

Tax savings opportunities through the Worker, Homeownership, and Business Assistance Act of 2009

On November 6, 2009, President Obama signed the Worker, Homeownership, and Business Assistance Act of 2009 (WHBAA) into law, which extends and expands The Homebuyers Tax Credit and expands the five-year net operating loss carryback to most taxpayers.

Changes to the Homebuyers Tax Credit

Last year, a refundable tax credit equal to 10 percent 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. In February, the American Recovery and Reinvestment Act of 2009 (ARRA) extended its availability to purchases made before December 1, 2009, and generally removed the repayment obligation for qualifying purchases after December 31, 2008.

For the Homebuyers Tax Credit, the new legislation:

- > Extends the expiration dates for the Homebuyers Tax Credit to the purchase of principal residences under written contract before May 1, 2010, and closed before July 1, 2010.
- > Extends the application of the credit to higher income taxpayers as phase-out amounts increase to:
 - > \$125,000 to \$145,000 for single taxpayers
 - > \$225,000 to \$245,000 for married filing jointly
- > Offers a \$6,500 credit (\$3,250 for married filing separately) for purchases after the effective date of the legislation for individuals who have maintained the same principal residence for any five consecutive-year period during the eight-year period ending on the date of the purchase.
- > Caps the price of the residence that can qualify for the credit. The credit cannot be claimed if buying a residence with a purchase price that exceeds \$800,000 after the effective date of the legislation.
- > Continues the maximum credit of \$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 U.S. during the prior three-year period.

Provisions of the five-year net operating loss (NOL) carryback rule

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 is not absorbed is carried forward up to 20 years.

The American Recovery & Reinvestment Act of 2009 (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 percent of income in the fifth year back, 100 percent in the other four. For qualifying small businesses, taxpayers can apply the longer carryback to both 2008 and 2009 NOLs, and the 50 percent 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.

(continued)

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Under the new act:

- > The application of the five-year NOL carryback rule is extended to most taxpayers and allows the carryback of losses from tax years ending after December 31, 2007, and beginning before January 1, 2010.
- > The election generally may be made for only one tax year falling within this period. However, an eligible small business that made or makes an election under the Internal Revenue Code as in effect before the act's enactment may make an election for two tax years instead of one.
- > The amount of the NOL that can be carried back to the fifth tax year before the loss year may not be more than 50 percent of the taxpayer's taxable income for the fifth preceding tax year, which is determined without taking into account any NOL for the loss year or any tax year after the loss year.
- > The 50 percent limitation does not apply to the applicable 2008 NOL of an eligible small business that was made under an election prescribed by the prior five-year NOL carryback legislation.
- > The 90 percent alternative minimum tax (AMT) limitation on NOLs is suspended.

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. However, the rules surrounding these tax benefits are complex. We would be glad to help you determine whether you are eligible and, if so, how you can make the most of these tax benefits.

Baker Tilly Tax Alerts provide you with timely updates about tax savings opportunities and changing regulations. Contact us at tax@bakertilly.com with questions.

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