

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 bill, H.R. 3548, is titled the Worker, Homeownership, and Business Assistance Act of 2009, and 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 bill also contains numerous other tax provisions and revenue offsets. The bill was signed into law on November 6, 2009.

Tax Provisions

Extension of FUTA surtax. The bill extends the 0.2 percent FUTA surtax through June 30, 2011. *Bill, 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 bill 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 bill also extends, for purchases through April 30, 2010, 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 bill 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 bill also creates (for homes purchased after November 6, 2009) a new \$6,500 credit 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. The bill specifies that both the \$8,000 and \$6,500 credits phase out for taxpayers adjusted gross income in excess of \$125,000 (\$225,000 (mfj)). The bill specifies that \$6,500 credit is not available for homes

where the purchase price exceeds \$800,000. In addition, the bill 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. *Bill, 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 bill 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 bill 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). *Bill, Sec. 12, amending I.R.C. §36(b), effective for homes purchased after Nov. 6, 2009.*

Extension of net operating loss carryback period. The bill permits all businesses (including those businesses with annual gross receipts of \$15 million or more 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, and allows businesses to offset 50

percent of available income from the fifth year and 100 percent of available income for the remaining four years. *Bill, Sec. 13, amending I.R.C. §172(b)(1), effective for net operating losses incurred in 2008 and 2009.*

Penalty for failure to file partnership or S corporation return. The bill 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. *Bill, 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 bill specifies that electronic filing is required for tax return preparers unless the preparer anticipates filing 10 or fewer returns for any calendar year. *Bill, Sec. 17, amending I.R.C. §6011, effective for returns filed after 2010.*

Corporate estimated tax. The bill 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. *Bill, Sec. 18, amending §202(b) of the Corporate Estimated Tax Shift Act of 2009, effective upon enactment.*