



SPECIAL ALERTS

First Time Homebuyer Credit (FTHC)

In a speech before the National Association of Realtors on May 12, HUD Secretary Shaun Donovan announced plans to allow lenders to loan up to \$8,000 to prospective homebuyers who are eligible for the FTHC. FHA-approved lenders, HUD-approved nonprofits, and state and local governments will be able to offer downpayment assistance in the form of a short-term bridge loan to eligible taxpayers who qualify for the FTHC. Taxpayers would then repay the short-term loan when they receive the FTHC. Important: Taxpayers must still purchase a home before claiming the FTHC on their tax returns. If their tax is otherwise underpaid, all or part of their FTHC will be used to pay the tax liability, so these individuals may not have sufficient funds to repay the bridge loan.

Mortgage Letter 2009-15

FEDERAL TAX UPDATE

INTEREST RATES UNCHANGED FOR THIRD QUARTER OF 2009

The IRS announced that interest rates for the third calendar quarter of 2009 (beginning July 1) will remain the same. The rates are:

- 4 percent for overpayments (3 percent in the case of a corporation);
- 4 percent for underpayments;
- 6 percent for large corporate underpayments; and
- 1.5 percent for the portion of a corporate overpayment exceeding \$10,000.

IR-2009-54

For the Tax Pro

QUESTION OF THE MONTH

Q. My client has a suspended passive activity loss of \$22,000 from his rental real estate activity. Although he actively participates in the activity, his modified AGI is over \$200,000 and he does not qualify for the \$25,000 special allowance for rental real estate passive activity losses. He recently completed a §1031 like-kind exchange of one of his apartment buildings for another apartment building. He must recognize gain on the exchange for the \$10,000 of cash boot he received in the exchange. May the suspended passive activity losses be used to offset this gain?

A. Yes. In a partially taxable exchange involving a passive activity, any taxable gain from the activity is treated as passive activity income. Therefore, the \$10,000 recognized gain may be offset with \$10,000 of suspended passive activity losses. The remaining \$12,000 of the suspended passive activity loss remains suspended until your client either 1) has passive income from the replacement property or from another passive activity, or 2) the replacement property is sold or exchanged in a fully taxable event.

DOL TO REVIEW DENIAL OF COBRA PREMIUM ASSISTANCE

The Department of Labor will expedite review of denial of COBRA premium assistance for former employees or members of the employee's family who believe they are entitled to the 65% COBRA premium reduction—but were denied the premium reduction. The DOL review is available for COBRA continuation coverage provided via a private sector health plan by an employer with at least 20 employees. The individual must have been:

- Covered under the employer's health plan on the last day of employment (and the health plan must still be available),
- Involuntarily terminated 9/1/08 through 12/31/09, and
- Eligible for COBRA because of the covered employee's involuntary job loss and not for a disqualifying reason (such as gross misconduct, entitlement to Medicare, loss of dependency status, or death of the covered employee).

Individuals may request DOL expedited review by either submitting an online application along with electronic submission of the required attachments or by mailing or faxing a completed application along with photocopies of the individual's COBRA election notice and other pertinent documents. The DOL link below includes instructions on completing these forms.

Note: For continuation coverage provided through federal, state, or local government plans, or pursuant to state insurance law, review should instead be requested through the Department of Health and Human Services (DHHS). The DHHS premium assistance continuation coverage help desk can be contacted toll free at (866) 400-6689 or via e-mail at continuationcoverage@maximus.com.

[Application and Instructions for Review of Denial of COBRA Premium Reduction](#)

DEPENDENCY EXEMPTION: WHEN STATE AND FEDERAL LAW CONFLICT

Court case: Swafford v. Comm'r. T. C. Summ. Op. 2009-82

The Tax Court determined that a noncustodial parent was not entitled to the dependency exemption and associated child tax credit despite a court order stating that he could claim the exemption if child support was paid in full.

Background. Under proposed regulations and other IRS guidance in effect before 2009, a divorce decree, separation agreement, or other court order could serve as a written declaration (in lieu of Form 8332) in certain circumstances if the signature and release guidelines were met, as explained above. However, and largely because of a great deal of misunderstanding about such documents, final regulations that go into effect in 2009 provide that divorce decrees and other agreements or orders issued by states after 2008 may not serve as a written declaration.

Facts. A legal agreement was filed in an Ohio court for the child of Ishmial Swafford and Laura Vogel, who were never married. The agreement required Swafford to make child support payments and also provided



that he would be entitled to claim the child as a dependent in even numbered years if his support payments were current and full. Vogel did not sign or date the agreement in question, although it was signed by Swafford's attorney, an attorney for the State of Ohio, and the judge. For tax year 2006, Swafford's support payments were complete and he claimed the dependency exemption for the child and child tax credit on his return. Vogel did not provide Swafford with a signed and dated Form 8332 or other written release, and Swafford did not attach a copy of the agreed entry or any other written release to his tax return.

Discussion. Under §152(e), a child is treated as the qualifying child of the noncustodial parent if all of the following conditions are met:

1. The parents are divorced, legally separated, or live apart at all times during the last six months of the year.
2. The child is in the custody of one or both parents for more than half the year.
3. The child receives over one-half of his support from his parents.
4. The custodial parent signs a written declaration (in such manner or form as the Secretary may prescribe) releasing the exemption to the noncustodial parent by stating that the custodial parent will not claim the child as a dependent for the year.
5. The noncustodial parent attaches the written declaration to his or her return for the year.

The temporary regulations in effect for 2006 generally required that the noncustodial parent attach a signed Form 8332 to the return. Any other type of written declaration would suffice only if it was signed by the custodial parent and included the custodial parent's agreement not to claim the child for the year or years in question. Vogel did not provide a signed and dated written release to Swafford, and Swafford did not attach a signed and dated written release to his 2006 return. Thus, two of the requirements needed for Swafford to claim the dependency exemption for the child were not met. Because he could not claim the exemption, he could not claim the child tax credit either. Therefore, although Swafford had complied with the court order by paying child support, even if he had attached the unsigned legal document to his return, he did not meet the requirements for claiming the child. In reaching its decision, the Tax Court makes the very important distinction between state and federal law: "[t]he mere fact that the State court granted the taxpayer the right to claim the dependency exemption deduction is immaterial because a State court cannot determine issues of Federal tax law."

Swafford v. Comm'r



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