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Federal Taxes Weekly Alert Newsletter

Preview Documents for the week of 03/26/2009 - Volume 55, No. 13


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IRS explains options to maximize first-time homebuyer credit for 2009 home purchases (03/26/2009)

Federal Taxes Weekly Alert,

IRS explains options to maximize first-time homebuyer credit for 2009 home purchases

IR 2009-27

 **RIA observation:** The pre-Recovery Act rules for the homebuyer credit apply for homes bought after Apr. 8, 2008 and on or before Dec. 31, 2008. The credit for these 2008 home purchases is reflected on an individual's 2008 return. However, as noted below, a credit for a home bought after Dec. 31, 2008 and before Dec. 1, 2009—which would normally be reflected on an individual's 2009 return—can, at his election, be taken on his 2008 return.

 **RIA observation:** A "principal residence" eligible for the homebuyer credit has the same meaning as under Code Sec. 121 (dealing with the exclusion of gain on the sale of principal residence). Thus, a conventional single family structure, house trailer, mobile home, houseboat, cooperative apartment, condominium, duplex, or row house can qualify as a taxpayer's principal residence for purposes of the homebuyer credit.


Pre-Recovery Act credit. Under pre-Recovery Act law, for qualifying purchases of principal residences in the U.S. after Apr. 8, 2008 and before July 1, 2009, eligible first-time homebuyers could claim a refundable tax credit equal to the lesser of 10% of the purchase price of a principal residence or \$7,500 (\$3,750 for married individuals filing separately).

A taxpayer is considered a first-time homebuyer if he (or spouse, if married) had no present ownership interest in a principal residence in the U.S. during the 3-year period before the purchase of the home to which the credit applies.

Eligible first-time homebuyers who purchase a principal residence after Dec. 31, 2008, and before July 1, 2009, could elect to treat the purchase as made on Dec. 31, 2008. For eligible purchases in 2009, a taxpayer could elect to claim the credit for 2008 or 2009 by attaching Form 5405 to the taxpayer's original or amended 2008 tax return or 2009 tax return.


The first-time homebuyer credit phases out for individual taxpayers with modified AGI between \$75,000 and \$95,000 (\$150,000-\$170,000 for joint filers) for the year of purchase.

The credit for new homebuyers available under per-Recovery Act law is recaptured ratably over fifteen years, with no interest charge, beginning with the second tax year after the tax year in which the home is purchased. For each tax year of the 15-year recapture period, the credit is recaptured as an additional income tax amount equal to 6 2/3% of the amount of the credit. This repayment obligation may be accelerated or forgiven under certain exceptions.

 **RIA observation:** In other words, the credit for new homebuyers under pre-Recovery Act law was the equivalent of a long-term interest-free loan from the government.


Recovery Act enhancements to the credit. For residences purchased after 2008, Sec. 1006 of the Recovery Act:

... increases the maximum homebuyer credit to \$8,000. (Code Sec. 36(b))
... extends the credit so that it applies to purchases before Dec. 1, 2009. (Code Sec. 36(h))
... correspondingly, for purposes of the election to treat the purchase of a principal residence as having been made on Dec. 31, 2008, extends the last date of purchase until Nov. 30, 2009. (Code Sec. 36(g))
... generally waives recapture of the credit for qualifying home purchases after Dec. 31, 2008. However, if the taxpayer disposes of the home or it otherwise ceases to be his principal residence within 36 months from the date of purchase, the pre-Recovery Act rules for recapture of the credit apply. (Code Sec. 36(f)(4)(D))

 **RIA observation:** Committee reports indicate that this waiver of the recapture applies without regard to whether the taxpayer elects to treat the purchase in 2009 as occurring on Dec. 31, 2008, which is allowed by Code Sec. 36(g) .

IRS advises first-time homebuyers. In IR 2009-27 , IRS outlines four options for first-time homebuyers to consider:

- *File an extension.* Individuals who haven't yet filed their 2008 returns but are buying a home soon can request a six-month extension to October 15. This would be faster than waiting until next year and claiming the credit on their 2009 tax return. Even with an extension, homebuyers could still file electronically, receiving their refund in as few as 10 days with direct deposit.
- *File now, amend later.* Individuals due a sizable refund for their 2008 tax return but who also are considering buying a house in the next few months can file their return now and claim the credit later. Individuals would file their 2008 tax forms as usual, then follow up with an amended return later this year to claim the homebuyer credit.
- *Amend the 2008 tax return.* Individuals buying a home in the near future who have already filed their 2008 tax return can file an amended tax return. This will allow them to claim the homebuyer credit on the 2008 return without waiting until next year to claim it on their 2009 return.
- *Claim the credit in 2009 rather than 2008.* For some taxpayers who have bought a home in 2009 (or intend to), it may make more financial sense to wait and claim the homebuyer credit next year when they file the 2009 tax return rather than claiming it now on the 2008 tax return. This could benefit taxpayers who might qualify for a higher credit on the 2009 tax return. This could include people who have less income in 2009 than 2008 because of factors such as a job loss or drop in investment income

 **RIA observation:** In suggesting that some individuals might claim the credit in 2009, rather than in 2008 (last item), IRS is referring to the impact of the phaseout rules. The homebuyer credit is reduced for modified AGI between \$75,000 and \$95,000 (\$150,000-\$170,000 for joint filers). Thus, a individual with income below this range in 2009, but not in 2008, could benefit from not claiming the credit in 2008.

References: For the first-time homebuyer credit, see FTC 2d/FIN ¶ A-4271 ; United States Tax Reporter ¶ 364 ; TaxDesk ¶ 568,850 ; TG ¶ 1470 .

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