

First-time homebuyer credit extended to residences purchased before December 1, 2009 and increased to \$8,000

An individual who is a first-time homebuyer of a principal residence in the U.S. after April 8, 2008 and, under pre-2009 Recovery Act law, before July 1, 2009 is allowed, subject to an income phase-out, a refundable tax credit for 10% of the purchase price, up to a maximum of \$7,500 (\$3,750 on a separate return). The credit is allowed for the tax year in which the taxpayer purchases the home unless the taxpayer makes an election as described below.

Two credit recapture rules generally apply. Under a "regular recapture rule," the credit is recaptured ratably over 15 years with no interest charge, beginning in 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 equal to 62/3% of the amount of the credit.

Under an "accelerated recapture rule," if the taxpayer sells the home, or the home ceases to be used as the principal residence of the taxpayer or the taxpayer's spouse, before the complete repayment of the credit, any remaining credit repayment amount is due on the tax return for the year in which the home is sold or ceases to be used as the principal residence. The credit repayment amount can't exceed the amount of gain from the sale of the residence to an unrelated person.

However, neither the regular nor accelerated recapture rule applies in any tax year ending after the taxpayer's death. In the case of an involuntary conversion of the home, recapture isn't accelerated if a new principal residence is acquired within a two-year period. And in the case of a transfer of the residence to a spouse or to a former spouse incident to a divorce, the transferee spouse—and not the transferor spouse—will be responsible for any future recapture. Under pre-2009 Recovery Act law, there were no other exceptions to the credit recapture rules.


A taxpayer can elect to treat a home purchased in the eligible period in 2009 as if purchased on December 31, 2008 for purposes of claiming the credit on the 2008 tax return and for establishing the beginning of the recapture period.

New Law. Under the 2009 Recovery Act, the first-time homebuyer credit is extended to apply to principal residences purchased before December 1, 2009. Correspondingly, for purposes of the election to treat the purchase of a principal residence as having been made on December 31, 2008, the last date of purchase has also been extended until December 1, 2009.

The maximum amount of the credit is increased from \$7,500 to \$8,000. For married individuals filing separately, the maximum credit is increased from \$3,750 to \$4,000.

Recapture rules.

The 2009 Recovery Act provides that for a principal residence purchased after December 31, 2008 and before December 1, 2009 for which a first-time homebuyer credit is allowed, the "regular recapture rule" won't apply.

 **RIA observation:** That is, recapture of the credit is waived for qualifying home purchases occurring between those dates. This change transforms the credit from the equivalent of an interest-free loan (under pre-2009 Recovery Act law) into direct financial support for qualifying home purchases.

Also, for a principal residence purchased after December 31, 2008 and before December 1, 2009 for which a first-time homebuyer credit is allowed, the "accelerated recapture rule" will apply only if the taxpayer disposes of the residence, or the residence ceases to be the principal residence of the taxpayer or the taxpayer's spouse, during the 36-month period beginning on the date of purchase of that residence by the taxpayer.

Election to treat purchase as made December 31, 2008.

The waiver of recapture applies without regard to whether the taxpayer makes an election to treat the pre-December 1, 2009 purchase as occurring on December 31, 2008.

Please call us with any questions.