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IRS describes allocation of new first-time homebuyer credit between unmarried taxpayers

With the housing slump continuing unabated, Congress is using the Tax Code to encourage home sales. The new first-time homebuyer tax credit rewards eligible individuals up to \$7,500 when they purchase a residence. The IRS recently issued guidance on how to allocate the credit between unmarried taxpayers.

Temporary tax break

The first-time homebuyer credit is a temporary tax break. Congress created it as part of the Housing and Economic Recovery Act of 2008. Eligible individuals can claim a credit equal to 10 percent of the purchase price of a residence purchased after April 8, 2008, and before July 1, 2009 (or September 1 if the Senate Finance Committee has its way). The maximum amount of the credit is \$7,500 (\$3,750 for a married couple filing a

separate return).

However, unlike other federal tax credits, the first-time homebuyer credit must be repaid. Taxpayers have 15 years to repay the credit - interest free - to the IRS in equal installments.

Planning tip. Congress is currently debating whether to remove the repayment requirement. If it does, this will make the credit much more attractive to prospective home purchasers.

Allocation

One of the unique features of the first-time homebuyer credit is that it can be allocated between unmarried taxpayers. For example, domestic partners, siblings, friends, and so on can take advantage of the credit. The total credit allocated between unmarried taxpayers cannot exceed \$7,500.

In January, the IRS released guidance about allocation of the first-time homebuyer credit. If two or more taxpayers who are not married purchase a principal residence the credit may be allocated between the taxpayers using any reasonable method. A reasonable method includes allo-

cating the credit between taxpayers who are eligible to claim the credit based on (1) the taxpayers' contributions toward the purchase price of the residence as tenants in common or joint tenants, or (2) the taxpayers' ownership interests in the residence as tenants in common.

Example. Alan contributes \$45,000 and Barry contributes \$15,000 to the \$60,000 purchase price of a residence. Each owns a one-half interest in the residence as tenants in common. The allowable credit is limited to 10 percent of the purchase price, or \$6,000. Alan and Barry may allocate the allowable \$6,000 credit three-fourths to Alan and one-fourth to Barry based on their contributions to the purchase price of the residence, one-half to each based on their ownership interests in the residence, or using any other reasonable method.

Income limits

The first-time homebuyer tax credit also has important income limitations. The credit begins to phase out for a taxpayer whose modified adjusted gross income

is \$75,000 (\$150,000 for married taxpayers filing a joint return). The credit is completely phased out for a taxpayer whose modified adjusted gross income is \$95,000 (\$170,000 for married taxpayers filing a joint return).

Example. Cecilia contributes \$75,000 and Derek contributes \$25,000 to the \$100,000 purchase price of a residence, and each owns a one-half interest in the residence as tenants in common. The allowable credit is limited to \$7,500. Cecilia's modified adjusted gross income is \$100,000 and Derek's modified adjusted gross income is \$60,000. Because Cecilia's modified adjusted gross income exceeds the statutory income cap, any portion of the credit allocated to Cecilia would be reduced to \$0. Cecilia and Derek may allocate the entire allowable \$7,500 credit to Derek because Derek's modified adjusted gross income is less than the \$75,000 income phase out. Therefore, Derek is eligible to claim the entire allowable credit.

If you have any questions about the first-time homebuyer tax credit, please contact our office. If Congress removes the repayment option, the credit will be a true credit and not an interest-free loan. We'll keep you posted of developments.

GA - Guidance provided on grace period from electronic filing mandate

The Georgia Department of Revenue advises taxpayers on

the grace period from the requirement that corporate and personal income tax returns be filed electronically when payments have been remitted by electronic funds transfer (EFT) on a mandatory or voluntary basis. The grace period applies to 2007 income tax year returns only. As a result, 2007 paper income tax returns will be deemed filed electronically on the date that they were filed non-electronically, and the electronic filing mandate will apply beginning with 2008 tax year returns. The Department is currently revising the regulations to require electronic filing of corporate and partnership income tax returns for tax year 2008 when a federal return is filed electronically.

GA - Company not entitled to freeport exemption

A company's retail inventory did not qualify for a freeport property tax exemption because, even though the inventory was purchased from its warehouse by out-of-state customers, the inventory was nevertheless sold at retail in Georgia. The freeport exemption applied to finished goods in a retailer's inventory that, as of January 1, were stored in a warehouse and were destined for shipment to a final destination outside Georgia. Specifically excluded from the free

port exemption was otherwise eligible inventory that constituted stock in trade of a retailer. Stock in trade of a retailer consisted of finished goods held or stored at a business location

from which retail sales were regularly made.

The company marketed its products through a printed catalog and a Web site and customers ordered products using either the Internet or a toll-free telephone number. The company argued that its retail sales made via the telephone or Internet to an out-of-state customer were not sales at retail in Georgia. It then reasoned that, because these transactions did not qualify as retail sales in Georgia, by default they must be considered the shipment of goods outside the state for resale purposes.

The court concluded that all aspects of the retail sales made from the company's warehouse to Internet and telephone customers occurred in Georgia, including the processing, filling, packaging, and shipping of orders, and it rejected the company's argument that retail sales made via catalog and the Internet to out-of-state customers were not sales at retail in the state. Further, the term "for resale purposes" expressly excluded from the freeport exemption any merchandise sold at retail, regardless of whether the sale was made to a resident or nonresident of Georgia. The court also held that the company was subject to tax not simply because it made retail sales to customers who came to its Georgia warehouse but because it was a retailer and all inventory sold at retail represented its stock in trade.