

Tax Legislative Update

Breaking news from Capitol Hill
from Grant Thornton's National Tax Office

2009-17
Nov. 6, 2009

Congress moves to extend NOL carryback and homebuyer credit

The president has signed into law tax provisions to extend and enhance the homebuyer credit and allow businesses to carry back their losses farther for refunds against past taxes.

The two tax provisions were added to an unemployment bill that was officially enacted on Nov. 6, 2009.

The two tax provisions would cost approximately \$21 billion and would be offset largely through an increase in certain failure-to-file penalties and a delay in the implication of worldwide interest allocation rules.

NOL carryback

The legislation would generally allow all taxpayers to elect to carry back a 2008 or 2009 net operating loss (NOL) for up to five years, with several important details:

- would be available for any tax year beginning or ending in 2008 or 2009;
- election could be made for only one year (unless a qualified small business);
- NOL carryback could offset only 50 percent of the income from the fifth year;
- election would be irrevocable and would have to be made by the extended filing date of the taxpayer's last tax year beginning in 2009; and
- recipients of federal government assistance through the Troubled Asset Relief Program would not be able to participate.

The provision also suspends the 90-percent alternative minimum tax (AMT) limitation for the carried back NOL and includes special rules for insurance companies. Insurance companies would be able to increase the current three-year period for operations NOLs to four or five years for any taxable year beginning or ending in either 2008 or 2009, with the 50-percent limitation on the fifth year in place.

The new proposal is much broader than the current NOL carryback extension provided by the February stimulus bill. That provision allows qualified small businesses (taxpayers with \$15 million in annual gross receipts) a five-year carryback period for an NOL from a single tax year beginning or ending in 2008. Under the new proposal, these taxpayers

Contact information

Mel Schwarz
Partner
National Tax Office
T 202.521.1564
E Mel.Schwarz@gt.com

Dustin Stamper
Manager
National Tax Office
T 202.861.4144
E Dustin.Stamper@gt.com

www.GrantThornton.com/tax

would still be able to use the old election, but could also extend the carryback period for an additional year of losses arising in a tax year beginning or ending in 2009.

An election to waive the carryback period for losses arising in a tax year ending before the date of enactment could be revoked under the bill, and the tentative refund procedures of Section 6411 could be used if done before the extended due date of the last tax year beginning in 2009.

Homebuyer credit

The legislation would extend the deadline for the current \$8,000 homebuyer credit and make significant modifications that would be effective on the date of enactment. The current credit is available only for home purchases before Dec. 1, 2009, made by taxpayers who have not owned a principal residence in the three years before their purchase. It phases out between income levels of \$75,000 to \$95,000 for single filers and \$150,000 to \$170,000 for joint filers.

The new changes to the credit would represent the second time it has been enhanced since its enactment in 2008 (see the chart for a comparison of the credit depending on date of purchase). Most importantly, the new legislation would extend the credit to apply to home purchases made by June 30, 2010, as long as a binding written contract is in place by April 30, 2010.

Credit characteristics depending on purchase date if proposal is enacted			
	Purchases between May 1, 2008, and Dec. 31, 2008	Purchases between Jan. 1, 2009, and enactment	Purchases between enactment and June 30, 2010
Home price limit	No limit	No limit	\$800,000
Credit amount	10% of price up to \$7,500	10% of price up to \$8,000	10% of price up to \$8,000 or 10% of price up to \$6,500
Eligibility	Not owned principle residence in 3 years	Not owned principle residence in 3 years	Not owned principle residence in 3 years or lived in principle residence 5 consecutive years in last 8 years
Income phaseout threshold	\$75,000 (singles) \$150,000 (couples)	\$75,000 (singles) \$150,000 (couples)	\$125,000 (singles) \$225,000 (couples)
General payback requirement	15 yearly installments	None	None
Early payback requirement	Payback 100% of credit if house is sold or ceases to be permanent residence within 3 years (with payback limited to amount of gain in the case of a sale)		

The start of the income phaseout for the credit would be increased to \$125,000 for single filers and from \$225,000 for joint filers — but the credit would be limited to home purchases of under \$800,000. Additionally, a lesser credit of \$6,500 would be available for taxpayers who have owned and lived in their principal residence for five consecutive years during the eight years prior to the new home purchase.

Purchases made in 2010 could be claimed on a taxpayer's 2009 return, just as purchases in 2009 can be claimed on a 2008 return. The agreement also includes administrative provisions for the IRS and popular provisions for service members. The payback requirement would be waived for service members called to duty at least 50 miles from their principal residence for at least 90 days. The deadline on the credit itself would be extended by one year for service members called to duty overseas for at least 90 days between the start of 2009 and April 30, 2010.

The credit would not be available for taxpayers under the age of 18, and a properly executed copy of the settlement statement would be required to be attached to the return claiming the credit for tax years ending after the date of enactment.

Other tax provisions

Exclusion for military base closure fringe benefit

Currently, benefits paid to individuals under the Department of Defense Homeowners Assistance Program for base closure or realignment are excluded from income. The legislation would extend this tax treatment to include the expanded benefits provided in the Recovery and Reinvestment Tax Act of 2009.

Electronic return filing

Return preparers who file at least 10 individual, trust or estate tax returns per year would be required to file electronically. This provision was proposed by the administration, but at a filing threshold of 100 returns.

Corporate estimated taxes

The corporate estimated tax due in July, August or September 2014 would have to be increased by 33 percentage points. This acceleration of a quarterly tax payment is a common technique used by tax writers to shift revenue from the five-year budget window to the 10-year budget window.

Revenue offsets

Extension of FUTA

The bill would extend the federal 0.2-percent unemployment tax through June 30, 2011.

Worldwide interest allocation

The bill would delay the implementation of worldwide interest allocation rules. They are currently scheduled to take effect for tax years beginning after Dec. 31, 2010, but under the bill would take effect for tax years beginning after Dec. 31, 2017.

A similar delay of these rules was included in the House healthcare bill. If enacted here, it would leave the healthcare bill with a revenue hole. House leaders are now proposing to amend their healthcare bill to completely repeal the worldwide interest allocation rules and block paper companies from claiming the biofuels tax credit on the "black liquor" byproduct of paper production.

S corporation and failure-to-file penalties

The legislation would increase the failure-to-file penalties for S corporations and partnerships from \$89 per shareholder or partner to \$195.

The information contained herein is general in nature and based on authorities that are subject to change. It is not intended and should not be construed as legal, accounting or tax advice or opinion provided by Grant Thornton LLP to the reader. This material may not be applicable to or suitable for specific circumstances or needs and may require consideration of nontax and other tax factors. Contact Grant Thornton LLP or other tax professionals prior to taking any action based upon this information. Grant Thornton LLP assumes no obligation to inform the reader of any changes in tax laws or other factors that could affect information contained herein. No part of this document may be reproduced, retransmitted or otherwise redistributed in any form or by any means, electronic or mechanical, including by photocopying, facsimile transmission, recording, re-keying or using any information storage and retrieval system without written permission from Grant Thornton LLP.

Tax professional standards statement

This document supports the marketing of professional services by Grant Thornton LLP. It is not written tax advice directed at the particular facts and circumstances of any person. Persons interested in the subject of this document should contact Grant Thornton or their tax advisor to discuss the potential application of this subject matter to their particular facts and circumstances. Nothing herein shall be construed as imposing a limitation on any person from disclosing the tax treatment or tax structure of any matter addressed. To the extent this document may be considered written tax advice, in accordance with applicable professional regulations, unless expressly stated otherwise, any written advice contained in, forwarded with, or attached to this document is not intended or written by Grant Thornton LLP to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed under the Internal Revenue Code.