

# First-time Homebuyer Credit Extended Through April 2010

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Before we review the changes in the First-time Homebuyer Credit for 2010, we need to summarize the prior law. In August, we wrote an article explaining the “American Recovery and Reinvestment Act of 2009” which expanded the previously created first-time homebuyer credit to purchases made by November 30, 2009. For homes purchased in 2009, Congress allowed first-time homebuyers a credit of ten percent of the value of the property, up to \$8000, which did not have to be paid back unless the home ceased to be the taxpayer’s main residence within a three-year period following the purchase. The credit for purchases in 2009 could be claimed on 2009 tax returns, filed this year, or by 2009 amendment of a 2008 return, which most recipients did to get their money faster, within about six weeks after closing. The credit could only be claimed after the closing date and required a signed HUD as proof of closing.

The law considers an individual who is making the purchase of a home for the first-time within the last three years to be a “first-time purchaser.” This means that the buyer could have previously owned property, or even currently be using property they own as a rental property, but they could not have owned and used a property as their personal residence within the last three years. The individual must be someone who, through the purchase of the home, has obtained equitable and beneficial title to the property. Essentially, this entitles the buyer of the home to the benefits of owning a home (i.e. – the ability to sell the home) and also the burdens of home ownership (i.e. – paying taxes, insurance, etc.). The IRS requires that the individual must be able to receive legal title to the home if the balance due is paid in full. Legal title refers to a deed that is complete of the property and that is enforceable in a court of law.

On November 6, 2009, Congress expanded the time period for purchases on which the first-time homebuyer credit could be claimed, and also made changes to the eligibility of certain individuals. Titled the “Worker,

Homeowner and Business Assistance Act of 2009,” the revision extended the deadline for qualifying home purchases from November 30, 2009 to April 30, 2010. Additionally, if a buyer enters into a binding contract by April 30, 2010, the buyer has until June 30, 2010 to close on and complete the purchase.

The amount of the credit remains at a maximum of \$8000 but the new law provides an additional “long-time resident” credit of up to \$6,500 to buyers who do not qualify as “first-time homebuyers.” To qualify as a “long-term resident,” a buyer must have owned and used the same home as a principal or primary residence for at least five consecutive years of the eight-year period ending on the date of purchase of a new home as a primary residence. For all qualifying purchases in 2010, taxpayers have the option of claiming the credit on either their 2009, amended 2009 or 2010 tax returns.

The new law also adds an adjustment on the eligibility of individuals to claim the credit, based on their income levels. For individuals who purchase homes after November 6, 2009, the full credit will be available to taxpayers with modified adjusted gross incomes (MAGI) up to \$125,000, or \$225,000 for combined income for husbands and wives filing jointly. Those with MAGI between \$125,000 and \$145,000, or \$225,000 and \$245,000 for joint filers, are eligible for a reduced credit. Those with higher incomes do not qualify.

For homes purchased prior to November 7, 2009, prior MAGI limits remained in place. The full credit was then available to taxpayers with MAGI up to \$75,000, or \$150,000 for joint filers. Those with MAGI between \$75,000 and \$95,000, or \$150,000 and \$170,000 for joint filers, were eligible for a reduced credit. Those with higher incomes did not qualify even then.

Finally the new law adds several restrictions on who may qualify for the credit. Dependents claimed on someone else’s tax return are not eligible to claim the credit, no credit is available if the purchase price of a home is more than \$800,000, and a purchaser must be at least 18 years of age on the date of purchase. Perhaps people were having their dependent children buy houses under the old law.

We also need to touch on the availability of the credit to buyers under installment land contracts. Under Pennsylvania’s Installment Land Contract Act, an installment land contract is a contract for the purchase and sale of a dwelling whereby the purchaser is obligated to make six or

more installment payments to the seller after the execution of the contract and before the time appointed for the conveyance of title purchaser becomes the equitable or beneficial owner of the property. The seller retains the deed to the property as security for the purchaser's performance of the contract until the purchaser satisfies the terms of the contract. At that point, the seller delivers a deed to the purchaser conveying legal title to the property. An installment land sale contract should be thought of as a method of financing the purchase of property, similar to a mortgage. This is very different from a lease option, where the buyer is a tenant with a choice whether to become an owner, and no equitable title has passed. Pennsylvania installment land contracts fall within the types of transactions eligible for the first-time homebuyer credit, but lease options do not. This means that investors with properties to sell to first-time homebuyers or even to "long time residents," should be familiar with the credits and also promote them as alternative ways for the buyer to provide us with down payments on land contracts, which should be particularly appealing given the economic hardships and limited availability of loans facing prospective home buyers today.

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