

# CCH Federal Tax Weekly, ¶1 New Law Expands NOL Carryback To All Businesses; Provides Reduced Homebuyer Credit To Long-Time Residents, (Nov. 12, 2009)

*Worker, Homeownership and Business Assistance Act of 2009, H.R. 3548*

<http://prod.resource.cch.com/resource/scion/document/default/%28%40%40CTW01+P1%2909013e2c85b8b608>

The just-passed *Worker, Homeownership and Business Assistance Act*, which President Obama signed into law on November 6, provides all businesses with an expanded net operating loss (NOL) carryback and extends the first-time homebuyer credit. The new law also increases penalties for failure to file certain returns, delays worldwide allocation of interest, extends the temporary FUTA surtax, and more.

**CCH Take Away.** The new law is not a second stimulus but does extend two of the tax incentives in the first stimulus package, the *American Recovery and Reinvestment Act of 2009 (2009 Recovery Act)*. Waiting for possible enactment before year-end are an extensive package of extenders, an AMT patch, estate tax relief, COBRA premium assistance, and offshore account disclosure measures. While extensions of bonus depreciation and enhanced expensing at current levels are currently not on the front-burner, they are also possible contenders for year-end extension.

## NOL carryback

The *2009 Recovery Act* allowed small businesses (generally taxpayers with average gross receipts of \$15 million or less) to elect to carry back 2008 NOLs for three, four or five years. Under the new law, all businesses may elect to carry back an applicable 2008 or 2009 NOL for three, four or five years.



### •Comment

Retailers are experiencing severe challenges to finding the cash they need to operate their businesses, Rachelle Bernstein, tax counsel, National Retail Federation, Washington, D.C., told CCH. The new law provides retailers with an important source of capital.

An applicable NOL is the taxpayer's NOL for a tax year ending after December 31, 2007 and beginning before January 1, 2010. However, the amount of any NOL that may be carried back to the fifth tax year preceding the tax year of the loss cannot exceed 50 percent of the taxpayer's taxable income.

A taxpayer can elect to take the expanded NOL treatment with respect to only one tax year (2008 or 2009). An eligible small business that carried back its 2008 NOL under the *2009 Recovery Act*, however, can make the election under the new law for its 2009 NOLs.



### •Comment

The fifth year 50 percent limitation does not apply to any loss of an eligible small business with respect to any election as in effect on the date before the date of enactment of the new law.

Additionally, the new law suspends the 90 percent income limitation on the use of NOLs for determining the AMT for an extended carryback year. The Act also provides a special carryback rule for insurance companies and generally prohibits taxpayers participating in the Troubled Asset Relief Program (TARP) from the expanded NOL treatment.

The irrevocable election under the new law must be made by the due date (including extensions) for the tax return filed for the taxpayer's last taxable year beginning in 2009. Fiscal year taxpayers can make the election for tax years beginning or ending in 2008 or 2009.

## Homebuyer credit

A taxpayer who is a first-time homebuyer of a principal residence may claim a refundable credit equal to 10 percent of the purchase price of the residence (with a maximum credit of \$8,000 (\$4,000 for married couples filing separate returns)). The new law extends the credit for qualified taxpayers purchasing principal residences on or before April 30, 2010. If a taxpayer enters into a binding contract before May 1, 2010, to close on the purchase of a principal residence before July 1, 2010, the new law treats the credit as not expiring until July 1, 2010. However, no credit is allowed if the purchase price of the principal residence exceeds \$800,000.

The new law also expands the credit to long-time homeowners who are buying replacement property but at a reduced amount. Individuals who have owned and used the same residence as their principal residence for any five consecutive year period during the eight year period ending on the date of the purchase of a subsequent principal residence may be eligible for a reduced credit of \$6,500 (\$3,250 for married couples filing separately). Phase-out of the credit begins under the new law at \$125,000 modified adjusted gross income (MAGI) for single taxpayers (up from \$75,000) and at \$225,000 for married taxpayers filing joint returns (up from \$150,000).



•Comment

It is unclear if the expanded credit will encourage current homeowners to sell, Phil Umansky, CPA, Ph.D., Virginia Union University, Richmond, Va., told CCH. Current homeowners will need to weigh the value of the credit against the cost of commissions to real estate agents, Umansky explained. The credit may temporarily move up demand, which could drop after the credit expires.



•Planning Note

The \$6,500 reduced credit, the higher MAGI levels and the \$800,000 cut-off are all effective for purchases after November 6, 2009.

The new law requires taxpayers to attach a copy of their settlement statement to their return. The Act also tightens the rules for intra-family transfers and generally disallows claims by individuals under age 18 with an exception if one spouse is 18 and the other spouse is not. Taxpayers may elect to treat a qualified purchase of a principal residence after December 31, 2008 as made on December 31 of the calendar year preceding the purchase.

The Act also gives the IRS math error authority over the credit. The math error authority is retroactive to returns for tax years ending on or after April 9, 2008.

Additionally, the new law incorporates provisions of a House-passed bill that provides members of the U.S. armed forces, foreign service and intelligence community additional time (generally one year) to claim the credit if they are serving on qualified official extended duty outside of the U.S. The Act also provides for waiver of repayment in certain circumstances for military personnel.

## HAP program

The *2009 Recovery Act* expanded the Department of Defense Homeowners Assistance Program (HAP) to assist military personnel required to permanently relocate during the home mortgage crisis, military and civilian personnel adversely impacted by base closings. The Act clarifies that payments made under the expansion of HAP in the *2009 Recovery Act* are excluded from income.

## Return preparation

The Act requires any individual income tax return prepared by a paid tax return preparer to be filed electronically unless the preparer reasonably expects to file fewer than 10 individual income tax returns during the calendar year. Under the new law, the term individual income tax return means any return imposed by subtitle A on individuals, estates or trusts. The provision is effective for returns filed after December 31, 2010.

## Offsets

The new law extends unemployment insurance benefits by extending 0.20 percent FUTA surtax through June 30, 2011. The *Emergency Economic Stabilization Act of 2008* had extended the temporary surtax through December 31, 2009. The homebuyer, NOL and military relocation relief in the new law are paid for with a mix of revenue raisers.

**Penalties.** Effective for tax years beginning after December 31, 2009, the penalty for failure to file a partnership return or an S corp return increases from \$89 to \$195.

**Worldwide allocation of interest.** The effective date of worldwide allocation of interest, authorized by the *American Jobs Creation Act of 2004*, is delayed until tax years beginning after December 31, 2017.

**Corporate estimated tax.** The Act increases the required corporate estimated tax payments factor for large corporations for payments due in July, August and September 2014 by 33 percentage points, up from an already increased level set by the Corporate Estimated Tax Shift Act of 2009.

*For further details, see the Law, Explanation and Analysis of the new law on CCH's Intelliconnect and Tax Research Network and the special CCH Briefing also online.*