# Tax Provisions of the Worker, Homeownership, and Business Assistance Act of 2009

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November 6, 2009
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**Overview**

The Congress has overwhelmingly approved legislation that expands the first-time homebuyer tax credit and extends the net operating loss carryback period. The Act is titled the Worker, Homeownership, and Business Assistance Act of 2009, was approved by the Senate 98-0 and the House 403-12 and has as its primary purpose an extension of unemployment insurance benefits for unemployed persons in areas plagued by high unemployment. The Act also contains numerous other tax provisions and revenue offsets. The legislation, H.R. 3548, was signed into law on November 6, 2009, and became public law No. 111-92.

**Tax Provisions**

**Extension of FUTA surtax.** The Act extends the 0.2 percent FUTA surtax through June 30, 2011. *Act, Sec. 10, amending I.R.C. §3301, effective for wages paid after December 31, 2009.*

**Extension and modification of first-time homebuyer tax credit.** The Act extends the existing $8,000 first-time homebuyer tax credit through April 30, 2010, and specifies that for binding written contracts for purchases of homes that are entered into after November 30, 2009 and before May 1, 2010, such contracts must close on or before July 1, 2010. The Act also extends for 2010 purchases the requirement that a taxpayer who claims the credit on a home purchased in 2009 remain in the home for 36 months to avoid recapture of the credit, and waives recapture for home purchases after 2008 on which the credit was claimed for individuals serving in the military that dispose of the residence as a result of Government orders. The credit is also extended for an additional year (through April 2011) for military personnel that are serving on qualified extended duty service outside the U.S. for at least 90 days during the timeframe of January 1, 2009 and April 30, 2010. The Act also allows the credit, as applied to home purchases after 2008, to be claimed on the tax return for the year preceding the year of purchase. The Act also creates (for homes purchased after November 6, 2009) a new $6,500 (maximum) credit (limited by 10% of the purchase price of a subsequent home) for taxpayers that have owned and used the same residence as their principal residence for five consecutive years out of the eight-year period ending on the date of purchase of a subsequent principal residence. Effective for homes purchased after Nov. 6, 2009, the Act specifies that both the $8,000 and $6,500 credits phase-out for taxpayers with adjusted gross income in excess of $125,000 ($225,000 (mfj)). The Act specifies that $6,500 credit is not available for homes where the purchase price exceeds

$800,000. In addition, the Act specifies that, for purchases after November 6, 2009, the credit is not available to a person that is eligible to be claimed as a dependent on another person's return. *Act, Sec. 11, amending various parts of I.R.C. §36, effective as indicated above.*

**Age limitation on utilization of first-time homebuyer tax credit.** The Act specifies that a taxpayer must be at least 18 years old as of the date of the purchase of a home to be eligible to claim the first-time homebuyer credit, unless the taxpayer is married and at least one spouse meets the age requirement. The Act also restricts the credit from being available to a married taxpayer that acquires a residence from the family of the taxpayer's spouse (via gift or inheritance). *Act, Sec. 12, amending I.R.C. §36(b), effective for homes purchased after Nov. 6, 2009.*

**Substantiation requirement.** The Act requires that a homebuyer must attach to the tax return on which the homebuyer credit or the first-time homebuyer credit is claimed a properly executed copy of the settlement statement that was used to complete the home purchase. *Act, Sec. 12, amending I.R.C. Sec. 36(d), effective for purchases after Nov. 6, 2009.*

**Extension of net operating loss carryback period**. The Act permits small businesses, (those businesses with annual gross receipts of less than $15 million of annual gross receipts) except those that accepted funds under the Troubled Asset Relief Program (TARP), to carry back losses incurred in either 2008 or 2009 against income reported over the previous five years. Businesses not qualifying for a 2008 carryback because of the $15 million gross receipts limit may choose between 2008 or 2009. I.R.C. §172(b)(1)(H)(iii)(l). Interestingly, businesses may only offset 50 percent of available income from the fifth year while 100 percent of available income can be offset for the remaining four years. *Act, Sec. 13, amending I.R.C. Sec. 172(b)(1), effective for net operating losses incurred in 2008 and 2009.*

> **Note:** The provision applies to farming losses. A farm taxpayer can make an election to treat a farming loss as not a farming loss. Upon making such an election, the taxpayer can use the new provision to carry the loss to a shorter carryback period (e.g., 2, 3 or 4 years) or (under the new provision) 5 years.

**Penalty for failure to file partnership or S corporation return**. The Act increases the penalty for failure to file a partnership or S corporation return to $195 per partner/shareholder per month for a maximum of 12 months. *Act, Sec. 16, amending I.R.C. §§6698(b)(1) and 6699(b)(1), effective for tax years beginning after December 31, 2009.*

**Electronic filing of returns.** The Act specifies that electronic filing is required for tax return preparers unless the preparer anticipates filing 10 or fewer returns for any calendar year. *Act, Sec. 17, amending I.R.C. §6011, effective for returns filed after 2010.*

**Corporate estimated tax.** The Act specifies that calendar-year corporations with $1 billion or more of assets must overpay third quarter 2014 estimated taxes by 33.25%. Such corporations will recover the overpayment with a lower fourth quarter payment in December 2014. *Act, Sec. 18, amending §202(b) of the Corporate Estimated Tax Shift Act of 2009, effective upon enactment.*