

§ 36. First-time homebuyer credit**(a) Allowance of credit**

In the case of an individual who is a first-time homebuyer of a principal residence in the United States during a taxable year, there shall be allowed as a credit against the tax imposed by this subtitle for such taxable year an amount equal to 10 percent of the purchase price of the residence.

(b) Limitations**(1) Dollar limitation****(A) In general**

Except as otherwise provided in this paragraph, the credit allowed under subsection (a) shall not exceed \$8,000.

(B) Married individuals filing separately

In the case of a married individual filing a separate return, subparagraph (A) shall be applied by substituting “\$4,000” for “\$8,000”.

(C) Other individuals

If two or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed \$8,000.

(D) Special rule for long-time residents of same principal residence

In the case of a taxpayer to whom a credit under subsection (a) is allowed by reason of subsection (c)(6), subparagraphs (A), (B), and (C) shall be applied by substituting “\$6,500” for “\$8,000” and “\$3,250” for “\$4,000”.

(2) Limitation based on modified adjusted gross income**(A) In general**

The amount allowable as a credit under subsection (a) (determined without regard to this paragraph) 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) \$125,000 (\$225,000 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.

(3) Limitation based on purchase price

No credit shall be allowed under subsection (a) for the purchase of any residence if the purchase price of such residence exceeds \$800,000.

(4) Age limitation

No credit shall be allowed under subsection (a) with respect to the purchase of any resi-

dence unless the taxpayer has attained age 18 as of the date of such purchase. In the case of any taxpayer who is married (within the meaning of section 7703), the taxpayer shall be treated as meeting the age requirement of the preceding sentence if the taxpayer or the taxpayer’s spouse meets such age requirement.

(c) Definitions

For purposes of this section—

(1) First-time homebuyer

The term “first-time homebuyer” means any individual if such individual (and if married, such individual’s spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of the purchase of the principal residence to which this section applies.

(2) Principal residence

The term “principal residence” has the same meaning as when used in section 121.

(3) Purchase**(A) In general**

The term “purchase” means any acquisition, but only if—

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

(ii) the basis of the property in the hands of the person acquiring such property is not determined—

(I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(II) under section 1014(a) (relating to property acquired from a decedent).

(B) Construction

A residence which is constructed by the taxpayer shall be treated as purchased by the taxpayer on the date the taxpayer first occupies such residence.

(4) Purchase price

The term “purchase price” means the adjusted basis of the principal residence on the date such residence is purchased.

(5) Related persons

A person shall be treated as related to another person if the relationship between such persons would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants).

(6) Exception for long-time residents of same principal residence

In the case of an individual (and, if married, such individual’s spouse) who has owned and used the same residence as such individual’s principal residence for any 5-consecutive-year period during the 8-year period ending on the date of the purchase of a subsequent principal residence, such individual shall be treated as a

first-time homebuyer for purposes of this section with respect to the purchase of such subsequent residence.

(d) Exceptions

No credit under subsection (a) shall be allowed to any taxpayer for any taxable year with respect to the purchase of a residence if—

- (1) the taxpayer is a nonresident alien,
- (2) the taxpayer disposes of such residence (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the close of such taxable year,
- (3) a deduction under section 151 with respect to such taxpayer is allowable to another taxpayer for such taxable year, or
- (4) the taxpayer fails to attach to the return of tax for such taxable year a properly executed copy of the settlement statement used to complete such purchase.

(e) Reporting

If the Secretary requires information reporting under section 6045 by a person described in subsection (e)(2) thereof to verify the eligibility of taxpayers for the credit allowable by this section, the exception provided by section 6045(e) shall not apply.

(f) Recapture of credit

(1) In general

Except as otherwise provided in this subsection, if a credit under subsection (a) is allowed to a taxpayer, the tax imposed by this chapter shall be increased by 6 $\frac{2}{3}$ percent of the amount of such credit for each taxable year in the recapture period.

(2) Acceleration of recapture

If a taxpayer disposes of the principal residence with respect to which a credit was allowed under subsection (a) (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the end of the recapture period—

- (A) the tax imposed by this chapter for the taxable year of such disposition or cessation shall be increased by the excess of the amount of the credit allowed over the amounts of tax imposed by paragraph (1) for preceding taxable years, and
- (B) paragraph (1) shall not apply with respect to such credit for such taxable year or any subsequent taxable year.

(3) Limitation based on gain

In the case of the sale of the principal residence to a person who is not related to the taxpayer, the increase in tax determined under paragraph (2) shall not exceed the amount of gain (if any) on such sale. Solely for purposes of the preceding sentence, the adjusted basis of such residence shall be reduced by the amount of the credit allowed under subsection (a) to the extent not previously recaptured under paragraph (1).

(4) Exceptions

(A) Death of taxpayer

Paragraphs (1) and (2) shall not apply to any taxable year ending after the date of the taxpayer's death.

(B) Involuntary conversion

Paragraph (2) shall not apply in the case of a residence which is compulsorily or involuntarily converted (within the meaning of section 1033(a)) if the taxpayer acquires a new principal residence during the 2-year period beginning on the date of the disposition or cessation referred to in paragraph (2). Paragraph (2) shall apply to such new principal residence during the recapture period in the same manner as if such new principal residence were the converted residence.

(C) Transfers between spouses or incident to divorce

In the case of a transfer of a residence to which section 1041(a) applies—

- (i) paragraph (2) shall not apply to such transfer, and
- (ii) in the case of taxable years ending after such transfer, paragraphs (1) and (2) shall apply to the transferee in the same manner as if such transferee were the transferor (and shall not apply to the transferor).

(D) Waiver of recapture for purchases in 2009 and 2010

In the case of any credit allowed with respect to the purchase of a principal residence after December 31, 2008—

- (i) paragraph (1) shall not apply, and
- (ii) paragraph (2) shall apply only if the disposition or cessation described in paragraph (2) with respect to such residence occurs during the 36-month period beginning on the date of the purchase of such residence by the taxpayer.

(E) Special rule for members of the armed forces, etc.

(i) In general

In the case of the disposition of a principal residence by an individual (or a cessation referred to in paragraph (2)) after December 31, 2008, in connection with Government orders received by such individual, or such individual's spouse, for qualified official extended duty service—

- (I) paragraph (2) and subsection (d)(2) shall not apply to such disposition (or cessation), and
- (II) if such residence was acquired before January 1, 2009, paragraph (1) shall not apply to the taxable year in which such disposition (or cessation) occurs or any subsequent taxable year.

(ii) Qualified official extended duty service

For purposes of this section, the term "qualified official extended duty service" means service on qualified official extended duty as—

- (I) a member of the uniformed services,
- (II) a member of the Foreign Service of the United States, or
- (III) an employee of the intelligence community.

(iii) Definitions

Any term used in this subparagraph which is also used in paragraph (9) of sec-

tion 121(d) shall have the same meaning as when used in such paragraph.

(5) Joint returns

In the case of a credit allowed under subsection (a) with respect to a joint return, half of such credit shall be treated as having been allowed to each individual filing such return for purposes of this subsection.

(6) Return requirement

If the tax imposed by this chapter for the taxable year is increased under this subsection, the taxpayer shall, notwithstanding section 6012, be required to file a return with respect to the taxes imposed under this subtitle.

(7) Recapture period

For purposes of this subsection, the term “recapture period” means the 15 taxable years beginning with the second taxable year following the taxable year in which the purchase of the principal residence for which a credit is allowed under subsection (a) was made.

(g) Election to treat purchase in prior year

In the case of a purchase of a principal residence after December 31, 2008, a taxpayer may elect to treat such purchase as made on December 31 of the calendar year preceding such purchase for purposes of this section (other than subsections (b)(4), (c), (f)(4)(D), and (h)).

(h) Application of section

(1) In general

This section shall only apply to a principal residence purchased by the taxpayer on or after April 9, 2008, and before May 1, 2010.

(2) Exception in case of binding contract

In the case of any taxpayer who enters into a written binding contract before May 1, 2010, to close on the purchase of a principal residence before July 1, 2010, and who purchases such residence before October 1, 2010, paragraph (1) shall be applied by substituting “October 1, 2010” for “May 1, 2010”.

(3) Special rule for individuals on qualified official extended duty outside the United States

In the case of any individual who serves on qualified official extended duty service (as defined in section 121(d)(9)(C)(i)) outside the United States for at least 90 days during the period beginning after December 31, 2008, and ending before May 1, 2010, and, if married, such individual’s spouse—

(A) paragraphs (1) and (2) shall each be applied by substituting “May 1, 2011” for “May 1, 2010”, and

(B) paragraph (2) shall be applied by substituting “July 1, 2011” for “July 1, 2010”, and for “October 1, 2010”.

(Added Pub. L. 110-289, div. C, title I, §3011(a), July 30, 2008, 122 Stat. 2888; amended Pub. L. 111-5, div. B, title I, §1006(a)-(c), (d)(2), (e), Feb. 17, 2009, 123 Stat. 316, 317; Pub. L. 111-92, §§11(a)-(g), 12(a)-(c), Nov. 6, 2009, 123 Stat. 2989-2992; Pub. L. 111-198, §2(a), (b), July 2, 2010, 124 Stat. 1356.)

Editorial Notes

PRIOR PROVISIONS

A prior section 36 was renumbered section 37 of this title.

Another prior section 36, acts Aug. 16, 1954, ch. 736, 68A Stat. 15; Oct. 4, 1976, Pub. L. 94-455, title V, §501(b)(2), title X, §1011(c), title XIX, §1901(b)(1)(A), 90 Stat. 1558, 1611, 1790, directed that credits provided by section 32 not be allowed if an individual elects under section 144 to take standard deduction, prior to repeal by Pub. L. 95-30, title I, §§101(d)(3), 106(a), May 23, 1977, 91 Stat. 133, 141, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2010—Subsec. (h)(2). Pub. L. 111-198, §2(a), substituted “and who purchases such residence before October 1, 2010, paragraph (1) shall be applied by substituting ‘October 1, 2010’” for “paragraph (1) shall be applied by substituting ‘July 1, 2010’”.

Subsec. (h)(3)(B). Pub. L. 111-198, §2(b), inserted “, and for ‘October 1, 2010’” after “for ‘July 1, 2010’”.

2009—Subsec. (b)(1)(A). Pub. L. 111-5, §1006(b)(1), substituted “\$8,000” for “\$7,500”.

Subsec. (b)(1)(B). Pub. L. 111-5, §1006(b), substituted “\$4,000” for “\$3,750” and “\$8,000” for “\$7,500”.

Subsec. (b)(1)(C). Pub. L. 111-5, §1006(b)(1), substituted “\$8,000” for “\$7,500”.

Subsec. (b)(1)(D). Pub. L. 111-92, §11(c)(1), added subpar. (D).

Subsec. (b)(2)(A)(i)(II). Pub. L. 111-92, §11(c)(2), substituted “\$125,000 (\$225,000)” for “\$75,000 (\$150,000)”.

Subsec. (b)(3). Pub. L. 111-92, §11(d), added par. (3).

Subsec. (b)(4). Pub. L. 111-92, §12(a)(1), added par. (4).

Subsec. (c)(3)(A)(i). Pub. L. 111-92, §12(c), inserted “(or, if married, such individual’s spouse)” after “person acquiring such property”.

Subsec. (c)(6). Pub. L. 111-92, §11(b), added par. (6).

Subsec. (d). Pub. L. 111-5, §1006(d)(2), (e), redesignated pars. (3) and (4) as (1) and (2), respectively, and struck out former pars. (1) and (2) which read as follows:

“(1) a credit under section 1400C (relating to first-time homebuyer in the District of Columbia) is allowable to the taxpayer (or the taxpayer’s spouse) for such taxable year or any prior taxable year,

“(2) the residence is financed by the proceeds of a qualified mortgage issue the interest on which is exempt from tax under section 103.”

Subsec. (d)(3). Pub. L. 111-92, §11(g), added par. (3).

Subsec. (d)(4). Pub. L. 111-92, §12(b), added par. (4).

Subsec. (f)(4)(D). Pub. L. 111-92, §11(a)(2), inserted “and 2010” after “2009” in heading and struck out “, and before December 1, 2009” after “December 31, 2008” in introductory provisions.

Pub. L. 111-5, §1006(c)(1), added subpar. (D).

Subsec. (f)(4)(E). Pub. L. 111-92, §11(e), added subpar. (E).

Subsec. (g). Pub. L. 111-92, §12(a)(2), inserted “(b)(4),” before “(c)”.

Pub. L. 111-92, §11(a)(3), amended subsec. (g) generally. Prior to amendment, text read as follows: “In the case of a purchase of a principal residence after December 31, 2008, and before December 1, 2009, a taxpayer may elect to treat such purchase as made on December 31, 2008, for purposes of this section (other than subsections (c) and (f)(4)(D)).”

Pub. L. 111-5, §1006(a)(2), (c)(2), substituted “December 1, 2009” for “July 1, 2009” and “subsections (c) and (f)(4)(D)” for “subsection (c)”.

Subsec. (h). Pub. L. 111-92, §11(a)(1), substituted “May 1, 2010” for “December 1, 2009”, designated existing provisions as par. (1), inserted heading, and added par. (2).

Pub. L. 111-5, §1006(a)(1), substituted “December 1, 2009” for “July 1, 2009”.

Subsec. (h)(3). Pub. L. 111-92, §11(f), added par. (3).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-198, §2(c), July 2, 2010, 124 Stat. 1356, provided that: “The amendments made by this section

[amending this section] shall apply to residences purchased after June 30, 2010.”

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-92, § 11(j)(1)–(3), Nov. 6, 2009, 123 Stat. 2991, provided that:

“(1) IN GENERAL.—The amendments made by subsections (b), (c), (d), and (g) [amending this section] shall apply to residences purchased after the date of the enactment of this Act [Nov. 6, 2009].

“(2) EXTENSIONS.—The amendments made by subsections (a) [amending this section], (f) [amending this section], and (i) [amending section 1400C of this title] shall apply to residences purchased after November 30, 2009.

“(3) WAIVER OF RECAPTURE.—The amendment made by subsection (e) [amending this section] shall apply to dispositions and cessations after December 31, 2008.”

Pub. L. 111-92, § 12(e), Nov. 6, 2009, 123 Stat. 2992, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 6213 of this title] shall apply to purchases after the date of the enactment of this Act [Nov. 6, 2009].

“(2) DOCUMENTATION REQUIREMENT.—The amendments made by subsection (b) [amending this section] shall apply to returns for taxable years ending after the date of the enactment of this Act [Nov. 6, 2009].

“(3) TREATMENT AS MATHEMATICAL AND CLERICAL ERRORS.—The amendments made by subsection (d) [amending section 6213 of this title] shall apply to returns for taxable years ending on or after April 9, 2008.”

Pub. L. 111-5, div. B, title I, § 1006(f), Feb. 17, 2009, 123 Stat. 317, provided that: “The amendments made by this section [amending this section and section 1400C of this title] shall apply to residences purchased after December 31, 2008.”

EFFECTIVE DATE

Section applicable to residences purchased on or after Apr. 9, 2008, in taxable years ending on or after such date, see section 3011(c) of Pub. L. 110-289, set out as an Effective Date of 2008 Amendment note under section 26 of this title.

[§ 36A. Repealed. Pub. L. 113-295, div. A, title II, § 221(a)(5)(A), Dec. 19, 2014, 128 Stat. 4037]

Section, added Pub. L. 111-5, div. B, title I, § 1001(a), Feb. 17, 2009, 123 Stat. 309, related to making work pay credit.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as an Effective Date of 2014 Amendment note under section 1 of this title.

TREATMENT OF POSSESSIONS

Pub. L. 111-5, div. B, title I, § 1001(b), Feb. 17, 2009, 123 Stat. 310, with respect to taxable years beginning in 2009 and 2010, required the Secretary of the Treasury to pay each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the making work pay credit and to pay certain possessions without a mirror code tax system amounts estimated as being equal to aggregate benefits that would have been provided to its residents, and provided that, for purposes of section 1324(b)(2) of Title 31, Money and Finance, such payments to possessions would be treated in the same manner as a refund due from the credit formerly allowed under this section.

§ 36B. Refundable credit for coverage under a qualified health plan

(a) In general

In the case of an applicable taxpayer, there shall be allowed as a credit against the tax imposed by this subtitle for any taxable year an amount equal to the premium assistance credit amount of the taxpayer for the taxable year.

(b) Premium assistance credit amount

For purposes of this section—

(1) In general

The term “premium assistance credit amount” means, with respect to any taxable year, the sum of the premium assistance amounts determined under paragraph (2) with respect to all coverage months of the taxpayer occurring during the taxable year.

(2) Premium assistance amount

The premium assistance amount determined under this subsection with respect to any coverage month is the amount equal to the lesser of—

(A) the monthly premiums for such month for 1 or more qualified health plans offered in the individual market within a State which cover the taxpayer, the taxpayer’s spouse, or any dependent (as defined in section 152) of the taxpayer and which were enrolled in through an Exchange established by the State under 1311¹ of the Patient Protection and Affordable Care Act, or

(B) the excess (if any) of—

(i) the adjusted monthly premium for such month for the applicable second lowest cost silver plan with respect to the taxpayer, over

(ii) an amount equal to 1/12 of the product of the applicable percentage and the taxpayer’s household income for the taxable year.

(3) Other terms and rules relating to premium assistance amounts

For purposes of paragraph (2)—

(A) Applicable percentage

(i) In general

Except as provided in clause (ii), the applicable percentage for any taxable year shall be the percentage such that the applicable percentage for any taxpayer whose household income is within an income tier specified in the following table shall increase, on a sliding scale in a linear manner, from the initial premium percentage to the final premium percentage specified in such table for such income tier:

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 133%	2.0%	2.0%
133% up to 150%	3.0%	4.0%
150% up to 200%	4.0%	6.3%
200% up to 250%	6.3%	8.05%

¹ So in original. Probably should be preceded by “section”.