

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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from: Nancy C. Carver
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subject: First-time Homebuyer Credit and Overpayment Interest

After coordinating with the Office of Associate Chief Counsel (Procedure and Administration) we are providing this response to your request for advice concerning whether interest under section 6611 of the Internal Revenue Code will accrue on the first-time homebuyer credit under section 36. Specifically, when a taxpayer utilizes section 36(g) and elects to treat a purchase of a principal residence made after December 31, 2008, and before December 31, 2009, as having been made on December 31, 2008, is a taxpayer entitled to interest and if so how is it computed.

Conclusion

We have located no authority for applying other than the general interest rules as provided in section 6611. Consequently, when a taxpayer elects the application of section 36(g), a taxpayer will be entitled to interest on the refundable credit, subject to the provisions of sections 6611(b)(3), (e), and (g).

Summary of the First-time Homebuyer Credit

Congress created the first-time homebuyer tax credit in 2008. As enacted, the credit was available only for purchases made after April 8, 2008, and before July 1, 2009. The credit was refundable and repayable. The American Recovery and Reinvestment Act of 2009 (ARRA) modified the first-time homebuyer tax credit for those taxpayers purchasing principal residences in 2009, increasing the amount of the credit, extending the eligible purchase dates, and eliminating the repayment provision for many taxpayers.

The credit is claimed on the tax return for the tax year in which the property is purchased. Taxpayers who purchase a principal residence in the first 11 months of 2009, however, may choose to treat the property as if it had been purchased in 2008. A taxpayer purchasing an eligible property before filing the 2008 tax return would be able

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to claim the credit on the original return for 2008. If a taxpayer had already filed the 2008 tax return, an amended return could be filed to claim the credit.

Interest

The statutory framework for calculating interest on overpayments is contained in section 6611. The payment of interest on overpayments is mandatory unless specifically prohibited by law.

Section 6611(a) provides that interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax. Section 6611(b) states that interest shall be allowed and paid, in the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken, and in the case of a refund, from the date of the overpayment to a date (to be determined by the Secretary) preceding the date of the refund check by not more than 30 days.

Section 6611(b)(3) provides that in the case of a return filed after the last date prescribed for filing the return (determined without regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed.

Section 6611(e)(1) provides that no overpayment interest will be paid if the overpayment is refunded within 45 days after the last date prescribed for filing the return (determined without regard to any extension of time for filing the return) or, if the return is filed after such last date, the refund is made within 45 days after the return is filed. Section 6611(e)(2) continues that if the taxpayer files a claim for a credit or refund for any overpayment of tax, and such overpayment is refunded within 45 days after the filing date of the claim, no overpayment interest is paid from the filing date of the claim until the refund date. Section 6611(e)(3) provides that if an adjustment initiated by the Service results in a refund or credit of an overpayment, the overpayment interest will be computed by subtracting 45 days from the number of days interest is otherwise allowed under section 6611.

Section 6611(g) provides that for purposes of sections 6611(b)(3) and 6611(e), a return shall not be treated as filed until it is filed in processible form. A return is in processible form if: (1) it is filed on a permitted form; and (2) it contains the taxpayer's name, address, identifying number, the required signature, and sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.

"Overpayment" is not defined in the Code, but is treated by the courts as any payment of a tax in excess of what is rightfully due. United States v. Dalm, 494 U.S. 596, 609 n.6, 110 S. Ct. 1361, 108 L. Ed. 2d 548 ("The common sense interpretation is that a tax is overpaid when a taxpayer pays more than is owed for whatever reason or no reason at all."); Jones v. Liberty Glass Co., 332 U.S. 524, 531, 68 S. Ct. 229, 92 L. Ed. 142, 1948-1 C.B. 102 (1947). The first-time homebuyer tax credit was made refundable, with no restrictions as to the payment of interest. Since a refundable credit constitutes an

overpayment for interest purposes under these circumstances, interest will accrue under the provisions of section 6611.

Examples

Example 1: Taxpayer timely filed a 2008 Form 1040 on April 15, 2009. On July 1, 2009 taxpayer purchases a residence that qualifies for the first-time homebuyer credit under section 36. On November 1, 2009, taxpayer files an amended 2008 Form 1040X claiming the credit under section 36(g). Application of this credit to the 2008 tax year creates an overpayment. Does the IRS pay overpayment interest under section 6611 to the taxpayer? If so, upon what period does interest accrue?

The IRS must pay overpayment interest to the taxpayer pursuant to section 6611. Interest will begin to run from the date taxpayer filed the original 2008 Form 1040 (April 15, 2009). If the overpayment is returned to the taxpayer by the IRS within 45 days of the claim for refund (i.e., 45 days from November 1, 2009), the end date for purposes of interest computation is the date of the claim for credit or refund (November 1, 2009). If, however, the IRS does not refund the overpayment within 45 days, the IRS must pay interest until a date not more than 30 days prior to the date of the refund check.

Example 2: Taxpayer untimely filed a 2008 Form 1040 on June 1, 2009. On July 1, 2009 taxpayer purchases a residence that qualifies for the first-time homebuyer credit under section 36. On November 1, 2009, taxpayer files an amended 2008 Form 1040X claiming the credit under section 36(g). Application of this credit to the 2008 tax year creates an overpayment. Does the IRS pay overpayment interest under section 6611 to the taxpayer? If so, upon what period does interest accrue?

The IRS must pay overpayment interest to the taxpayer pursuant to section 6611. Interest will begin to run from the date the taxpayer filed the original 2008 Form 1040 (June 1, 2009) and not before that date. If the overpayment is returned to the taxpayer by the IRS within 45 days of the claim for refund (i.e., 45 days from November 1, 2009), the end date for purposes of interest computation is the date of the claim for credit or refund (November 1, 2009). If, however, the IRS does not refund the overpayment within 45 days, the IRS must pay interest until a date not more than 30 days prior to the date of the refund check.

Example 3: Taxpayer did not file a 2008 Form 1040. On July 1, 2009 taxpayer purchases a residence that qualifies for the first-time homebuyer credit under section 36. On November 1, 2009, taxpayer files an original 2008 Form 1040 claiming the credit under section 36(g). Application of this credit to the 2008 tax year creates an overpayment. Does the IRS pay overpayment interest under section 6611 to the taxpayer? If so, upon what period does interest accrue?

The IRS may have to pay overpayment interest to the taxpayer pursuant to section 6611. If the overpayment is returned to the taxpayer by the IRS within 45 days of the date the return is filed (i.e., 45 days from November 1, 2009) the IRS will not have to

pay interest to the taxpayer under section 6611. See section 6611(e)(1). If however, the IRS does not refund the overpayment within 45 days, the IRS must pay interest from the date the return was filed (November 1, 2009) until a date not more than 30 days prior to the date of the refund check.