use the current version of Form 5405.

According to the IRS, taxpayers who claim the credit on their 2009 tax returns will NOT be able to file electronically and will have to file a paper return.

### **What Has Not Changed**

The tax law still provides an extraordinary opportunity to receive home buyer credit cash without waiting to file your tax return for the year in which you buy the qualifying principal residence.

Thus, if you buy a qualifying principal residence in 2009, you can treat the purchase as having taken place on December 31, 2008; file an amended return for 2008 claiming the credit for that year, and get your home buyer credit cash relatively quickly via a tax refund.

Similarly, you can treat a qualifying principal residence bought in 2010 (before the new deadlines) as having taken place on December 31, 2009, and file an original or amended return for 2009 claiming the credit for that year.

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**If you need assistance in determining whether the home buyer credit is available under your personal circumstances, please contact the director in charge of your account.**

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## **BUSINESS CHANGES**

### **Background on NOLs**

A net operating loss (NOL) is the excess of business deductions (computed with certain modifications) over gross income in a particular tax year. The loss can be deducted, through an NOL carryback or carryover, in another tax year in which gross income exceeds business deductions.

In general, NOLs may be carried back two years and forward 20 years. The NOL is first carried to the earliest tax year for which it is allowable as a carryback or a carryover, and is then carried to the next earliest tax year. A business may forego the entire carryback period and instead carry the NOL forward.

For NOLs arising in a tax year beginning or ending in 2008, eligible small businesses (ESBs) could elect to increase the NOL carryback period from two years to three, four, or five years.

A calendar year business could only make the election for 2008.

A fiscal-year taxpayer whose year ended in 2008 could make the election either for:

- (a) its fiscal year ending in 2008, or
- (b) its fiscal year beginning in 2008 and ending in 2009, but not both.

An ESB is a trade or business (including one conducted in or through a corporation, partnership, or sole proprietorship) whose average annual gross receipts are \$15 million or less for the three-tax-year period (or shorter period of existence) ending with the tax year in which the loss arose.

### **The New Law Treatment of NOLs**

The new law allows a longer carryback period for most businesses.

The Act generally permits any business (not just an ESB) to increase the carryback period for an applicable NOL to three, four, or five years from two years (however, businesses getting certain federal bailout funds are not eligible).

An applicable NOL is a business's NOL for any tax year ending after December 31, 2007, and beginning before January 1, 2010. Generally, an election may be made for only one tax year. However, an ESB that made or makes an election under the rules in effect before November 6, 2009 (the Act's enactment date) may make an election for two tax years instead of just one.

The amount of the NOL that can be carried back to the fifth tax year before the loss year cannot be more than 50% of a business's taxable income for that fifth preceding tax year determined without taking into account any NOL for the loss year or for any tax year after the loss year.

The amount of the NOL otherwise carried to tax years after the fifth preceding tax year is adjusted to take into account that the NOL could offset only 50% of the taxable income for that fifth preceding tax year.

For example, assume Ace Corp (not an ESB) has an NOL of \$5 million for its tax year ending August 31, 2009. In its tax year ending August 31, 2004, it had taxable income of \$6 million. If Ace elects to carry back its NOL to the 2004 tax year, then it may apply only \$3 million of that loss against its taxable income for 2004. In determining the amount of the NOL that ACE can carry over to years ending after August 31, 2004, the NOL is reduced by only the \$3 million that was offset for the 2004 tax year.

However, note that the 50% limitation does not apply to the applicable 2008 NOL of an ESB that makes an election under pre-Act law, even if the election is made after November 6, 2009.

**Note:** The Act carries a separate, similar set of NOL carryback rules for life insurance companies.

### **NOL Transition Rules To Watch Out For**

The Act's transition rules allow a business to revoke any election to waive the carryback period for an applicable NOL or an applicable loss from operations for a tax year ending before November 6, 2009. The election can be revoked by the extended due date for filing the tax return for the business's last tax year beginning in 2009.

Similarly, any application for a tentative carryback adjustment to gain an immediate refund for such a loss is treated as timely filed if filed by the extended due

date for filing the tax return for the business's last tax year beginning in 2009.

Normally, an election to waive the carryback period cannot be revoked. The transition rules afford an opportunity to undo a waiver for an applicable NOL, or an applicable loss from operations for a tax year ending before November 6, 2009.

### **FUTA Change**

Scheduled drop in FUTA tax rate is deferred. Before the Act, the FUTA rate was scheduled to drop from 6.2% to 6% after 2009. Under the Act, the 6.2% FUTA tax rate continues to apply through June of 2011, and afterwards a 6.0% rate will apply.

### **Tax Estimates**

*Estimated tax change.* For large corporations (those with \$1 billion or more in assets), the required payment of estimated tax otherwise due in July, August, or September of 2014 under pre-Act law will be increased by 33%.

The amount of the next required installment will be appropriately reduced to reflect the amount of the increase in the earlier installment.

### **Penalty Increases**

*Passthrough penalties increased.* The base amount on which a penalty is computed for a failure to file either a partnership or S corporation return for a tax year beginning after December 31, 2009, is increased to \$195 per partner or shareholder.

Items in this publication should not be considered official statements of position, nor advice for individuals or organizations without consulting a professional advisor. This information is not intended to be, nor can it be, used by any taxpayer for the purpose of avoiding tax penalties. For more information, please contact tax directors Leo Parmegiani or Joe Lee.



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