

August 21, 2008

The Honorable Eric Solomon
Assistant Secretary (Tax Policy)
U.S. Department of the Treasury
Room 3120
1500 Pennsylvania Avenue, N.W
Washington, D.C. 20220

Re: section 36 of the Internal Revenue Code (First-Time Homebuyer Credit)

Dear Mr. Solomon:

We, the undersigned organizations representing builders, mortgage bankers and realtors from across the country, are writing to ask for the publication of guidance concerning allocation rules for the \$7,500, first-time homebuyer tax credit, enacted as part of the *Housing and Economic Recovery Act of 2008* (Public Law 110-289). Quick publication of this guidance, specifically the allocation of the credit among non-married individuals who purchase a residence jointly, is critical for making the tax credit program an effective and robust stimulus to the nation's housing market.

Background

The *Housing and Economic Recovery Act* establishes new section 36 of the Internal Revenue Code, which provides a temporary tax credit of up to \$7,500 for first-time buyers of a principal residence. Section 36(b)(1)(B) requires that qualified married taxpayers filing separate returns shall allow a tax credit of no more than \$3,750 for each return. Section 36(b)(1)(C) indicates that for qualified taxpayers who are not married and jointly purchase a principal residence, the amount of the credit shall be allocated among the taxpayers as prescribed by the Secretary, provided the total amount of the credits shall not exceed \$7,500 per qualifying residence purchase.

Policy Issues

It is common in the housing market, particularly for first-time homebuyers, to involve a guarantor or co-signer as part of a home purchase. This co-signer can have no ownership interest in residence, and instead may only have joint liability on the mortgage. However, in some situations the co-signer may have an ownership interest or may be a parent jointly purchasing a home with their child, a first-time buyer. These parents, or other individuals, are likely to not be first-time homebuyers, as defined by section 36(c)(1).

It is also common for two individuals to jointly purchase a residence in anticipation of marriage in the near future. Such joint purchases are more common among first-time homebuyers.

Recommendations

We recommend that the U.S. Department of the Treasury issue guidance concerning allocations. First, we recommend that guidance make it clear that even though additional family members may acquire ownership interests in the home or to serve as guarantors to facilitate its purchase, the ownership interest of these parties and/or guarantors does not compromise the availability of the credit. The guidance should also make it clear that the entire purchase price of the house is eligible for the calculation of the credit, and that the credit is only allocable to the taxpayer(s) who is (are) purchasing the home in order to occupy it as their principal residence.

We also recommend that homebuyers may elect to divide and allocate the credit (totaling no more than \$7,500) among those first-time homebuyers who are jointly purchasing the qualified residence. This option would be particularly useful for individuals who purchase a residence together prior to an expected future marriage.

We believe these recommendations are consistent with the statute and will help make the credit effective in stimulating the housing market, consistent with congressional intent.

We urge you to issue clarifying guidance on this issue as quickly as possible. We also recommend quick publication of an IRS Fact Sheet explaining basic rules with respect to the credit. As you know, this incentive is only temporary, so time is of the essence. The faster that you act, the faster the housing market will respond, and the speedier the recovery can be.

Thank you for consideration of our views. If you have any questions about these comments, please contact Robert Dietz, Director of Tax Issues for the National Association of Home Builders at 202.266.8285, Linda Goold, Tax Counsel for the National Association of Realtors at 202.383.1083, or Jim Gross, Associate Vice President for Accounting, Tax and Regulatory Capital for the Mortgage Bankers Association at 803.557.2860.

Mortgage Bankers Association

National Association of Home Builders

National Associations of Realtors

cc: Jeanne Ross, Office of the Tax Legislative Counsel

Brandon Carlton, Office of the Tax Legislative Counsel