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NEW DEVELOPMENTS

HOUSING ASSISTANCE ACT OF 2008

On July 20, 2008, President Bush signed into law the Housing Assistance Tax Act of 2008. The tax act is part of a broader bill, The Housing and Economic Recovery Act of 2008. While the act has many provisions, the following, are in general, some of the more significant:

1. FIRST-TIME HOMEBUYER TAX CREDIT

The housing act gives first-time homebuyers nationwide a temporary refundable tax credit equal to 10 percent of the purchase price of a home, up to \$7,500 (\$3,750 for married individuals filing separately). The credit begins to phase out for taxpayers with adjusted gross income in excess of \$75,000 (\$150,000 in the case of a joint return). The credit is effective for homes purchased on or after April 9, 2008, and before July 1, 2009. Unlike other credits, however, the first-time homebuyer credit must be repaid in equal installments over 15 years, starting two years after the year in which the home was purchased. Essentially, the repayment provision makes it an interest-free loan from the government.

The new credit phases out for married couples filing jointly with modified AGI between \$150,000 and \$170,000 and for single taxpayers with modified AGI between \$75,000 to \$95,000

The Internal Revenue Service is not giving the \$7,500 credit as cash at closing. The individual must claim the credit on a 2008 or 2009 tax return. However, a first-time buyer who purchases a principal residence in 2009 after filing a 2008 tax return has the option of filing an amended 2008 tax return to claim the credit. Purchasers also should investigate adjusting their wage withholdings or estimated tax payments for the balance of the year to account for the credit.

A person is considered a “first-time homebuyer” if he or she (or spouse) had no ownership interest in a principal residence during the three-year period before the new home is purchased.

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Renters who also own a vacation home may qualify for the credit since the three-year look back period for owning a home applies only to a principal residence.

Under the new law, two or more unmarried individuals may purchase a residence and qualified for the credit. They must allocate the amount of the credit between them as the Internal Revenue Service prescribes. However, the total amount of the credit allowed to the individuals jointly may not exceed \$7,500.

The Internal Revenue Service will disallow the credit if the taxpayer disposes of the residence – or the residence ceases to be the taxpayer’s principal residence – before the close of the tax year for which the credit would be allowed (either 2008 or 2009). The Internal Revenue Service will also disallow the credit if the taxpayer is a nonresident alien, takes the expired, but likely to be renewed, District of Columbia first-time homebuyer tax credit or the taxpayer’s financing is from tax-exempt mortgage revenue bonds.

If a taxpayer sells or no longer uses the home as his or her principal residence before repaying the credit, the unpaid balance becomes due in the year in which the residence is sold or is no longer used as the taxpayer’s principal residence. However, the amount of recaptured credit may not exceed the amount of gain from the sale of the residence to an unrelated person. The credit does not have to be repaid if the taxpayer dies. Special rules also exist for an involuntary conversion and for a residence transferred in a divorce.

2. PROPERTY TAX DEDUCTION FOR NON-ITEMIZERS

Currently only individuals who itemize deductions may deduct real property taxes imposed by state and local governments. The new law gives non-itemizers a limited deduction for state and local real property taxes by increasing the amount of their standard deduction by the lesser of:

1. The amount of real property taxes paid during the year, or
2. \$500 (\$1,000 for a married couple filing jointly).

This temporary deduction is available only for 2008.

Taxpayers most likely to benefit from this increased standard deduction include homeowners who have paid off their mortgage and, therefore, no longer have a lot of itemize deductions and homeowners whose overall itemized deductions generally do not exceed their standard deduction.

For 2008, as a result of this law change, the \$10,900 standard deduction for joint filers and surviving spouses would increase to a maximum of \$11,900, while the \$5,450 standard deduction for single individuals increases to a maximum of \$5,950 and the head-of-house hold amount from \$8,000 to \$8,500.

3. REDUCED HOME SALE EXCLUSION

Gain from the sale of a principal residence home will no longer be excluded from gross income under Code Sec. 121 for periods that the home was not used as the principal residence (“non-qualifying use”). This new income inclusion rule applies to home sales after December 31, 2008, and is based only on nonqualified use periods that begin on or after January 1, 2009. A period of absence generally counts as “qualifying use” if it occurs while the home is being used as the principal residence.

The new law prevents full use of the exclusion of gain from the sale of a principal residence of up to \$250,000 (\$500,000 for joint filers) for appreciation attributable to periods after 2008 during which a residence was used as a vacation home or as rental property before its use as the principal residence.

Rather than require a valuation of the property on January 1, 2009, or at the time use is converted into a principal residence, however, the new law determines excluded appreciation on a pro-rata basis.

The amount of gain allocated to periods of nonqualified use is the amount of gain multiplied by a fraction, the numerator of which is the aggregate period of nonqualified use during which the property was owned by the taxpayer and the denominator of which is the period the taxpayer owned the property. “Non-qualified use” for this computation does not include any use prior to 2009.

4. CREDIT CARD INFORMATION REPORTING

Under the new law, banks and other processors of merchant payment card transactions (credit or debit cards) will be required to report a merchant’s annual gross payment card receipts to the Internal Revenue Service (and to the merchant). The new law also requires reporting on third-party network transactions (such as ones used by many online retailers). Merchants and payment card processors have time to prepare. The new treatment is effective for sales made on or after January 1, 2011.

The new law creates an exception from information reporting if the aggregate value of third-party network transactions does not exceed \$20,000 for the calendar year or the aggregate number of these transactions does not exceed 200.

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