The Homebuyer Tax Credit, "Version 3.0"

By Jeffrey C. O'Brien

The Worker, Homeownership and Business Assistance Act of 2009 has extended the widely-publicized "first time home buyer tax credit" for qualified first-time home buyers purchasing a principal residence. While some speculated about an increase of the credit amount from $8,000.00 to as much as $15,000.00 (which was advocated by the National Association of Realtors), no such increase occurred. Instead, the existing $8,000.00 credit established early in 2009 has merely been extended. Without the new legislation, the 2009 credit would have expired on November 30, 2009. With the extension, the credit will now be effective for sales closed or under binding contract on or before April 30, 2010.

The most significant changes to "Version 3.0" of the credit ("Version 1.0" being the original 2008 version and "Version 2.0" being the revised credit enacted in early 2009) are (i) the inclusion of additional restrictions to combat fraud and abuse; (ii) adjustments to the properties which qualify and the adjusted gross income limits for taxpayers seeking to claim the credit; and, most importantly (iii) the enactment of a "move-up/repeat home buyer tax credit" of $6,500.00.

Increased Restrictions to Combat Fraud and Abuse

"Version 3.0" of the home buyer tax credit contains increased restrictions, many of which are designed to curb documented abuses and misuses of the credit. The General Accountability Office ("GAO") has reportedly frozen more than 110,000 first-time home buyer tax credit refunds pending civil or criminal examinations due to allegations of fraud. The main concerns are whether or not a home purchase actually took place and if the home buyer claiming the credit is technically a first-time home buyer as defined by the IRS.

Other investigations have found that children as young as four years old have improperly received the first-time home buyer tax credit. The IRS has also testified to Congress of its findings that 580 taxpayers under 18 years old and therefore ineligible to buy a home claimed almost $4 million in tax credits.

To combat these and other abuses, the new version of the tax credit is not available to a taxpayer who is allowable as a dependent or under 18 years of age (unless the taxpayer's spouse is 18 years of age or older). Additionally, the "related party" restriction contained in both the 2008 and early 2009 versions of the credit has been extended to include the spouse of a family member as a "related party" who would not be eligible to claim the credit (for example, if a parent sold their home to their child, the child could not claim the credit. However, under the old credit, a sale to that child's spouse would have qualified; that loophole has now been closed in the new legislation). A final anti-abuse provision is the new requirement that a copy of the settlement statement from the sale closing must be submitted along with IRS Form 5405. This final provision adds some clarity to a largely ambiguous issue in the earlier versions of the credit; that is, can home buyers who purchase a home on a contract for deed claim the tax credit? While the IRS has not offered any clear guidance, a wise course of action for taxpayers in this position is to close the contract for deed sale through a closing company will have a settlement statement to submit along with Form 5405, and that should be proof enough that a legitimate, qualifying sale has taken place.

Other Changes

Other changes to the first time home buyer tax credit include a cap on the sale price for eligible properties of $800,000.00. The new credit includes more generous adjusted gross income (“AGI”) limits to claim the credit. Version 3.0 of the credit is available for single-filing taxpayers with AGI up to $125,000 (the prior credit phased out at $75,000) and joint filers with AGI up to $225,000 (up from $150,000).

Move-Up/Repeat Home Buyer Tax Credit

The most significant change to the tax credit, of course, is the addition of a “Move-Up/Repeat Home Buyer Tax Credit” of $6,500.00 for qualified move-up/repeat home buyers. Many of the parameters for this credit are identical to the first time home buyer tax credit, with the exception of the amount of the credit ($6,500.00 versus $8,000.00 for the first time home buyer credit) and the definition of a “qualified buyer.” The move-up/repeat credit is available to taxpayers who are “long term owners,” defined as taxpayers who have lived in the same residence for five out of the prior eight years. These taxpayers qualify for the credit if they purchase a different credit; however, the taxpayers do not have to sell their prior residence as a condition of receiving the credit, but the home purchased has to be their principal residence. In other words, taxpayers seeking to claim this credit could purchase a new home and lease their existing home (or sell that home on a contract for deed).

Early Access to the Credit

A frequently asked question which arises is how quickly can a taxpayer access the credit? In other words, does the taxpayer have to wait until filing their 2009 return to receive the funds or is there a method of accessing the funds sooner? The answer is yes, there are ways in which a taxpayer can access the funds prior to filing their 2009 return, including the following:

- A taxpayer is permitted to reduce his/her withholding to account for the credit; or
- Alternatively, the taxpayer can file an amended 2008 return for a qualifying 2009 sale and receive the credit as a refund arising out of the amended return; note that if a taxpayer elects this option for the 2009 version of the credit, the taxpayer is not subject to the recapture provisions which were part of the 2008 version of the credit (for more information on the details of prior versions of the credit, see the author’s article “A Primer on the First Time Home Buyer Tax Credit, available at www.mansfieldtanick.com)

Conclusion

While opposing views exist, there is a widespread belief in the real estate industry that the first time home buyer tax credit has played a significant role in the increase in sales and sale prices since February 2009. This belief led to intense lobbying of Congress to extend and expand the credit with the overall goal to provide incentives to taxpayers to purchase a new home and thereby reduce the still significant inventory of available homes on the market. Congress has now responded with “Version 3.0” of the tax credit and, like prior versions, only time will tell if this measure will assist in the recovery of the residential real estate market.