

On November 6, 2009, President Obama signed into law the “Worker, Homeownership, and Business Assistance Act of 2009” (the 2009 Assistance Act). In addition to providing an extension of unemployment benefits for the long-time jobless, the 2009 Assistance Act includes tax changes for individuals, namely changes extending and generally liberalizing the first-time homebuyer tax credit and providing tax relief for military families.

Homebuyer Credit Extended and Liberalized

You may remember that the stimulus package enacted earlier this year included an up-to-\$8,000 tax credit for first-time homebuyers. This credit was scheduled to expire on November 30, 2009. The new law extends and expands the first-time homebuyer credit by:

- *Extending deadlines for purchasing and closing on a home.* Under the 2009 Assistance Act, an eligible taxpayer must buy, or enter into a binding contract to buy, a principal residence on or before April 30, 2010 and close on the home by June 30, 2010. For qualifying purchases in 2010, taxpayers have the option of claiming the credit on either their 2009 or 2010 return.
- *Authorizing the credit for long-time homeowners buying a replacement principal residence.* For the first time, long-time homeowners who buy a replacement principal residence may also claim a homebuyer credit of up to \$6,500 (up to \$3,250 for a married individual filing separately). They must have lived in the same principal residence for any five-consecutive-year period during the eight-year period that ended on the date the replacement home is purchased. One key point is that the replacement home must be a principal residence—vacation homes aren't eligible.
- *Raising the income limitations for homeowners claiming the credit.* People with higher incomes can now qualify for the credit. The new law raises the income limits for homes purchased after November 6, 2009. The credit phases out for individual taxpayers with modified adjusted gross income (MAGI) between \$125,000 and \$145,000 or between \$225,000 and \$245,000 for joint filers. The pre-2009 Assistance Act MAGI phase-outs of \$75,000 to \$95,000 or \$150,000 to \$170,000 for joint filers still apply to purchases on or before November 6, 2009.
- *Providing additional homebuyer liberalizations for service members.* The 2009 Assistance Act ensures that recapture of the credit will not apply to service members (including members of the U.S. uniformed services, Foreign Service, and intelligence community) who dispose of a principal residence or cease using a home as a principal residence after December 1, 2008, in connection with Government orders received by the individual or the individual's spouse for qualified official extended duty service. Additionally, in the case of service members serving outside the United States for at least 90 days during the period beginning after December 31, 2008, and ending before May 1, 2010, the credit is extended for one year. This means that the purchase must occur before May 1, 2011 (or July 1, 2011, for taxpayers with binding contracts). This change will allow service members stationed overseas to take advantage of the credit when they return.

However, the 2009 Assistance Act also adds new restrictions on the first-time homebuyer tax credit by:

- Imposing an \$800,000 purchase-price limitation. For purchases after November 6, 2009, the credit cannot be claimed for buying a residence for more than

- \$800,000. There is no phaseout mechanism. A purchase price that exceeds the \$800,000 threshold by even a single dollar will cause the loss of the entire credit.
- Requiring a minimum age of 18 to claim the credit.
 - Prohibiting dependents from claiming the credit.
 - Denying the credit for purchases from parties related to the taxpayer's spouse.
 - Requiring taxpayers to attach a signed copy of their settlement statement to their return.
 - Giving IRS the authority to automatically assess tax and begin collection proceedings in cases where they suspect fraud (thus shortening the time it takes for IRS to collect additional tax through the normal deficiency procedures). This IRS authority (called "math error authority") is retroactive to April 9, 2008, thus giving IRS the ability to quickly address any erroneous refund claims that have been previously filed.

Exclusion from Gross Income of Qualified Military Base Realignment and Closure Fringe

The Homeowner's Assistance Program (HAP) has long provided payments to certain Defense Department employees and members of the Armed Forces to offset the adverse effects on housing values that result from a military base realignment or closure. These payments are excluded from the recipient's gross income and are not considered wages for FICA tax purposes (including Medicare). The stimulus legislation enacted earlier this year (i.e., the American Recovery and Reinvestment Act of 2009 (ARRA)) expanded HAP to cover, among other things, individuals whose property values were affected by the current real estate slowdown, including wounded Armed Forces members and civilian Department of Defense and Coast Guard employees, and Armed Forces members permanently reassigned from an area at or near a military installation. The new law expands the exclusion from income to cover HAP payments authorized under ARRA, effective for payments made after Feb. 17, 2009 (ARRA's enactment date).