

115TH CONGRESS
2D SESSION

S. 3364

To amend the Internal Revenue Code of 1986 to create a refundable first-time homebuyer tax credit.

IN THE SENATE OF THE UNITED STATES

AUGUST 22, 2018

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to create a refundable first-time homebuyer tax credit.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “First-Time Homebuyer
5 Credit Act of 2018”.

6 **SEC. 2. FIRST-TIME HOMEBUYER REFUNDABLE CREDIT.**

7 (a) IN GENERAL.—Section 36 of the Internal Rev-
8 enue Code of 1986 is amended to read as follows:

1 **“SEC. 36. FIRST-TIME HOMEBUYER REFUNDABLE CREDIT.**

2 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
3 dividual who is a first-time homebuyer of a principal resi-
4 dence in the United States during a taxable year, there
5 shall be allowed as a credit against the tax imposed by
6 this subtitle for such taxable year an amount equal to 2.5
7 percent of the purchase price of the residence.

8 “(b) LIMITATIONS; SPECIAL RULES BASED ON MAR-
9 ITAL AND FILING STATUS.—

10 “(1) DOLLAR LIMITATION.—The credit allowed
11 under subsection (a) shall not exceed \$10,000.

12 “(2) LIMITATION BASED ON PURCHASE
13 PRICE.—The amount allowable as a credit under
14 subsection (a) (determined without regard to this
15 paragraph and paragraph (3), and after the applica-
16 tion of paragraph (1)) for the taxable year shall be
17 reduced (but not below zero) by the amount which
18 bears the same ratio to the amount which is so al-
19 lowable as—

20 “(A) the excess (if any) of—

21 “(i) the purchase price of the resi-
22 dence, over

23 “(ii) \$600,000, bears to

24 “(B) \$100,000.

25 “(3) LIMITATION BASED ON MODIFIED AD-
26 JUSTED GROSS INCOME.—

“(A) IN GENERAL.—The amount allowable as a credit under subsection (a) (determined without regard to this paragraph and after the application of paragraphs (1) and (2)) for the taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so allowable as—

“(i) the excess (if any) of—

“(I) the taxpayer’s modified adjusted gross income for such taxable year, over

“(II) \$80,000 (\$160,000 in the case of a joint return), bears to

“(ii) \$20,000.

“(B) MODIFIED ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term ‘modified adjusted gross income’ means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

“(4) AGE LIMITATION.—No credit shall be allowed under subsection (a) with respect to the purchase of any residence for a taxable year if—

1 “(A) the taxpayer has not attained age 18
2 as of the date of such purchase, or

3 “(B) a deduction under section 151 with
4 respect to the taxpayer is allowable to another
5 taxpayer for the taxable year.

6 In the case of a taxpayer who is married, the tax-
7 payer shall be treated as meeting the age require-
8 ment of subparagraph (A) if the taxpayer or the tax-
9 payer’s spouse meets such age requirement.

10 “(5) MULTIPLE PURCHASERS.—If two or more
11 individuals who are not married purchase a principal
12 residence, the amount of the credit under subsection
13 (a) shall be allocated among such individuals in such
14 manner as the Secretary may prescribe by taking
15 into account the requirements of paragraphs (2) and
16 (3), except that the total amount of the credits al-
17 lowed to all such individuals shall not exceed
18 \$10,000.

19 “(6) MARRIED COUPLES MUST FILE JOINT RE-
20 TURN.—If an individual is married at the close of
21 the taxable year, the credit shall be allowed under
22 subsection (a) only if the individual and the individ-
23 ual’s spouse file a joint return for the taxable year.

24 “(c) DEFINITIONS.—For purposes of this section—

25 “(1) FIRST-TIME HOMEBUYER.—

1 “(A) IN GENERAL.—The term ‘first-time
2 homebuyer’ means any individual who acquires
3 a principal residence by purchase if such indi-
4 vidual (and, if married, such individual’s
5 spouse)—

6 “(i) has not claimed any credit or de-
7 duction under this title for any previous
8 taxable year with respect to the purchase
9 or ownership of any residence or residen-
10 tial real estate (including for any expendi-
11 tures relating to the placing in service of
12 any property on, in connection with, or for
13 use in such a residence or real estate), and

14 “(ii) attests under penalty of perjury
15 that—

16 “(I) the individual (and, if mar-
17 ried, the individual’s spouse) has not
18 owned a principal residence at any
19 time prior to the purchase of the prin-
20 cipal residence to which this section
21 applies, and

22 “(II) the principal residence to
23 which this section applies was not ac-
24 quired from a person related to such
25 individual or spouse.

1 “(B) WAIVER IN CASE OF CERTAIN
 2 CHANGES IN STATUS.—The Secretary may, in
 3 such manner as the Secretary may prescribe,
 4 waive the requirements of subparagraph (A) for
 5 a taxable year in the case of an individual who
 6 is not eligible to file a joint return for the tax-
 7 able year, and who was married at the time the
 8 individual or the individual’s former spouse pur-
 9 chased a previous residence.

10 “(2) PRINCIPAL RESIDENCE.—The term ‘prin-
 11 cipal residence’ has the same meaning as when used
 12 in section 121.

13 “(3) PURCHASE.—

14 “(A) IN GENERAL.—The term ‘purchase’
 15 means any acquisition, but only if—

16 “(i) the property is not acquired from
 17 a person related to the person acquiring
 18 such property (or, if either such person is
 19 married, such individual’s spouse), and

20 “(ii) the basis of the property in the
 21 hands of the person acquiring such prop-
 22 erty is not determined—

23 “(I) in whole or in part by ref-
 24 erence to the adjusted basis of such

1 property in the hands of the person
2 from whom acquired, or

3 “(II) under section 1014(a).

4 “(B) CONSTRUCTION.—A residence which
5 is constructed by the taxpayer shall be treated
6 as purchased by the taxpayer on the date the
7 taxpayer first occupies such residence.

8 “(4) PURCHASE PRICE.—The term ‘purchase
9 price’ means the adjusted basis (without regard to
10 any reduction under section 1016(a)(38)) of the
11 principal residence on the date such residence is pur-
12 chased.

13 “(5) RELATED PERSONS.—A person shall be
14 treated as related to another person if the relation-
15 ship between such persons would result in the dis-
16 allowance of losses under section 267 or 707(b) (but,
17 in applying subsections (b) and (c) of section 267
18 for purposes of this section, paragraph (4) of section
19 267(c) shall be treated as providing that the family
20 of an individual shall include only the individual’s
21 spouse, ancestors, lineal descendants, and spouse’s
22 ancestors and lineal descendants).

23 “(6) MARITAL STATUS.—An individual’s mar-
24 ital status shall be determined in accordance with
25 section 7703.

1 “(d) DENIAL AND RECAPTURE RULES IN CASE OF
2 DISPOSAL OF RESIDENCE WITHIN 5 TAXABLE YEARS.—

3 “(1) DENIAL OF CREDIT IN CASE OF DISPOSAL
4 WITHIN TAXABLE YEAR.—No credit under sub-
5 section (a) shall be allowed to any taxpayer for any
6 taxable year with respect to the purchase of a resi-
7 dence if the taxpayer disposes of such residence (or
8 such residence ceases to be the principal residence of
9 the taxpayer (and, if married, the taxpayer’s
10 spouse)) before the close of such taxable year.

11 “(2) PARTIAL RECAPTURE.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (D), if the taxpayer disposes of
14 the residence with respect to which a credit was
15 allowed under subsection (a) (or such residence
16 ceases to be the principal residence of the tax-
17 payer (and, if married, the taxpayer’s spouse))
18 during the 4-taxable-year period beginning with
19 the taxable year immediately following the cred-
20 it year, the tax imposed by this chapter for the
21 taxable year in which such disposal (or ces-
22 sation) occurs shall be increased by an amount
23 equal to the recapture percentage of the
24 amount of the credit so allowed.

“(B) CREDIT YEAR.—For purposes of subparagraph (A), the term ‘credit year’ means the taxable year in which the credit under subsection (a) was allowed.

“(C) RECAPTURE PERCENTAGE.—For purposes of subparagraph (A), the recapture percentage with respect to any disposal or cessation described in such subparagraph shall be determined in accordance with the following table:

“If the disposal or cessation occurs in:	The recapture percentage is:
The 1st taxable year beginning after the credit year	80 percent
The 2nd taxable year beginning after the credit year	60 percent
The 3rd taxable year beginning after the credit year	40 percent
The 4th taxable year beginning after the credit year	20 percent.

“(D) EXCEPTIONS.—This paragraph shall not apply in the case of a disposal or cessation described in subparagraph (A) which occurs after or incident to any of the following:

“(i) Death of the taxpayer or the taxpayer’s spouse.

“(ii) Divorce of the taxpayer.

“(iii) Involuntary conversion of the residence (within the meaning of section 121(d)(5)(A)).

“(iv) Relocation of duty station or qualified official extended duty (as defined

1 in section 121(d)(9)(C)) of the taxpayer or
 2 the taxpayer's spouse who is a member of
 3 the uniformed services (as defined in sec-
 4 tion 121(d)(9)(C)(ii)), a member of the
 5 Foreign Service of the United States (as
 6 defined in section 121(d)(9)(C)(iii)), or an
 7 employee of the intelligence community (as
 8 defined in section 121(d)(9)(C)(iv)).

9 “(v) Change of employment of the
 10 taxpayer or the taxpayer's spouse which
 11 meets the conditions of section 217(c).

12 “(vi) Loss of employment, health con-
 13 ditions, or such other unforeseen cir-
 14 cumstances as may be specified by the Sec-
 15 retary.

16 “(e) ADJUSTMENT TO BASIS.—For purposes of this
 17 subtitle, if a credit is allowed under this section with re-
 18 spect to any property, the taxpayer's basis in such prop-
 19 erty shall be reduced by the amount of the credit so al-
 20 lowed.

21 “(f) REPORTING.—

22 “(1) IN GENERAL.—A credit shall be allowed
 23 under this section only if the following are included
 24 on the return of tax:

1 “(A) The individual’s (and, if married, the
2 individual’s spouse’s) social security number
3 issued by the Social Security Administration.

4 “(B) The street address (not including a
5 post office box) of the principal residence pur-
6 chased.

7 “(C) The purchase price of the principal
8 residence.

9 “(D) The date of purchase of the principal
10 residence.

11 “(E) The closing disclosure relating to the
12 purchase (in the case of a purchase financed by
13 a mortgage).

14 “(2) REPORTING OF REAL ESTATE TRANS-
15 ACTIONS.—If the Secretary requires information re-
16 porting under section 6045 by a person described in
17 subsection (e)(2) thereof to verify the eligibility of
18 taxpayers for the credit allowable by this section, the
19 exception provided by section 6045(e)(5) shall not
20 apply.”.

21 (b) CONFORMING AMENDMENT RELATING TO BASIS
22 ADJUSTMENT.—Subsection (a) of section 1016 of the In-
23 ternal Revenue Code of 1986 is amended—

24 (1) by striking “and” at the end of paragraph
25 (36),

1 (2) by striking the period at the end of para-
2 graph (37) and inserting “, and”, and

3 (3) by adding at the end the following new
4 paragraph:

5 “(38) to the extent provided in section 36(e).”.

6 (c) CONFORMING AMENDMENT.—Section 26(b)(2) of
7 the Internal Revenue Code of 1986 is amended by striking
8 subparagraph (W) and by redesignating subparagraphs
9 (X) and (Y) as subparagraphs (W) and (X), respectively.

10 (d) CLERICAL AMENDMENT.—The item relating to
11 section 36 in the table of sections for subpart C of part
12 IV of subchapter A of chapter 1 of the Internal Revenue
13 Code of 1986 is amended to read as follows:

“Sec. 36. First-time homebuyer refundable credit.”.

14 (e) AUTHORITY TO TREAT CLAIM OF CREDIT AS
15 ERROR, ETC.—Subparagraph (N) of section 6213(g)(2) of
16 the Internal Revenue Code of 1986 is amended to read
17 as follows:

18 “(N) in the case of a return claiming the
19 credit under section 36—

20 “(i) the omission of a social security
21 number required under section 36(f)(1)(A),

22 “(ii) the inclusion of a social security
23 number so required if—

24 “(I) the claim of the credit on
25 the return reflects the treatment of

1 such individual as being of an age dif-
2 ferent from the individual's age based
3 on such social security number, or

4 “(II) except as provided in sec-
5 tion 36(c)(1)(B), such social security
6 number has been included (other than
7 as a dependent for purposes of section
8 151) on a return for any previous tax-
9 able year claiming any credit or de-
10 duction described in section
11 36(c)(1)(A)(i),

12 “(iii) the omission of any other re-
13 quired information or documentation de-
14 scribed in section 36(f)(1), including the
15 inclusion of a post office box instead of a
16 street address for the purchased residence,

17 “(iv) the inclusion of any information
18 or documentation described in clause (iii)
19 if such information or documentation does
20 not support a valid claim for the credit, or

21 “(v) a claim of such credit for a tax-
22 able year with respect to the purchase of
23 a residence made after the last day of such
24 taxable year, or”.

1 (f) IRS RECORDKEEPING.—Notwithstanding the lim-
2 itations on assessment and collection under section 6501
3 of the Internal Revenue Code of 1986, the Commissioner
4 of Internal Revenue shall maintain in perpetuity records
5 of returns and return information (as defined in section
6 6103(b)(2) of such Code) of any taxpayer claiming the
7 credit under section 36 of such Code (as amended by this
8 section) for the taxable year in which such credit is
9 claimed and succeeding taxable years. The Commissioner
10 may, in the Commissioner’s discretion, discard such
11 records within a reasonable amount of time after the death
12 of such taxpayer (and, if married, the taxpayer’s spouse).

13 (g) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to residences purchased in taxable
15 years beginning after December 31, 2018.

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