

TAX AND BUSINESS Alert™

January 2010

The First-time Homebuyer Tax Credit (Credit) allows new homeowners the opportunity to receive a tax credit of up to \$8,000 to help them purchase a home. The Credit was originally set to expire on December 1, 2009, but was recently extended and expanded.

The Worker, Homeownership, and Business Assistance Act of 2009 (Act) extends and liberalizes the Credit by making it available to (a) higher income taxpayers and (b) existing homeowners who are qualifying *long-time residents* and purchase another principal residence. However, for the first time there will be a dollar cap on residences qualifying for the credit.

The Credit is now available on a principal residence purchased before May 1, 2010. The Credit also applies to the purchase of a principal residence that is closed before July 1, 2010, where the contract to purchase was binding before May 1, 2010. In addition, the homebuyer may elect to treat a qualifying home purchase after 2008 as made on December 31 of the calendar year preceding the purchase. Making this election allows homebuyers to claim the Credit on their prior

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year's tax return and may allow them to receive their money sooner.

The Act allows more taxpayers to qualify for the Credit by increasing the modified adjusted gross income (MAGI) limitations. For home purchases after November 6, 2009, eligibility for the Credit now phases out for individual taxpayers with a MAGI between \$125,000 and \$145,000 for the year of purchase. For joint filers, the phase-out range is \$225,000 to \$245,000. Prior to the Act, the phase-out ranges were between \$75,000 and \$95,000 (\$150,000 and \$170,000 for joint filers).

The Credit is now available to *long-time residents* for home purchases after November 6, 2009. An individual, and spouse if married, who has maintained the same principal residence for any five consecutive years during



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The information contained in this newsletter was not intended or written to be used and cannot be used for the purpose of (1) avoiding tax-related penalties prescribed by the Internal Revenue Code or (2) promoting or marketing any tax-related matter addressed herein.

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Tax Calendar



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January 15—Individual taxpayer's final 2009 estimated tax payment is due unless Form 1040 is filed by February 1, 2010, and any tax due is paid with the return.

February 1—Most employers must file Form 941 (Employer's Quarterly Federal Tax Return) to report Medicare, social security, and income taxes withheld in the fourth quarter of 2009. (If your tax liability is less than \$2,500, you can pay it in full with a timely filed return.) If you deposited the tax for the quarter in full and on time, you have until February 10 to file the return. Employers who have an estimated annual employment tax liability of \$1,000 or less may be eligible to file Form 944 (Employer's Annual Federal Tax Return).

—Give your employees their copies of Form W-2 for 2009. If an employee agreed to receive Form W-2 electronically, have it posted on the website and notify the employee.

—Generally, give annual information statements to recipients of certain payments you made during 2009. You can use the appropriate version of Form 1099 or other

information return. Form 1099 can be filed electronically with the consent of the recipient.

—File Form 940 [Employer's Annual Federal Unemployment (FUTA) Tax Return] for 2009. If your undeposited tax is \$500 or less, you can either pay it with your return or deposit it. If it is more than \$500, you must deposit it. However, if you deposited the tax for the year in full and on time, you have until February 10 to file the return.

—File Form 945 (Annual Return of Withheld Federal Income Tax) for 2009 to report income tax withheld on all nonpayroll items, including backup withholding and withholding on pensions, annuities, IRAs, etc. If your tax liability is less than \$2,500, you can pay it in full with a timely filed return. If you deposited the tax for the year in full and on time, you have until February 10 to file the return.

March 1—The government's copy of Form 1099 and Form W-2 series returns (along with the appropriate transmittal form) should be sent in by today. However, if these forms will be filed electronically, the due date is March 31.

March 15—2009 income tax returns must be filed or extended for calendar-year corporations. If the return is not extended, this is also the last day for calendar-year corporations to make 2009 contributions to pension and profit-sharing plans. 

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the eight-year period ending on the date of purchase of a subsequent principal residence is eligible for a reduced Credit. The maximum credit available for these taxpayers is \$6,500 (\$3,250 for a married individual filing separately).

Example: Homebuyer Credit Available to Long-time Residents. Joe and Cass purchased their home on Magnolia Street 15 years ago, and it has been their principal residence since. In 2010, they decide to downsize and close on a smaller \$240,000

home on February 12. Their 2010 MAGI is estimated to be less than \$150,000. At the time of purchase, Joe and Cass will be eligible for a Homebuyer Credit of \$6,500, the maximum credit available to taxpayers who meet the definition of long-time resident.

The Act sets a maximum purchase price of \$800,000 with no phase-out on homes qualifying for the Credit. Prior to the Act, there was no such limitation.

Please contact us if you have questions about how you might qualify for or benefit from this Credit. 

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Congress Extends Beneficial NOL Provision

The rough economy has caused many businesses to operate at a loss, also termed a *net operating loss* (NOL). As you would expect, an NOL occurs when there is an excess of business deductions (computed with certain modifications) over gross income in a particular tax year. The good news is there generally are no federal taxes due, and the current-year NOL can be deducted through NOL carryback or carryover in another tax year in which gross income exceeds business deductions (a profitable year). In general, NOLs may be carried back two years and forward 20 years. The NOL is first carried back to the earliest tax year for which it's allowable, and is then carried to the next earliest tax year. Carrying back an NOL allows a taxpayer to recover taxes paid in a prior period and improve business cash flow. A taxpayer may elect to forgo the entire NOL carryback period and instead carry it forward if it is more beneficial to do so.

For NOLs arising in tax years ending after December 31, 2007, small businesses can elect to increase the carryback period for an applicable 2008 NOL from two years up to five years. A small business for this purpose is defined as a corporation, partnership, or sole proprietorship whose average annual gross receipts for the three-tax-year period ending with the tax year in which the loss arose are \$15 million or less.

The recent Worker, Homeownership, and Business Assistance Act of 2009 (Act) provides an election for even more taxpayers (not just small businesses) to increase the carryback period for an applicable NOL to three, four, or five years. For this provision, an applicable NOL means the taxpayer's NOL for any tax year ending after December 31, 2007, and beginning before January 1, 2010. Generally, an election may be made only once. However, an eligible small business that elected an NOL carryback before November 6, 2009 (the enactment date), may make a second election in a subsequent tax year that begins before January 1, 2010.

The Act limits the amount of the NOL that can be carried back to the fifth tax year preceding the loss year to no more than 50% of the taxpayer's taxable income for that fifth preceding tax year. The amount of the NOL otherwise carried to tax years after the fifth preceding tax year is adjusted to take into account that the NOL could offset only 50% of the taxable income for that fifth preceding tax year.



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Example: Five-year NOL Carryback. Justa Corporation (Justa), a taxpayer averaging \$200 million in annual sales, incurs a \$5 million NOL during its year ending August 31, 2009. During its tax year ending August 31, 2004, it had taxable income of \$6 million. If Justa carries its NOL back to the 2004 tax year, it will only be able to apply \$3 million of that 2009 loss against its taxable income in 2004 (because of the 50% limitation). The remaining \$2 million can be used to offset taxable income in years 2005 or later. By carrying the 2009 NOL back to prior profitable years, Justa can recover taxes paid in those years, increase its cash flow, and use the proceeds to meet payroll requirements, pay operating expenses, or purchase necessary equipment.

Dealing with business losses can be a painful experience, but NOL treatment and the subsequent recovery of taxes previously paid can often substantially improve this trying situation. However, the tax treatment of NOLs is quite technical, so please contact us to discuss how you might benefit from this provision.



Taxation of Bartering

Bartering is the exchange of property or services for another's property or services.

During this difficult economic period, many small businesses are facing cash flow issues due to falling sales and tight credit.



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Given the tough economy, some small business owners have found that bartering is a way to increase

sales and decrease excess inventory in exchange for marketing and advertising, professional services, and goods and supplies for their business. Bartering can be done individually or through an organized barter exchange.

If examined by the IRS, business owners and individuals are likely to be asked if they engaged in any bartering transactions. This is because the fair market value (FMV) of the goods or services received must be included in gross income on the date received just as if it had been a cash transaction. A business owner can offset bartering income with the cost (not FMV) of any property exchanged in such a transaction, as would be the case in an ordinary sale of inventory. Taxpayers who trade services, instead of property, can offset the income with any expenses that would normally be deducted against income generated by producing that service (e.g., supplies, telephone, etc.).

A bartering transaction may actually consist of two transactions. The first is the receipt of income, equal to the FMV of the goods or services received. Next, if the goods and services received are used in the taxpayer's business or income-producing activity, a deduction should be available, just as it would be if the goods or services had been obtained with cash.

Example: Bartering Transaction. Courtney is a self-employed attorney. She exchanges her services for a painting worth \$5,000 that she displays in her home. She must include the value of the painting (\$5,000) in income. She can deduct only the out-of-pocket expenses incurred to furnish the legal fees. This is the same result as if she had collected \$5,000 in cash and used the cash to buy the painting.

Variation: Assume instead that Courtney exchanged her legal services for two months rent (worth \$5,000) for the office space where she conducts her legal practice. Here, she would have \$5,000 income, but also a \$5,000 deduction for rental expense on her tax return reporting income from her legal practice. Again, the result is the same as if she had received the \$5,000 in cash and used it to pay the rent on her office space.

Please call us if you have questions on the reporting requirements of bartering transactions or any other tax compliance or planning issue. 

The *Tax and Business Alert* is designed to provide accurate information regarding the subject matter covered. However, before completing any significant transactions based on the information contained herein, please contact us for advice on how the information applies in your specific situation.

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