



Worker, Homeownership, and Business Assistance Act of 2009

H.R. 3548

On November 6, 2009, President Obama signed into law the *Worker, Homeownership, and Business Assistance Act of 2009*. The new law liberalizes and extends the first-time homebuyer credit, amends and extends the rules for five-year net operating loss carrybacks, increases the penalties on S corporations and partnerships for failure to file returns, and mandates electronic filing for certain tax return preparers.

Individuals	
First-Time Homebuyers	<p>The \$8,000 credit is extended for purchases made before May 1, 2010. For this purpose, a first-time homebuyer is a taxpayer (and, if married, the spouse of the taxpayer) who has not owned a principal residence at any time during the previous three years.</p> <p>For qualifying taxpayers, the credit also applies to purchases before July 1, 2010, provided the taxpayer has entered into a written binding contract to close on the purchase before May 1, 2010. Effectively, this provision allows taxpayers an additional two months to close.</p>
<ul style="list-style-type: none"> • Higher Income Limitations 	<p>The first-time home homebuyer credit phases out for taxpayers with a modified adjusted gross income between \$125,000 and</p>

	<p>\$145,000 (\$225,000 and \$245,000 for joint filers) for the year of purchase.</p> <p>Effective for purchases after November 6, 2009.</p>
<ul style="list-style-type: none"> Existing Homeowners 	<p>A taxpayer is eligible for a credit up to \$6,500 (\$3,250 if separate returns are filed) provided the taxpayer (and if married, the taxpayer's spouse) has owned the same principal residence for any five consecutive years during the eight-year period ending on the date of purchase.</p> <p>Effective for purchases after November 6, 2009.</p>
<ul style="list-style-type: none"> Home Price Limitation 	<p>No credit is allowed if the purchase price of the home exceeds \$800,000.</p> <p>Effective for purchases after November 6, 2009.</p>
<ul style="list-style-type: none"> Age Limitation 	<p>No credit is allowed unless the taxpayer has attained age 18 as of the date of purchase, unless the taxpayer is married and his or her spouse is age 18 or older.</p> <p>Effective for purchases after November 6, 2009.</p>
<ul style="list-style-type: none"> Dependents 	<p>No credit is allowed if the taxpayer is claimed as a dependent on another taxpayer's return for the tax year of purchase.</p> <p>Effective for purchases after November 6, 2009.</p>
<ul style="list-style-type: none"> Closing Statement 	<p>No credit is allowed unless the taxpayer attaches a properly executed copy of the settlement statement that is used to complete the purchase to his or her 2009 return.</p> <p>Effective for tax years ending after November 6, 2009.</p> <p>NOTE: This means that the closing statement is required to be attached to the return for any qualifying new home purchase made during calendar year 2009, where the credit</p>

	is claimed on the 2009 return. It does not appear that closing statements need to be attached to amended 2008 returns.
<ul style="list-style-type: none"> • Related Party Definition 	<p>The definition of related party now includes persons related to the taxpayer's spouse. For example, a taxpayer cannot purchase a residence from the parents, grandparents, or children of his or her spouse and qualify for the credit.</p> <p>Effective for purchases after November 6, 2009.</p>
First-Time Homebuyer Rules for Military	<p>The recapture provisions are waived for qualified military personnel, and others, who claimed the first-time homebuyer credit and either sold the home or stopped using it as a principal residence after December 31, 2008, in connection with government orders received by the taxpayer (or spouse) for qualified official extended duty service.</p> <p>The recapture rules that generally apply when the credit is claimed for purchases made during 2008 do not apply in the year of sale or cessation of use, or any subsequent tax year. The accelerated recapture rules for homes purchased in 2009 do not apply.</p> <p>The credit is extended until April 30, 2011, (June 30, 2011, under a written binding contract) for qualified personnel who are on official extended duty outside the United States. These changes are effective for homes purchased after November 30, 2009.</p> <p>Qualified personnel include members of the uniformed armed services, members of the Foreign Service of the United States, and employees of the intelligence community who are on official extended duty.</p> <p>Extended duty is a period of at least 90 days. The extended duty must be served outside the United States.</p>

Business Provisions	
Electronic Filing Mandate	<p>Tax return preparers who prepare more than ten individual income tax returns in a calendar year are required to electronically file those returns. Individual income tax returns include returns for estates and trusts.</p> <p>Effective for returns filed after December 31, 2010.</p>
Net Operating Losses (NOL)	<p>The election under §172(b)(1)(H) to carryback an applicable 2008 NOL from two years to either three, four, or five years is extended to include applicable 2009 NOLs. The new provision is available for most taxpayers, not just eligible small businesses.</p> <ul style="list-style-type: none"> • Small businesses (corporations, partnerships, or sole proprietorships with gross receipts under \$15 million) that elected the extended carryback period in 2008 can also make an election for a 2009. • Taxpayers who are not a small business can only elect the extended carryback period in either 2008 or 2009, not both years. An "applicable NOL" is a taxpayer's NOL for a tax year ending after December 31, 2007, and beginning before January 1, 2010. • For taxpayers electing to use a five-year carryback period for an applicable NOL, the amount that can be carried back to the fifth tax year preceding the loss year cannot exceed 50% of the taxpayer's taxable income for such preceding tax year, computed without regard to the NOL for the loss year or any tax year thereafter. This 50% limitation rule does not apply to a small business that elected the extended carryback period for an applicable 2008 NOL even

	<p>if the election is made after November 6, 2009, but it does apply to applicable 2009 NOL carrybacks of electing small businesses.</p> <ul style="list-style-type: none"> • Taxpayers that qualify for the extended carryback period for applicable NOLs must make an affirmative election to use the longer carryback period. The election must be made by the due date, including extensions, for filing the return for the taxpayer's last tax year beginning in 2009. Once an election is made, it cannot be revoked.
<ul style="list-style-type: none"> • Alternative Minimum Tax NOL 	<p>The 90% limitation on the use of an NOL for purposes of alternative minimum tax is suspended for any applicable NOL where the extended carryback period is used.</p> <p>Effective for tax years ending after 2002.</p>
<ul style="list-style-type: none"> • Life Insurance Companies 	<p>Life insurance companies that have an "applicable loss from operations" and have elected to apply the special carryback rules to that loss can apply a carryback period of four or five years. An "applicable loss from operations" is a loss from operations for a tax year ending after December 31, 2007, and beginning before January 1, 2010.</p> <p>If the five-year carryback period is elected, the loss is limited to 50% of the gross income of that carryback year.</p> <p>An irrevocable election to use a four- or five-year carryback period must be made by the due date, including extensions, for filing the return for the taxpayer's last tax year beginning in 2009.</p>
<ul style="list-style-type: none"> • TARP Recipients 	<p>Certain taxpayers who received stimulus money from the federal government are not eligible for the extended NOL carryback periods, the change in the AMTNOL deduction, or the life insurance</p>

company loss rules. The changes do not apply to:

1. Any taxpayer if:

(a) The federal government acquired, before November 6, 2009, an equity interest in the taxpayer pursuant to the *Emergency Economic Stabilization Act of 2008*,

(b) The federal government acquired, before November 6, 2009, any warrant or other right to acquire any equity interest with respect to the taxpayer, or

(c) The taxpayer receives, after November 6, 2009, funds from the federal government in exchange for an interest described in item (a) or (b), above, pursuant to a program established under title I of division A of EESA (P.L. 110-343) (unless such taxpayer is a financial institution as defined in Section 3 of such Act) and the funds are received pursuant to a program established by the Secretary of the Treasury for the stated purpose of increasing the availability of credit to small businesses using funding made available under such Act); or

2. The Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"); and

3. Any taxpayer that at any time in 2008 or 2009 was or is a member of the same affiliated group, as defined in §1504

	(but determined without regard to §1504(b)), as a taxpayer described in item (1) or (2) above (Act Sec. 13(f) of the <i>2009 Worker Act</i>).
Federal Unemployment Tax	The temporary FUTA surtax of 0.2 (total of 6.2%) percent on wages is extended through June 30, 2011. The rate will drop to 6.0% for wages paid after June 30, 2011. Effective for wages paid after December 31, 2009.
Corporate Estimated Tax Payments	The estimated tax payment required to be made in July, August, or September 2014, by a corporation with at least \$1 billion in assets is increased to 133.25% of the amount otherwise due.
Penalty for Failure to File Forms 1120-S or 1065	Partnerships that fail to file a required return will be assessed a penalty of \$195 per partner for each month, or fraction of a month the failure continues, up to a maximum of 12 months. S corporations that fail to file a required return will be assessed a penalty of \$195 per shareholder for each month, or fraction of a month the failure continues, up to a maximum of 12 months. Effective for returns filed for tax years beginning after December 31, 2009.