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THE WORKER, HOMEOWNER, AND BUSINESS ASSISTANCE ACT OF 2009 - FOR **INDIVIDUALS**

By Victor Sy, CPA

Homebuyer Credit Extended and Liberalized

A refundable tax Credit is available for qualifying first-time home purchases after Apr. 8, 2008, and before Dec. 1, 2009. For homes bought in 2009, the maximum first time homebuyer tax credit 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 (for purchases before 2009, the dollar limits are \$7,500 (\$3,750 for married filing separately). The credit phases out for individual taxpayers with modified adjusted gross income (AGI) between \$75,000 and \$95,000 (\$150,000 and \$170,000 for joint filers) for the year of purchase.

An individual is treated as a first-time homebuyer if he (and his spouse, if married) had no ownership interest in a principal residence in the U.S. during the 3-year period before the purchase of the home. A taxpayer who buys a qualifying residence after Dec. 31, 2008, and before Dec. 1, 2009, may elect to be treated as having bought the home on Dec. 31, 2008, so that he may claim the Credit on the 2008 income tax return. No District of Columbia first-time homebuyer Credit may be claimed by any taxpayer for the purchase of a residence after Dec. 31, 2008, and before Dec. 1, 2009, if the national first-time homebuyer Credit is allowable to the taxpayer (or his spouse) with respect to such purchase.

Recapture rules apply for homes bought on or before Dec. 31, 2008. In general, the credit is recaptured ratably over fifteen years with no interest charge beginning in the second tax year after the tax year in which the home is purchased. For homes bought after Dec. 31, 2008, and before Dec. 1, 2009, the credit is recaptured only if the taxpayer disposes of the home (or the home otherwise ceases to be the principal residence of the taxpayer) within 36 months from the date of purchase.

New law. The Act extends the credit and liberalizes it by making it available to (1) higher-income taxpayers and (2) to existing homeowners who are qualifying “long-time residents” and who buy another principal residence. However, for the first time there will be a dollar cap on residences qualifying for the credit.

Credit extended. Under the Act, the credit is extended to apply to a principal residence purchased by the taxpayer before May 1, 2010. The credit also applies to the purchase of a principal residence before July 1, 2010 by any taxpayer who enters into a written binding contract before May 1, 2010, to close on the purchase of a principal residence before July 1, 2010.

Credit available to higher income taxpayers. For purchases after the enactment date, the credit phases out for individual taxpayers with modified adjusted gross income (AGI) between \$125,000 and \$145,000 (\$225,000 and \$245,000 for joint filers) for the year of purchase.

Credit available for existing homebuyers who are “long-time residents.” For purchases after the enactment date, any individual (and, if married, the individual's spouse) who has maintained the same principal residence for any 5-consecutive year period during the 8-year period ending on the date of the purchase of a subsequent principal residence is treated for credit purposes as a first-time homebuyer of that subsequent principal residence. The maximum allowable Credit for such taxpayers is \$6,500 (\$3,250 for a married individual filing separately).

New limitation on home price for Credit. For purchases after the enactment date, the credit cannot be claimed for buying a residence if its purchase price exceeds \$800,000. There is no phaseout mechanism. A purchase price that exceeds the \$800,000 threshold by even a single dollar will cause the loss of the entire Credit.

The Act includes the following “housekeeping” changes to conform the general credit rules to the above changes:

- A taxpayer may elect to treat a qualifying home purchase after 2008 as made on December 31 of the calendar year preceding the purchase for purposes of claiming the credit on the prior year's tax return.

- No District of Columbia first-time homebuyer credit is allowed to any taxpayer with respect to the purchase of a residence after 2008, if the national credit is allowable to the taxpayer (or the taxpayer's spouse) with respect to such purchase.

New Anti-Abuse Provisions for Homebuyer Credit

- The Act makes the following changes to help prevent abuse of the credit.
- For purchases after the enactment date, the credit can't be claimed unless the taxpayer has attained 18 years of age as of the date of purchase. A taxpayer who is married is treated as meeting the age requirement if the taxpayer or his spouse meets the age requirement.
- For purchases after the enactment date, the credit can't be claimed by a taxpayer if he can be claimed as a dependent by another taxpayer for the tax year of purchase.
- For returns for tax years ending after the enactment date, the credit is not allowed unless the taxpayer attaches to the relevant tax return a properly executed copy of the settlement statement used to complete the purchase.
- For purchases after the enactment date, the definition of a qualifying purchase for 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.
- For returns for tax years ending after Apr. 8, 2008, the Act expands the definition of mathematical or clerical error for purposes of administration of the Credit by IRS so that IRS may assess additional tax without issuance of a notice of deficiency as otherwise required in the case of:
 - An omission of any increase in tax required by the recapture provisions of the credit;
 - Information from the person issuing the taxpayer identification number (TIN) of the taxpayer that indicates that the taxpayer does not meet the age requirement of the Credit;
 - Information provided to IRS on an income tax return for at least one of the two preceding tax years that is inconsistent with eligibility for such Credit; or
 - Failure to attach to the return a properly executed copy of the settlement statement used to complete the purchase.

Additional Homebuyer Liberalizations for Service Members

The Act extends the credit for an additional year, and waives recapture provisions, for individuals who are on qualified official extended duty, which means service on official extended duty as a member of the uniformed services, a member of the Foreign Service of the United States, or an employee of the intelligence community. Qualified official extended duty is any period of extended duty while serving at a place of duty at least 50 miles away from the taxpayer's principal residence or under orders compelling residence in government furnished quarters. Extended duty is any period of duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

Extension of Credit for service members overseas. For an individual (and, if married, the individual's spouse) who serves on qualified official extended duty service outside of the U.S. for at least 90 days during the period beginning after Dec. 31, 2008, and ending before May 1, 2010, the expiration date of the first-time homebuyer Credit is extended for one year, through April 30, 2011 (June 30, 2011, in the case of an individual who enters into a written binding contract before May 1, 2010, to close on the purchase of a principal residence before July 1, 2011).

Waiver of Credit recapture. In the case of a disposition of a principal residence by an individual (or a cessation of use of the residence that otherwise would cause recapture) after Dec. 31, 2008, in connection with Government orders received by the individual (or the individual's spouse) for qualified official extended duty service, no recapture applies by reason of the disposition of the residence, and any 15-year recapture with respect to a home acquired before Jan. 1, 2009, ceases to apply in the tax year of the disposition. (

Exclusion from Gross Income of Qualified Military Base Realignment and Closure Fringe

The Department of Defense Homeowners Assistance Program ("HAP") provides payments to certain employees and members of the Armed Forces to offset the adverse effects on housing values that result from a military base realignment or closure.

The American Recovery and Reinvestment Act of 2009 (ARRA) expanded the HAP in various ways. For example, it allows the Secretary of Defense to provide assistance or reimbursement for certain losses in the sale of family dwellings by members of the Armed Forces living on or near a military installation in situations where: (1) there

was a base closure or realignment; (2) the property was purchased before July 1, 2006, and sold between that date and Sept. 30, 2012; (3) the property is the owner's primary residence; and (4) the owner has not previously received benefits under the HAP. Further, it authorizes similar HAP assistance or reimbursement to: (1) wounded members and wounded civilian Department of Defense and Coast Guard employees (and their spouses); and (2) members permanently reassigned from an area at or near a military installation to a new duty station more than 50 miles away. It allows the Secretary to provide compensation for losses from home sales by such individuals to ensure the realization of at least 90% (in some cases, 95%) of the pre-mortgage-crisis assessed value of such property. Gross income does not include amounts received under the HAP (as in effect on Nov. 11, 2003). Amounts received under the program also are not considered wages for FICA tax purposes (including Medicare). The excludable amount is limited to the reduction in the fair market value of property.