

Homebuyer Assistance Improvement Act of 2010 Extends Closing Date for Homebuyer Credit



On June 30, 2010, the Senate passed HR. 5623, the "Homebuyer Assistance Improvement Act of 2010" (the Act) by unanimous consent. The House of Representatives had previously approved H.R. 5623 by a vote of 409-5 on June 29. Thus, the Act, which provides first-time homebuyer credit relief to taxpayers who couldn't meet a key June 30, 2010 closing date, is now cleared for signature by the President.

The cost of the closing reprieve is fully offset by expanding the bad check penalty under Code Sec. 6657 to cover electronic payments, and providing for disclosure of prisoner return information under Code Sec. 6103(k)(10) to state prisons.

Relief for First-Time Homebuyers Unable to Meet Closing Deadline

The Code Sec. 36 first-time homebuyer credit generally is equal to the lesser of \$8,000 (\$4,000 for a married individual filing separately) or 10% of the principal residence's purchase price. However, for purchases after Nov. 6, 2009, a taxpayer (i.e., a "long-time resident") may claim the homebuyer credit if he (and, if married, his spouse) maintained the same principal residence for any 5-consecutive year period during the 8-years ending on the date that the taxpayer buys the subsequent principal residence. The maximum allowable homebuyer credit for such taxpayers, who are treated as first time homebuyers for purposes of the first-time homebuyer credit, is \$6,500 (\$3,250 for a married individual filing separately), or 10% of the purchase price of the subsequent principal residence, whichever is less.

For purchases after Nov. 6, 2009:

- The first-time homebuyer credit phase-out range is between \$125,000 and \$145,000, and for those filing a joint return, it's between \$225,000 and \$245,000.
- The first-time homebuyer credit cannot be claimed for a home if its purchase price exceeds \$800,000; and
- A number of anti-abuse provisions apply. For example, dependents can't claim the first-time homebuyer credit; a purchaser must be at least 18 years of age on the date of purchase; and the definition of a qualifying purchase for first-time homebuyer credit purposes is amended to exclude property acquired from a person related to the person acquiring the property or the spouse of the person acquiring the property, if married.

The first-time homebuyer credit applied to a principal residence bought before May 1, 2010 and, under pre-Act law, to a principal residence bought before July 1, 2010, by a person who entered into a written binding contract before May 1, 2010, if the purchase closed before July 1, 2010. (Certain service members on qualified official extended duty service outside of the U.S. get an extra year to buy a qualifying home and get the credit.)

New law. The Act provides that if a written binding contract to purchase a principal residence was entered into before May 1, 2010, to close on the purchase of a principal residence before July 1, 2010, the credit may be claimed if the purchase is closed before Oct. 1, 2010. (Code Sec. 36(h)(2), as amended by Act Sec. 2(a)) Thus, this extension

allows homebuyers who signed a contract no later than the April 30th deadline, intending to close before July 1, 2010, to complete their closing by the end of September and still qualify for the credit. Conforming amendments are made for purposes of the longer periods for those service members on qualified official extended duty service outside of the U.S. (Code Sec. 36(h)(3)(B)).

The three-month extension of the closing date is intended to provide tax relief for those who couldn't close on time because of backlogs at lenders and federal programs involved in homebuyer loans. In the words of the Act's supporters, the three-month extension "will give time for all the new mortgages to be processed and not punish those homeowners who have been delayed through no fault of their own."

Documentation is required to claim the credit on Form 5405, First Time Homebuyer Credit and Repayment of the Credit. A taxpayer who entered into a binding contract before May 1, 2010, must attach pages from the signed contract showing all parties names and signatures, the property address, the purchase price, and the date of the contract.