

<http://www.irs.gov/pub/irs-pdf/p17.pdf>

Updated IRS Publication 17 highlights host of return-related changes for individuals

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IRS has released its updated Publication 17 (Your Federal Income Tax) for use in preparing 2009 returns. The 300-page-plus work reflects the many tax changes that affect the 2009 return, including the changes made to the first time homebuyer tax credit (FTHTC) by the Worker, Homeownership, and Business Assistance Act of 2009 (the Act, P.L. 111-92).

Revised FTHTC rules. As explained in detail in Federal Taxes Weekly Alert 11/12/2009, the Act extended and expanded the FTHTC under Code Sec. 36, and added a number of anti-abuse provisions as well. For example, the Act:

- Extends the FTHTC to apply to a principal residence bought before May 1, 2010; it also applies to a principal residence bought before July 1, 2010 by a person who enters into a written binding contract before May 1, 2010, to close on the purchase of the principal residence before July 1, 2010.
- For purchases after Nov. 6, 2009, permits a taxpayer to claim the homebuyer credit if he (and, if married, his spouse) maintained the same principal residence for any 5-consecutive year period during the 8-years ending on the date that the taxpayer buys the subsequent principal residence. The maximum allowable homebuyer credit for such taxpayers, who are treated as first time homebuyers for purposes of the FTHTC, is \$6,500 (\$3,250 for a married individual filing separately), or 10% of the purchase price of the subsequent principal residence, whichever is less.
- For purchases after Nov. 6, 2009, phases out the FTHTC over much higher modified AGI levels: for individuals, the phaseout range is between \$125,000 and \$145,000, and for those filing a joint return, it's between \$225,000 and \$245,000.

IRS Pub. 17 points out that the Act adds the following to the list of individuals and situations where the FTHTC cannot be claimed, if the principal residence was purchased after Nov. 6, 2009:

- The purchase price of the principal residence is more than \$800,000.

- The purchaser can be claimed as a dependent on someone else's return.
- The purchaser (and spouse, if married) was younger than 18 when the home was bought.
- The purchaser acquired the principal residence from his spouse's ancestors or lineal descendants, if the purchaser is married.

For residences purchased after 2008, the maximum amount of the FTHTC was increased by the American Recovery and Reinvestment Act of 2009 (Recovery Act, P.L. 111-5)) from \$7,500 to \$8,000. IRS Pub. 17 reminds FTHTC-eligible taxpayers that if they made the election to claim the credit on their 2008 return for a home they bought in 2009 and they did not use the February 2009 revision of Form 5405 (First Time Homebuyer Credit), they now may be able to claim a larger credit, not to exceed a total credit of \$8,000, on an amended 2008 return.

Observation: On its website IRS says the 2008 Form 5405 can be used to claim the FTHTC only for homes purchased before Nov. 7, 2009, for which an election is made to claim the credit for 2008, and that it will soon issue a December 2009 revision of Form 5405. The revised form will be for use for all homes purchased after Nov. 6, 2009 (whether the credit is claimed for 2008 or for 2009) and for all claims on 2009 returns for homes purchased any time in 2009.

Observation: IRS Pub. 17 does not cover the liberalized FTHTC rules that apply to qualifying service members. Certain service members on qualified official extended duty service outside of the U.S. get an extra year to buy a qualifying home and get the credit; they also can avoid the recapture rules under certain circumstances (see Federal Taxes Weekly Alert 11/12/2009 for details).

New-for-2009 changes. IRS Pub. 17 highlights 35-plus changes that apply for the first time on the 2009 return, including the following noteworthy items:

- Individuals can use their tax refunds to buy up to \$5,000 in U.S. Series I savings bonds in multiples of \$50.
- A \$3,500 or \$4,500 voucher or payment made for such a voucher under the “cash for clunkers” program to buy or lease a new fuel-efficient automobile is not taxable for federal income tax purposes.
- Individuals don't have to pay tax on unemployment compensation up to \$2,400 per person for the year; amounts over \$2,400 are still taxable.
- The maximum Hope education credit is increased to \$2,500. Additionally, the increased credit has been renamed the American opportunity credit and part of it may be refundable.

- Individuals who bought a new motor vehicle in 2009 after February 16, may be able to deduct any state or local sales or excise taxes on the purchase. In states without a sales tax, they may be able to deduct certain other taxes or fees instead. The deduction is claimed on Schedule A (Form 1040) by taxpayers who are itemizing deductions and are not electing to deduct state and local general sales taxes. If they are not itemizing deductions, these taxes increase the standard deduction as figured on Schedule L (Form 1040A or 1040).
- For parents who are divorced or separated, a noncustodial parent claiming an exemption for a child can no longer attach certain pages from a divorce decree or separation agreement instead of Form 8332 (Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent) if the decree or agreement went into effect after 2008. The noncustodial parent must attach Form 8332 or a similar statement signed by the custodial parent and whose only purpose is to release a claim to exemption.
- Generally, a personal casualty or theft loss must be more than \$500 to be allowed (this floor will revert to \$100 after 2009). This is in addition to the 10% of AGI limit that generally applies to the net loss.

Observation: Inexplicably, Pub. 17 fails to note that under ARRA Sec. 3001(b), a recapture rule applies if premium subsidy is provided for COBRA continuation coverage of the taxpayer (or spouse or any dependent) during the tax year and the taxpayer's modified adjusted gross income (MAGI) exceeds \$125,000 (\$250,000 for joint return filers). If the MAGI limit is exceeded, the taxpayer's income tax for the tax year is increased by part or all of the amount of the premium subsidy. The full amount of the subsidy must be repaid as an additional tax if a taxpayer's MAGI exceeds \$145,000 (\$290,000 for joint return filers).

- The 65% subsidy for payment of COBRA health care coverage continuation premiums is not taxable.
- Any Pay-for- Performance Success Payments that reduce the principal balance of an individual's home mortgage under the Home Affordable Modification Program are not taxable.

The Pub may be viewed on the IRS website at <http://www.irs.gov/pub/irs-pdf/p17.pdf>.

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