

Part III - Administrative, Procedural, and Miscellaneous

Allocation of Section 36 First-Time Homebuyer Credit Between Taxpayers Who Are Not Married

Notice 2009-12

PURPOSE

This notice provides guidance under § 36(b)(1)(C) of the Internal Revenue Code (Code) for allocating the first-time homebuyer credit between taxpayers who are not married.

LAW

Section 36 was added to the Code by section 3011 of the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654, 2888 (2008). Section 36(a) provides that a taxpayer who is a first-time homebuyer of a principal residence (as defined in § 121) may claim a credit on the taxpayer's income tax return equal to 10 percent of the purchase price of the residence. Section 36(c)(1) defines "first-time homebuyer" as any individual (and if married, the individual's spouse) who has not had an ownership interest in any principal residence during the three-year period ending on the date of the purchase of the principal residence. Section 36(c)(3) defines "purchase" as any acquisition, but only if (i) the taxpayer did not acquire the property from a related person, and (ii) the taxpayer's basis in the property is not determined, in whole or in

part, by reference to the adjusted basis of the property in the hands of the person from whom the taxpayer acquired the property, or determined under § 1014(a) (relating to property acquired from a decedent). For purposes of § 36(c)(3)(i), § 36(c)(5) provides that a person is treated as related to another person if the relationship would result in the disallowance of losses under § 267 or § 707, except that members of a family of an individual include only the individual's spouse, ancestors, and lineal descendants.

Pursuant to § 36(h), the first-time homebuyer credit applies to a home purchased on or after April 9, 2008, and before July 1, 2009. The maximum amount of the credit is \$7,500 (\$3,750 for a married taxpayer filing a separate return), as provided in § 36(b)(1)(A) and (B). Under § 36(b)(2), the credit begins to phase out for a taxpayer whose modified adjusted gross income (MAGI) is \$75,000 (\$150,000 for married taxpayers filing a joint return) (“MAGI threshold”). The allowable credit is reduced by an amount equal to:

Maximum Allowable x MAGI in excess of \$75,000 (\$150,000 for married filing jointly).
Credit \$20,000

The credit is completely phased out for a taxpayer whose MAGI is \$95,000 (\$170,000 for married taxpayers filing a joint return) (“MAGI cap”).

Section 36(f) generally requires a taxpayer who claims the first-time homebuyer credit to repay the credit allowed in 15 equal annual installments beginning with the second taxable year after the taxable year in which the taxpayer claims the credit. This repayment obligation may be accelerated or forgiven under certain exceptions as provided in § 36(f).

For eligible purchases in 2008, a taxpayer claims the credit by attaching Form 5405, “First-Time Homebuyer Credit,” to the taxpayer’s 2008 tax return. For eligible purchases in 2009, a taxpayer may elect to claim the credit for 2008 or 2009 by attaching Form 5405 to the taxpayer’s original or amended 2008 tax return or 2009 tax return.

APPLICATION

Section 36(b)(1)(C) provides that the Secretary may prescribe the manner in which the first-time homebuyer credit is allocated between two or more taxpayers who are not married and who purchase a principal residence. The total credit allocated between the taxpayers cannot exceed \$7,500. For purposes of § 36(b)(1)(C), if two or more taxpayers who are not married purchase (within the meaning of § 36(c)(3)) a principal residence and otherwise satisfy the requirements of § 36, the first-time homebuyer credit may be allocated between the taxpayers using any reasonable method. A reasonable method is any method that does not allocate any portion of the credit to a taxpayer not eligible to claim that portion. A reasonable method includes allocating the credit between taxpayers who are eligible to claim the credit based on (1) the taxpayers’ contributions towards the purchase price of a residence as tenants in common or joint tenants, or (2) the taxpayers’ ownership interests in a residence as tenants in common.

EXAMPLES

The examples illustrate how the first-time homebuyer credit may be allocated

when A and B purchase a principal residence as tenants in common. The rules illustrated in the examples also apply in a similar manner to taxpayers who purchase a principal residence as joint tenants. Unless otherwise indicated, assume that in each example A and B (i) purchase a principal residence on May 1, 2008, (ii) are not married to each other, (iii) do not have MAGI in excess of the MAGI threshold, and (iv) are first-time homebuyers who otherwise satisfy the requirements of § 36.

Example 1.

A contributes \$45,000 and B contributes \$15,000 towards the \$60,000 purchase price of a residence. Each owns a one-half interest in the residence as tenants in common. Under § 36(a), the allowable credit is limited to 10 percent of the purchase price, or \$6,000. A and B may allocate the allowable \$6,000 credit three-fourths to A and one-fourth to B based on their contributions toward the purchase price of the residence, one-half to each based on their ownership interests in the residence, or using any other reasonable method (for example, the entire credit to A or B because both A and B are eligible to claim the entire allowable credit).

Example 2.

A contributes \$10,000 for a down payment towards the \$100,000 purchase price of a residence, and A and B obtain and are jointly liable for a \$90,000 mortgage for the remainder of the purchase price. Each owns a one-half interest in the residence as tenants in common. Under § 36(b)(1)(A), the allowable credit is not \$10,000 (10 percent of the purchase price) but is limited to \$7,500. A and B may allocate the

allowable \$7,500 credit 55 percent to A and 45 percent to B based on their contributions toward the purchase price, one-half to each based on their ownership interests in the residence, or using any other reasonable method (for example, the entire credit to A or B because both A and B are eligible to claim the entire allowable credit).

Example 3.

On April 15, 2008, A pays the entire \$100,000 purchase price of a residence and is the sole owner. Under § 36(b)(1)(A), the allowable credit is not \$10,000 (10 percent of the purchase price) but is limited to \$7,500. On May 12, 2008, A transfers a one-half interest in the residence to B as a tenant in common for \$10,000. A may claim the entire allowable \$7,500 credit. Because B acquired B's interest in the residence from A in part by gift, B's basis in the residence is determined under § 1015 by reference to A's basis in the residence. Therefore, B did not purchase an interest in the residence within the meaning of § 36(c)(3), and no portion of the credit may be allocated to B because B is not eligible to claim any portion of the credit.

Example 4.

A and B each contributes \$50,000 towards the \$100,000 purchase price of a residence and owns a one-half interest in the residence as tenants in common. Under § 36(b)(1)(A), the allowable credit is not \$10,000 (10 percent of the purchase price) but is limited to \$7,500. However, B is not a first-time homebuyer within the meaning of § 36(c)(1). Therefore, no portion of the credit may be allocated to B because B is not eligible to claim any portion of the credit. A may claim the entire allowable \$7,500

credit.

Example 5.

A contributes \$75,000 and B contributes \$25,000 towards the \$100,000 purchase price of a residence, and each owns a one-half interest in the residence as tenants in common. Under § 36(b)(1)(A), the allowable credit is not \$10,000 (10 percent of the purchase price) but is limited to \$7,500. A's MAGI is \$100,000 and B's MAGI is \$60,000. Because A's MAGI exceeds the \$95,000 MAGI cap, any portion of the credit allocated to A would be reduced to \$0. A and B may allocate the entire allowable \$7,500 credit to B because B's MAGI is less than the \$75,000 MAGI threshold and, therefore, B is eligible to claim the entire allowable credit.

Example 6.

A and B each contributes \$50,000 towards the \$100,000 purchase price of a residence and owns a one-half interest in the residence as tenants in common. Under § 36(b)(1)(A), the allowable credit is not \$10,000 (10 percent of the purchase price) but is limited to \$7,500. A's MAGI is \$80,000 and B's MAGI is \$60,000. Because A's MAGI exceeds the \$75,000 MAGI threshold by \$5,000, any portion of the allowable credit allocated to A will be reduced by one-quarter, \$5,000 (MAGI in excess of \$75,000) / \$20,000. A and B may allocate the allowable \$7,500 credit one-half to A and one-half to B (\$3,750 each) based on their contributions toward the purchase price of the residence or their ownership interests in the residence. However, A's \$3,750 portion of the credit is limited by § 36(b)(2) and is reduced by one-quarter ($\$3,750 \times .25 = \937.50) to

\$2,812.50 (\$3,750 - 937.50). Alternatively, A and B may allocate the allowable \$7,500 credit using any other reasonable method (for example, the entire credit to B because B's MAGI is less than the \$75,000 MAGI threshold and, therefore, B is eligible to claim the entire allowable credit).

Example 7.

A and B, who are sisters, each contributes \$50,000 towards the \$100,000 purchase price of a residence and each owns a one-half interest as tenants in common. Under § 36(b)(1)(A), the allowable credit is not \$10,000 (10 percent of the purchase price) but is limited to \$7,500. A and B purchase the residence from their cousin, C. A, B, and C are not related persons within the meaning of § 36(c)(5). Therefore, A and B may allocate the allowable \$7,500 credit one-half to A and one-half to B based on their contributions toward the purchase price of the residence or their ownership interests in the residence. Alternatively, A and B may allocate the allowable \$7,500 credit using any other reasonable method (for example, the entire credit to A or B because both A and B are eligible to claim the entire allowable credit).

DRAFTING INFORMATION

The principal author of this notice is Christina M. Glendening of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Ms. Glendening at (202) 622-4920 (not a toll-free call).