



TAX BENEFITS ENACTED IN THE “WORKER, HOMEOWNERSHIP, AND BUSINESS ASSISTANCE ACT OF 2009”

Executive Summary:

New tax law signed November 6, 2009, includes two provisions important to banks:

1. A five-year carryback period for losses incurred in 2008 or 2009.
2. Extension of the first-time homebuyer tax credit to April 30, 2010, and a new \$6,500 credit for existing homeowners.

Both changes are beneficial to banks, either directly or indirectly.

FIVE-YEAR CARRYBACK OF NET OPERATING LOSSES (NOLS)

The “Worker, Homeownership, and Business Assistance Act of 2009” has expanded the eligibility for a five-year carryback of NOLs and extended it to NOLs occurring in 2009. In February of 2009, Congress enacted a five-year carryback for 2008 losses, but it was only available to eligible small business taxpayers (defined as corporations, partnerships, or proprietorships with average annual gross receipts of \$15 million or less). Unfortunately, this definition restricted the benefit to only a few small banks that had losses for 2008.

Under the revised provision, any taxpayer with an NOL for 2008 or 2009 can elect to carryback that loss up to five years. There is no size restriction based on gross receipts. For S corporation shareholders, the respective share of business losses must be large enough to offset all sources of income in order to create an NOL on his/her individual return. The only banks that are not eligible to use the new five-year carryback of NOLs are those that received TARP funds under the capital purchase program.

Generally, a taxpayer can use the elective five-year carryback for just one of the tax years— 2008 or 2009. However, a taxpayer that qualified under the original five-year carryback as a “small business” for the 2008 loss can now use the new law to make another election for the 2009 year.

The amount of the NOL that can be carried back to the fifth tax year before the loss year may not be more than 50% of the taxable income for that year. The amount carried to the succeeding years (fourth year back, third, etc.) can fully offset the taxable income of those years.

Any application for refund must be filed before the due date (including extensions) of the 2009 return. The election shall be made in such manner as prescribed by the Secretary. It is anticipated that the procedures will be substantially similar to those prescribed under the earlier provision, Rev. Proc. 2009-26.

For C corporation banks that have losses in 2008 or 2009 and did not receive TARP funds, this provision could be beneficial to your deferred tax asset. If your bank paid significant tax in the carryback period, then using the expanded five-year carryback will set aside a portion of the deferred tax asset at the end of the year, which might otherwise be reduced for regulatory capital purposes.

HOMEBUYER CREDIT EXTENDED AND LIBERALIZED

A large part of the positive recent trends in home sales has been due to the “first-time homebuyer tax credit” (FTHTC), which was set to expire November 30, 2009. The new law extends the credit to residences purchased before May 1, 2010 (or to closings before July 1, 2010, if there was a written binding contract before May 1). Service members on official extended duty have an additional year from these deadlines to make a qualified purchase. In addition to the time extension, the credit is now available to higher income taxpayers and to existing homeowners who are longtime residents (at least 5 consecutive years in the same home within the last 8 years). These rules, along with low mortgage rates and prices, should allow the positive trends in home sales to continue.

The increased income levels to phase out the credit are between \$125,000 and \$145,000 for single taxpayers (\$225,000 and \$245,000 for joint filers). The maximum credit for existing homeowners is \$6,500 instead of the \$8,000 limit for first-time homebuyers. There is no requirement that the existing home be sold to qualify for the credit on the replacement home.

A few other changes to the credit are intended to curb perceived abuses. The credit cannot be claimed on any purchase exceeding \$800,000. The taxpayer (or spouse) must be at least 18 years old and not eligible to be claimed as a dependent for the year of the purchase. Also, the home cannot be acquired from a related party.

CONTACT INFORMATION

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