

The Worker, Homeownership and Business Assistance Act of 2009 (WHBAA) was signed into law Nov. 6. Not only does the act extend unemployment benefits for millions of Americans, but it also extends and enhances the homebuyers credit and the five-year net operating loss (NOL) carryback election for businesses.

The Homebuyers Credit

Last year, a refundable tax credit equal to 10% of the purchase price of a principal residence was made available to qualified first-time homebuyers. This credit was set to expire July 1, 2009, and generally required repayment. But in February the American Recovery and Reinvestment Act of 2009 (ARRA) extended its availability to purchases made before Dec. 1, 2009, and generally removed the repayment obligation for qualifying purchases after Dec. 31, 2008.

WHBAA has now extended the credit to purchases made before May 1, 2010 — or July 1st if a binding contract is in place before May 1st to close on the purchase before July 1st.

The maximum credit remains at \$8,000 (\$4,000 for married filing separately) for first-time homebuyers. For purposes of the credit, a first-time homebuyer is someone who has had no ownership interest in a principal residence in the United States during the prior three-year period.

In addition, WHBAA *expands* the credit to many "long-time" homeowners purchasing a subsequent home. The maximum credit for these taxpayers is \$6,500 (\$3,250 for married filing separately). To qualify, the homeowner must have maintained the same principal residence for any five-consecutive-year period during the eight-year period ending on the purchase date of a subsequent principal residence.

WHBAA also significantly increases the modified adjusted gross income (MAGI) phase-out ranges for the credit. For qualifying purchases made after Nov. 6, 2009, the phase-out range is \$225,000-\$245,000 for joint filers, \$125,000-\$145,000 for single filers.

WHBAA does add a few new limits. Effective for purchases made after Nov. 6, 2009, *no* credit is allowed if:

- The home's purchase price exceeds \$800,000 (regardless of regional market factors),
- The homebuyer (or his or her spouse) is related to the seller,
- The homebuyer is under age 18 on the date of purchase (unless his or her spouse meets the age requirement), or
- The homebuyer is the dependent of another taxpayer.

There are other expansions, enhancements and limitations as well, so it's important to consult your tax advisor to determine whether you're eligible for the credit.

The NOL Carryback

Generally, when business deductions exceed gross income, the difference is an NOL for tax purposes and may be carried back two years to offset income. This generates a tax refund, providing a cash infusion in times of loss. Any loss that's not absorbed is carried forward up to 20 years.

ARRA allowed taxpayers to elect to carry back 2008 NOLs from qualifying small businesses (businesses with average gross receipts of \$15 million or less for the three years ending with the loss year) for three, four or five years instead of two. WHBAA expands the longer carryback option to businesses that don't qualify as "small" and extends it to 2009 NOLs.

Under WHBAA, generally taxpayers can apply the longer carryback to only one tax year's NOL and to offset only 50% of income in the fifth year back, 100% in the other four. For qualifying small businesses, taxpayers can apply the longer carryback to both 2008 *and* 2009 NOLs, and the 50% limit applies only to 2009 NOLs. Taxpayers also have the option to use the normal two-year carryback or to waive the carryback period entirely and carry the loss forward.

Are You Eligible?

The extension and expansion of the homebuyers credit and the five-year NOL carryback option could provide you or your business with a valuable tax-saving opportunity. But the rules surrounding these breaks are complex. We'd be glad to help you determine whether you're eligible and, if so, how you can make the most of these breaks.