



# TAX ALERT

NOVEMBER 13, 2009

## **The Worker, Homeownership, and Business Assistance Act of 2009**

Congress passed and the President signed into law on November 6<sup>th</sup> the Worker, Homeownership, and Business Assistance Act of 2009. The principal changes are outlined below:

### **Homebuyer Credit Extended and Liberalized**

#### Present Law

A refundable tax credit is available for qualifying first-time home purchases after April 8, 2008, and before December 1, 2009. For homes bought in 2009, the maximum first time homebuyer tax credit is equal to the lesser of \$8,000 (\$4,000 for a married individual filing separately) or 10% of the principal residence's purchase price (for purchases before 2009, the dollar limits are \$7,500 (\$3,750 for marrieds filing separately). The credit phases out for individual taxpayers with modified adjusted gross income (AGI) between \$75,000 and \$95,000 (\$150,000 and \$170,000 for joint filers) for the year of purchase.

An individual is treated as a first-time homebuyer if he (and his spouse, if married) had no ownership interest in a principal residence in the U.S. during the 3-year period before the purchase of the home. A taxpayer who buys a qualifying residence after December 31, 2008, and before December 1, 2009, may elect to be treated as having bought the home on December 31, 2008, so that he may claim the credit on the 2008 income tax return.

For homes bought on or before December 31, 2008, the credit is recaptured ratably over fifteen years. For homes bought after December 31, 2008, and before December 1, 2009, the credit is recaptured only if the taxpayer disposes of the home (or the home otherwise ceases to be the principal residence of the taxpayer) within 36 months from the date of purchase.

#### New Law

The new law extends and liberalizes the credit by making it available to (1) higher-income taxpayers and (2) to existing homeowners who are qualifying "long-time residents" and who buy another principal residence. However, for the first time there will be a dollar cap on residences qualifying for the credit.

The new law is extended to apply to a principal residence purchased before May 1, 2010 and to a residence purchased before July 1, 2010 if it is purchased pursuant to a written binding contract entered into before May 1, 2010.

The credit under the new law phases out for individual taxpayers with modified adjusted gross income (AGI) between \$125,000 and \$145,000 (\$225,000 and \$245,000 for joint filers) for the year of purchase.

Any individual (and, if married, the individual's spouse) who has 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 subsequent principal residence is treated as a first-time homebuyer of that subsequent principal residence. The maximum allowable credit for such taxpayers is \$6,500 (\$3,250 for a married individual filing separately).

For purchases after the enactment date, the credit cannot be claimed for a residence if its purchase price exceeds \$800,000. If the purchase price exceeds \$800,000 by even \$1, the entire credit is lost.

### **Net Operating Losses Expanded**

#### Present Law

Net operating losses (NOLs) can be carried back two years and forward 20 years until it has been fully utilized. A taxpayer can elect to forego the entire carryback period and instead carry it forward.

For NOLs arising after December 31, 2007, small businesses can elect to increase the NOL carryback period from 2 years to 3, 4, or 5 years. A small business is a corporation or partnership whose average gross receipts for the loss year and the preceding two years is less than \$15 million.

Under current law, your net operating loss (NOL) carryback for alternative minimum tax (AMT) purposes is limited to 90% of the AMT income for the year of the carryback.

#### New Law

All businesses, not just small businesses, can increase the carryback period from two years to three, four, or five years. For calendar year taxpayers, the election can be made for NOLs generated in 2008 or 2009 but not both years. However, a small business that made the election in 2008 under the old law may still make the new election for 2009. The amount of the loss that may be carried back to the 5<sup>th</sup> year is limited to 50% of the taxable income of the 5<sup>th</sup> year. This 50% limitation does not apply to small businesses that carry back losses to the 5<sup>th</sup> year.

For tax years ending after 2002, the Act suspends the 90% limitation on the use of any alternative tax NOL deduction attributable to the carryback of an applicable NOL for which the extended carryback period is elected.

The new law will give a significant tax break to industries that were profitable in the past and are suffering severely as a result of the severe downturn in our economy. It will be of particular benefit to homebuilders whose earnings have been volatile. Their lobbying efforts have proven to be successful.

### **Increased Penalty for Failure to File Partnership or S Corporation Returns**

#### Present Law

The penalty is \$89 times the number of partners or shareholders for each month that the failure continues up to a total of 12 months.

#### **Example:**

S Corp Tardy has five shareholders. Its return is due March 15, 2009. It does not file until November 10, 2009 (eight months late) and does not apply for an extension. It is subject to a penalty of \$4,450 (\$89 x five shareholders x 10 months).

### New Law

For each year beginning after December 31, 2009, the penalty is increased to \$195 per month per partner.

#### **Example:**

S Corp Tardy's penalty increases under the new law to \$9,750 (\$195 x five partners x 10 months).

The penalty is more than doubled by the new law.

Note that presently there is an exception to the penalty assessment in the case of a late-filed partnership return having 10 or fewer partners. Arguably, this exception in the committee reports will continue in effect under the new law.

### **Unemployment Insurance Extended**

The new law extends unemployment insurance benefits for up to 14 additional weeks for jobless workers in most states and for up to 20 weeks in states with unemployment levels over 8.5 percent. Illinois' unemployment rate is over 8.5 percent.

### **A Preview of Coming Attractions (A Horror Film)**

On October 30<sup>th</sup>, we attended a presentation by Russ Sullivan previewing coming tax law changes. Mr. Sullivan is the Majority Staff Director of the U.S. Senate Finance Committee.

He discussed proposed legislation regarding first time homebuyer's tax credit and expanded net operating loss carryback rules, which were enacted into law the following week. He also discussed the following topics:

- **Estate Tax Reform**

He also discussed the estate tax which is scheduled to end in 2010 and return with a sharply reduced exemption – \$1,000,000 instead of the current \$3,500,000 – and increased rates – 55% maximum instead of the present 45% – in 2011. Mr. Sullivan stated that the Senate Bill will eliminate the temporary repeal of the estate tax and the carryover basis rules. Instead the 2009 estate tax exemption of \$3,500,000 would be extended one to three years – to 2010 and perhaps to 2011 and 2012. The maximum tax bracket of 45 percent would remain in effect. Mr. Sullivan did not express an opinion as to whether portability or the valuation discounts would survive. Portability refers to permitting the surviving spouse to use the portion of the deceased spouse's lifetime exemption that was not used.

- **Capital Gains Tax Rate**

Currently the rate is 15%. Mr. Sullivan believes that this rate will continue through the end of 2010. However, he feels the rate will increase to 20% for 2011.

- **Qualified Dividend Tax Rate**

Mr. Sullivan commented that it is harder for him to predict what will happen to the tax on qualified dividends that is currently 15%. He believes that President Obama's plan includes certain categories of stock with beneficial treatment for owners of small business stock.

- **Elimination of Alternative Minimum Tax (AMT)**

Mr. Sullivan commented that this will not occur in the short run. The 2008 AMT “patch” cost the government \$70 billion. While there will probably be more patches on the horizon, a permanent elimination of AMT will not occur in the near future. However, it is a long-term goal of the Senate Finance Committee to eliminate AMT.

- **Waiver of Required Minimum Distributions from Retirement Plans**

Because market conditions caused portfolios to decline, taxpayers were relieved of mandated 2009 distributions from their depleted retirement account. There is a possibility that this waiver of the distribution will continue into future years.

- **Re-unification of the Estate and Gift Tax System**

Currently, the estate tax has an exclusion of \$3.5 million while the gift tax has an exemption of \$1 million. At one time, both taxes had the same exemption. The Senate Finance Committee has recommended the re-unification of these systems. However, Mr. Sullivan does not know the likelihood of this issue being resolved at this time.

At SS&H, we will be watching for new legislation and promptly informing our clients. As always, if you have any tax issues that you would like to discuss, please contact us.

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### **Sherry Walters Earns Certified Fraud Examiner (CFE) Credential**

SS&H is pleased to report that Audit Supervisor Sherry Walters recently passed all four sections of the CFE exam. She now holds the credential of Certified Fraud Examiner. The Certified Fraud Examiner (CFE) credential denotes proven expertise in fraud prevention, detection and deterrence. CFEs are trained to identify the warning signs and red flags that indicate evidence of fraud and fraud risk. CFEs around the world help protect the global economy by uncovering fraud and implementing processes to prevent fraud from occurring in the first place.

Sherry’s attainment of this credential helps to broaden the scope of forensic (investigative) accounting services that SS&H can provide to clients with proven expertise. Also, Sherry will be an excellent resource to SS&H clients by assisting them with fraud prevention and risk assessment programs that they may embark on.

Sherry Walters is a CPA and has been with SS&H for seven years.

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