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Increased First-Time Homebuyer Credit May Be Claimed for 2008 or 2009 (IR-2009-14; TDNR TG-39)

The IRS has announced a taxpayer-friendly option for individuals and married couples who qualify for the first-time homebuyer credit under Code Sec. 36, as amended by the American Recovery and Reinvestment Tax Act of 2009 (P.L. 111-5). Taxpayers qualifying for the amended credit have the option to claim the Code Sec. 36 credit on either their 2008 or 2009 tax returns.

The 2009 Recovery Act increased the maximum credit allowed under Code Sec. 36 from \$7,500 to \$8,000 (\$3,750 to \$4,000 for married filing separately). To qualify for the increased credit, the home must be purchased after December 31, 2008 and before December 1, 2009. The credit, as amended, does not need to be repaid as long as the home remains the purchaser's principal residence for 36 months after the purchase date.

A spokesperson at the Joint Committee on Taxation told CCH that the issue of whether the technical language of the Act supports the use of the \$8,000 amount for credits claimed on 2008 returns for 2009 purchases, or whether the \$7,500 amount should apply, had been debated among staff members. Their conclusion was that the congressional intent was to allow the \$8,000 amount for all 2009 purchases, regardless of whether the credit was claimed on a 2008 and 2009 return. The staff economists then used that conclusion in determining the final revenue estimates assigned to this provision, as published in JCX-19-09.

CCH Comment. The changes made to the first-time homebuyer credit by the Act are effective only for residences purchased after December 31, 2008. This makes clear that the increased \$8,000 cap on the first-time homebuyer credit only applies to residences purchased from January 1 through November 30, 2009. The \$7,500 cap still applies to homes purchased in 2008. The language providing for an election to treat a 2009 purchase as if made in the prior year was also revised by the new act. Code Sec. 36(g) states that, in the case of a purchase of a principal residence after December 31, 2008, and before December 1, 2009, a taxpayer may elect to treat such purchase as made on December 31, 2008, for purposes of Code Sec. 36 other than Code Sec. 36(c), the definitional subsection, and Code Sec. 36(f)(4)(D), the subsection addressing the waiver of recapture for purchases in 2009. Under a technical reading of the statute, therefore, an election to treat a residence purchased in 2009 as if made on December 31, 2008, would subject the purchase to the \$7,500 dollar limitation applicable to 2008 purchases under Code Sec. 36(b). The IRS appears to have decided, however, to allow residences purchased in 2009 to qualify for the \$8,000 limit even where the taxpayer elects to treat the purchase as if made on December 31, 2008.

A revised version of Form 5405, First-Time Homebuyer Credit, has been posted on the IRS website (www.irs.gov/pub/irs-pdf/f5405.pdf) incorporating changes made by the Act.

In addition, the IRS reminds taxpayers that amended Code Sec. 36 does not apply to people who actually purchased a home after April 8, 2008, and on or before December 31, 2008. These taxpayers, who are claiming the credit on their 2008 tax returns, are limited to a maximum credit of \$7,500 (or \$3,750 for married individuals filing separately). In addition, the credit for these 2008 purchases must be repaid in 15 equal installments over 15 years, beginning with the 2010 tax year.

IR-2009-14,

2009FED ¶46,277

Treasury Department News Release, TDNR TG-39, 2009FED ¶46,278

Other References:

Code Sec. 36

CCH Reference - 2009FED ¶4190K.11