

Worker, Homeownership, and Business Assistance Act of 2009 **By Sidney Kess**

While Congress was extending unemployment benefits, it also made a number of important changes affecting certain individuals and businesses. The Worker, Homeownership, and Business Assistance Act of 2009 (P.L. 111-ADD), which was passed by the Senate on November 4, the House on November 5, and signed into law on November 6, 2009, will extend unemployment benefits by 20 weeks in states hardest hit by the tough economy and by 14 weeks all other states. The important points to note with respect to some of the tax-related changes in the new law are the effective dates, the expiration dates, and limits on eligibility.

Homebuyer credit

Until now, only first-time homebuyers were eligible to claim a refundable tax credit for buying a home (Code Sec. 36). The credit is 10% of the cost of the home, up to a maximum of \$8,000 (\$4,000 for married persons filing separately). That credit had been set to expire on November 30th. The new law extends the credit through April 30, 2010. Also, anyone with a home in contract on that date can qualify for the credit if the sale closes by June 30, 2010. The new law not only extends the expiration date for the credit; it expands it in several significant ways. It does not, however, change the requirement that the home must be a principal residence; the credit does not apply to the purchase of vacation property.

Income range. The income range for eligible purchasers has been expanded to cover more buyers. For homes purchased after November 6, 2009, the full credit applies to singles with modified adjusted gross income (MAGI) of \$125,000 (up from \$75,000), and for joint filers with MAGI up to \$225,000 (up from \$125,000). The credit phases out for singles with MAGI between \$125,000 and \$145,000, and for joint filers with MAGI between \$225,000 and \$245,000.

Cap on home price. The credit can only be claimed with respect to a home costing no more than \$800,000. There is no partial credit allowed if the purchase price exceeds this cap by even \$1.

Long-time residents. The credit is no longer restricted to "first-timers," so that empty nesters and relocating homeowners may be able to qualify for a tax break when buying a new home. Effective after November 6, 2009, a modified credit can be claimed by those who have owned a home for a set period, sell it, and buy new home within the time limit described above. (The new home need not be newly constructed; it can be an older home.) The modified credit is 10% of

the purchase price, up to a top credit of \$6,500 (\$3,250 for married persons filing separate returns).

A long-time resident is defined as someone who has maintained the same principal residence for at least five consecutive years during an eight-year period ending on the date of the purchase of the new home.

Members of the military. Those serving outside the U.S. for at least 90 days have an extra year in which to claim the credit. They can essentially close on a home through June 30, 2011.

Also, military personnel as well as members of the Foreign Service or an employee of the intelligence community have been given another break. For homes purchased before 2009, there had been a 15-year recapture period. Under the new law, if the home is disposed of because of extended duty service, the recapture rule does not apply. Again, extended duty service means a call or order to duty for a period of more than 90 days or for an indefinite period (this period is different from the period in connection with the purchase date described above).

Young buyers. The law now imposes some qualifications on buyers in order to claim the credit. The purchaser must be at least 18 years old; if the purchaser's spouse is at least 18 years old, then the couple can qualify for the credit. The purchaser cannot be claimed as a dependent on another taxpayer's return.

Related parties. The credit cannot be claimed for a home acquired by a person related to the buyer or the spouse of the buyer, if married. This applies for purchases after November 6, 2009.

DC homebuyers. There is a special first-time homebuyer credit for residents of the District of Columbia. The new law makes it clear that anyone who could qualify for both the DC and national credit can only take the national credit.

Anti-fraud. There have been reports of considerable fraud with respect to this credit; some individuals have been claiming the credit even though they are not entitled to it. To combat fraud, the new law includes some new rules:

- To claim the credit, a properly executed copy of the settlement statement used to complete the purchase must be attached to the return.
- The IRS may assess an additional tax without the issuance of a notice of deficiency for a credit containing a mathematical or clerical error. This change is retroactive to tax years ending on or after April 9, 2008, so it applies to any first-time homebuyer credit claim.

Net operating loss carryback

Many businesses have suffered losses during this recession and can use net operating loss carrybacks as a way to generate an immediate refund providing cash that can be used in the businesses now. The usual net operating loss (NOL) carryback period is two years. The American Recovery and Reinvestment Act of 2009 (P.L. 111-5) had created a NOL carryback period for certain small businesses (Code Sec. 172(b)(1)(H)). Eligible businesses could opt to use a three-, four-, or five-year carryback for any NOL arising in a tax year beginning or ending in 2008. Small businesses for this purpose meant having average annual gross receipts in the three prior years of no more than \$15 million.

The new law now provides a similar carryback option for NOLs in 2009, but with one difference. The amount of an NOL carried back for a fifth year can only offset 50% of income in that year; the NOL carryback in the other years can offset 100% of income. This NOL break is expected to cost the federal government \$34 billion in 2010.

The new law says that the longer carryback election can be used in 2008 or 2009, but not both. However, businesses that already made the election for 2008 can also make the election for 2009.

To claim the longer carryback period for 2009, a taxpayer must make an election by the extended due date of the return for the year; the election is irrevocable.

The election applies for both regular tax and the alternative minimum tax (AMT). The 90% limitation on the use of any AMT NOL carryback is suspended.

Exclusion for military base closure pay

The Department of Defense has a program, called Homeowners Assistance Program (HAP), that provides payments to employees and members of the Armed Forces to offset the adverse impact on housing values resulting from a military base "realignment" or closure. The American Recovery and Reinvestment Act has expanded the HAP program to provide assistance or reimbursement for certain losses in the sale of a family home on or near a military installation in certain situations. Such amounts are excludable from gross income and are not treated as wages for purposes of Social Security and Medicare taxes (FICA). The excludable amount is limited to the reduction in the fair market value of the property. The new law expands the exclusion to payments made after February 17, 2009.

Revenue offsets

In order to pay for the tax breaks created in the new law, there are several so-called offsets:

- *Increase in the penalties for failure to file a partnership return (Code Sec. 6698) or an S corporation return (Code Sec. 6699).* The penalty has been fixed at \$89

times the number of owners for each month (or fraction of a month) that the failure continues, up to a maximum of 12 months; the new penalty is \$195 per owner. The new penalty applies to returns required to be filed beginning after December 31, 2009.

- *Electronic filing by return preparers.* The IRS has authority to decide which returns must be filed electronically (Code Sec. 6011(e)). A taxpayer does not have to file electronically unless the taxpayer files at least 250 tax returns for the year; then it must begin to file electronically two years later and continue to do so. Current IRS rules has exempted tax return preparers from this mandatory electronic filing; now it includes any preparer who reasonably expects to prepare 10 or more individual income tax returns during the calendar year. This new rule applies for returns filed after December 31, 2010.
- *Large corporate estimated tax payments (Code Sec. 6655).* Corporations with assets of at least \$1 billion (“large corporations”) must make an estimated tax payment otherwise due in July, August, or September 2014, that is increased by 33%.