

Worker, Homeownership and Business Assistance Act Signed Into Law

By Jason Quinn

On November 6, 2009, President Obama signed the *Worker, Homeownership and Business Assistance Act of 2009* (the "Act") into law. The Act expands on two important tax provisions: the first-time homebuyer's credit and the 5-year net operating loss carryback provision from the American Recovery and Reinvestment Act.

First-Time Homebuyer's Credit

The updated first-time homebuyer's credit is a \$4,000 (\$8,000 for married couples) credit, which is available for qualifying first-time home purchases after the date of enactment and before May 1, 2010. The credit phases out for individuals with income between \$125,000 and \$145,000 (\$225,000 and \$245,000 for married couples). The income limitation is substantially higher than it was under the original first-time homebuyer's credit. The credit has also been updated so that purchases of homes costing more than \$800,000 do not qualify for the credit.

In addition, the definition of "first-time homebuyer" has been expanded to include individuals who maintained the same principal residence for any consecutive 5-year period during the 8-year period ending on the date of the purchase of a new principal residence. The credit amount for individuals qualifying under the expanded definition is limited to \$3,250 (\$6,500 for married couples).

The Act also updated the credit with several anti-abuse provisions to reduce fraudulently claimed credits.

5-Year Net Operating Loss Carryback Period

In addition, the Act expands on the American Recovery and Reinvestment Act's introduction of an election to extend the net operating loss carryback period for losses incurred by small businesses in 2008 to 3, 4, or 5 years. Under the new Act, most taxpayers (not just small businesses) will be allowed to make the election for either the 2008 or 2009 tax year. Any taxpayer that elects the full 5-year carryback may only offset up to 50 percent of the taxpayer's taxable income in the 5th year prior to the year of the loss, but may offset up to 100 percent of taxable income in subsequent carryback years.

Small businesses (a business with less than \$15 million of gross receipts in the loss year) continue to receive preferential treatment under the updated NOL carryback provision. If a small business made the election to extend the carryback period for its 2008 loss before the date of enactment, it may also make the election for 2009. In addition, small businesses are not affected by the 50 percent of taxable income limitation for losses carried back from 2008 to the 5th year before the loss. The 50 percent limitation still applies to losses carried back from 2009.