

President Signs Housing Assistance Bill Into Law – New Tax Provisions Enacted

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The President has signed into law H.R. 3221, the Housing and Economic Recovery Act of 2008. The Tax Title of the bill – The Housing Assistance Tax Act of 2008 – contains several tax changes designed to provide tax relief associated with certain real estate transactions. Perhaps of most significance, the bill creates a new tax credit for first-time homebuyers (defined as a person (or spouse) that has had no ownership of a “principal residence” during the three-year period before the day the house was purchased). The credit is available for eligible taxpayers that purchase a home in 2008 and 2009 equivalent to 10 percent of the purchase price of the home. The maximum credit is \$7,500 (\$3,750 for married persons filing separately).

But, the credit comes with numerous limitations. Here are the most significant ones:

- The property must be acquired on or after April 9, 2008 and before July 1, 2009.
- If the taxpayer is building the residence, the taxpayer must occupy the residence by July 1, 2009.
- The credit phases-out for taxpayers with AGI in excess of \$75,000 (\$150,000 for married persons filing jointly) over a \$20,000 range. So,

the credit is eliminated at AGI of \$95,000 (\$170,000 for married persons filing jointly).

- The credit is inapplicable if the taxpayer buys the residence from a spouse, ancestor or lineal descendant.
- The residence cannot be acquired by gift or inheritance.
- The credit is not available to a non-resident alien.
- The credit must be paid back (recaptured) as an additional tax, but without interest, over 15 years, beginning with the second year after the credit is taken.
- If the credit is utilized for the purchase of a residence, any sale of the residence within 15 years of its purchase triggers recapture of any portion of the credit not yet recaptured.

For homes purchased in 2009, eligible taxpayers can claim the credit on an amended 2008 tax return.

Other provisions of the bill include:

- A prohibition on seller-financed down payment assistance.

- A provision allowing non-itemizers to deduct state and local property taxes (maximum of \$500 for single taxpayers and \$1,000 for married persons filing jointly). This provision is effective for 2008 only.
- A limitation of the rule allowing the non-recognition of gain on the sale of a principal residence (within limits) which pares the exclusion of gain down by those time periods the property was not used as the taxpayer's principal residence (such as when it was used as a vacation or rental property). This provision is effective for homes sold on or after January 1, 2009.