

FAQ's on Move-Up and Repeat Home Buyer Tax Credit

The Worker, Homeownership, and Business Assistance Act of 2009 has established a tax credit of up to \$6,500 for qualified Move-up/Repeat home buyers (existing home owners) purchasing a principal residence after November 6, 2009 and on or before April 30, 2010 (or purchased by June 30, 2010 with a binding sales contract signed by April 30, 2010).

The following questions and answers provide basic information about the tax credit. If you have more specific questions, we strongly encourage you to consult a qualified tax advisor or legal professional about your unique situation.

- **Who is eligible to claim the \$6,500 tax credit?**
Qualified move-up or repeat home buyers purchasing any kind of home are eligible to claim this credit.
- **What is the definition of a move-up or repeat home buyer?**
The law defines a tax credit qualified move-up buyer ("long-time resident") as a home owner who has owned and resided in a home for at least five consecutive years of the eight years prior to the purchase date. For married taxpayers, the law tests the homeownership history of both the home buyer and his/her spouse. Repeat home buyers do not have to purchase a home that is more expensive than their previous home to qualify for the tax credit.
- **How is the amount of the tax credit determined?**
The tax credit is equal to 10 percent of the home's purchase price up to a maximum of \$6,500. Homes purchased above the price of \$800,000 are not eligible for the tax credit.
- **Are there any income limits for claiming the tax credit?**
Yes. The income limit for single taxpayers is \$125,000; the limit is \$225,000 for married taxpayers filing a joint return. The tax credit amount is reduced for buyers with a modified adjusted gross income (MAGI) above those limits. The phase out range for the tax credit program is equal to \$20,000. That is, the tax credit amount is reduced to zero for taxpayers with MGI of more than \$145,000 (single) or \$245,000 (married) and is reduced proportionally for taxpayers with MAGI's between these amounts.
- **What is "modified adjusted gross income"?**
Modified adjusted gross income or MAGI is defined by the IRS. To find it, a taxpayer must first determine "adjusted gross income" or AGI. AGI is total income for a year,

minus certain deductions (known as “adjustments” or “above-the-line” deductions”), but before itemized deductions from Schedule A or personal exemptions are subtracted. On Forms 1040 and 1040A, AGI is the last number on page 1 and the first number on page 2 of the form. For form 1040-EZ, AGI appears on line 4 (as of 2007). Note that AGI includes all forms of income including wages, salaries, interest income, dividends and capital gains.

To determine modified adjusted gross income (MAGI), add to AGI certain amounts of foreign-earned income. See IRS Form 5405 for more details.

- **If my modified adjusted gross income (MAGI) is above the limit, do I qualify for any tax credit?**

Possibly, it depends on your income. Partial credits of less than \$6,500 are available for some taxpayers whose MAGI exceed the phase out limits.

- **Can you give me an example of how the partial tax credit is determined?**

Just as an example, assume that a married couple has a modified adjusted gross income of \$235,000. The applicable phase out to qualify for the tax credit is \$225,000, and the couple is \$10,000 over this amount. Dividing \$10,000 by the phase out range of \$20,000 yields 0.5. When you subtract 0.5 from 1.0, the result is 0.5. To determine the amount of the partial first-time home buyer tax credit that is available to this couple, multiply \$6,500 by 0.5. The result is \$3,250.

Here’s another example: assume that an individual home buyer has a modified adjusted gross income of \$138,000. The buyer’s income exceeds \$125,000 by \$13,000. Dividing \$13,000 by the phase out range of \$20,000 yields 0.65. When you subtract 0.65 from 1.0 the result is 0.35. Multiplying \$6,500 by 0.35, shows, that the buyer is eligible for a partial tax credit of \$2,275.

Please remember that these examples are intended to provide a general idea of how the tax credit might be applied in different circumstances. You should always consult your tax advisor for information relating to your specific circumstances.

- **How is the home buyer tax credit different from the tax credit that Congress enacted in July of 2008? How is this different than the rules established in early 2009?**

The previous tax credits applied only to the first-time home buyer and were for different amounts of money.

- **How do I claim the tax credit? Do I need to complete a form or application? Are there documentation requirements?**

You claim the tax credit on your federal income tax return. Specifically, home buyers should complete IRS Form 5405 to determine their tax credit amount, and then claim this amount on line 67 of the 1040 income tax form for 2009 returns (line 69 of the 1040 income tax form for 2008 returns).

No other applications are required and no pre-approval is necessary. However, you will want to be sure that you qualify for the credit under the income limits and repeat home buyer tests. Note that you cannot claim the credit on form 5405 for an intended purchase for some future date; it must be a completed purchase. Home buyers must attach a copy of their HUD-1 settlement form (closing statement) to Form 5404 as proof of the completed home purchase.

- **What types of homes will qualify for the tax credit?**

Any home that will be used as a principal residence will qualify for the credit, provided the home is purchased for a price less than or equal to \$800,000. This includes a single-family detached homes, attached homes like townhouses and condominiums, manufactured homes (also known as mobile home) and houseboats. The definition of principal residence is identical to the one used to determine whether you may qualify for the \$250,000/\$500,00 capital gain tax exclusion for principal residences.

It is important to note that you cannot purchase a home from, among other family members, your ancestors (parents, grandparents, etc.), you lineal descendants (children, grandchildren, etc.) or your spouse or your spouse's family members. Please consult with your tax advisor for more information. Also see IRS Form 5405.

- **I read that the tax credit is "refundable." What does that mean?**

The fact that the credit is refundable means that the home buyer credit can be claimed even if the taxpayer has little or no federal income tax liability to offset. Typically this involves the government sending the taxpayer a check for a portion or even all the amount of the refundable tax credit.

For example, if a qualified home buyer expected, notwithstanding the tax credit, federal income tax liability of \$5,000 and had tax withholding of \$4,000 for the year, then without the tax credit the taxpayer would owe the IRS \$1,000 on April 15th. Suppose now that the taxpayer qualified for the \$6,500 home buyer tax credit. As a result, the taxpayer would receive a check for \$5,500 (\$6,500 minus the \$1,000 owed).

- **Instead of buying a new home from a home builder, I hired a contractor to construct a home on a lot that I already own? Do I still qualify for the tax credit?**

Yes. For the purposes of the home buyer tax credit, a principal residence that is constructed by the home owner is treated by the tax code as having been “purchased” on the date the owner first occupies the house. In this situation, the date of first occupancy must be after November 6, 2009 and on or before April 30, 2010 (or by June 30, 2010, provided a binding sales contract was in force by April 30, 2010).

In contrast, for newly-constructed homes bought from a home builder, eligibility for the tax credit is determined by the settlement date. Be sure to check with a tax advisor in cases where a HUD-1 form is not used at settlement to be sure you have sufficient documentation to attach to IRS Form 5405.

- **Can I claim the tax credit if I finance the purchase of my home under a mortgage revenue bond (MRB) program?**

Yes. The tax credit can be combined with an MRB home buyer program.

- **I am not a U.S. citizen. Can I claim the tax credit?**

Perhaps, anyone who is not a nonresident alien (as defined by the IRS) and who has owned and resided in a principal residence in the United States for at least five consecutive years of the eight years prior to the purchase date can claim the tax credit if they meet the income limits. For married taxpayers, the law tests the homeownership history of both the home buyer and his/her spouse. The IRS provides a definition of “nonresident alien” in IRS Publication 519.

- **Is a tax credit the same as a tax deduction?**

No. A tax credit is a dollar-for-dollar reduction in what the taxpayer owes. That means that a taxpayer who owes \$6,500 in income taxes and who receives a \$6,500 tax credit would owe nothing to the IRS.

A tax deduction is subtracted from the amount of income that is taxed. Using the same example, assume the taxpayer is in the 15 percent tax bracket and owes \$6,500 in income taxes. If the taxpayer receives a \$6,500 deduction, the taxpayer’s liability would be reduced by \$975 (15 percent of \$6,500), or lowered from \$6,500 to \$5,525.

- **Is there a way for a home buyer to access the money allocable to the credit sooner than waiting to file their 2009 or 2010 tax return?**

Yes. Prospective home buyers who believe they qualify for the tax credit are permitted to reduce their income tax withholding. Reducing tax withholding (up to the amount of the credit) will enable the buyer to accumulate cash by raising his/her take home pay. This money can then be applied to the down payment.

Buyers should adjust the withholding amount on their 4 via their employer or through their quarterly estimated tax payment. IRS Publication 919 contains rules and guidelines for income tax withholding. Prospective home buyers should note that if income tax withholding is reduced and the tax credit qualified purchase does not occur then the individual would be liable for repayment to the IRS or income tax and possible interest charges and penalties.

In addition, rule changes made as part of the economic stimulus legislation allow home buyers to claim the tax credit and participate in a program financed by tax-exempt bonds. As a result, some state housing finance agencies have introduced programs that provide short-term second mortgage loans that may be used to fund a down payment. Prospective home buyers should check with their state housing finance agency to see if such a program is available in their community. To date, 18 state agencies have announced tax credit assistance programs and more are expected to follow suit. The National Council of state Housing Agencies (NCSHA) has compiled a list of such programs, which can be found here.

- **HUD allows “monetization” of the tax credit. What does that mean?**

It means that HUD will allow buyers using FHA-insured mortgages to apply their anticipated tax credit toward their home purchases immediately rather than waiting until they file their 2009 or 2010 income taxes to receive a refund. These funds may be used for certain down payment and closing cost expenses.

Under the guidelines announced by HUD, non-profits and FHA-approved lenders are allowed to give home buyers short-term loans. The guidelines also allow government agencies, such as state housing finance agencies, to facilitate home sales by providing longer term loans secured by second mortgages.

Housing finance agencies and other government entities may also issue tax credit loan, which home buyers may use to satisfy the FHA 3.5 percent down payment requirement.

In addition, approved FHA lenders can purchase a home buyer's anticipated tax credit to pay closing costs and down payment costs above 3.5 percent down payment that is required for FHA-insured homes.

More information about the guidelines is available on the NAHB website. Read the HUD Mortgagee Letter (pdf) and an explanation of the FHA Mortgagee Letter on Tax Credit Monetization (pdf). An FAQ about monetization (pdf) is available at the NAHB website.

- **If I'm qualified for the tax credit and buy a home in 2009 (or 2010), can I apply the tax credit against my 2008 (or 2009) tax return?**

Yes. The law allows taxpayers to choose ("elect") to treat qualified home purchases in 2009 (or 2010) as if the purchase occurred on December 31, 2008 (or if in 2010, December 31, 2009). This means that the previous year's income limit (MAGI) applies and the election accelerates when the credit can be claimed. A benefit of the election is that a home buyer in 2009 or 2010 will know their prior year MAGI with certainty, thereby helping the buyer know whether the income limit, will reduce their credit amount.

Taxpayers buying a home who wish to claim it on their prior year tax return, but who have already submitted their tax return to the IRS, may file an amended return claiming the tax credit using Form 1040X. You should consult with a tax professional to determine how to arrange this.

- **For a home purchase in 2009 or 2010, can I choose whether to treat the purchase as occurring in the prior or present year, depending on in which year my credit amount is the largest?**

Yes. If the applicable income phase out would reduce your home buyer tax credit amount in the present year and a larger credit would be available using the prior year MAGI amounts, then you can choose the year that yields the largest credit amount.