

SPECIAL ALERTS

First-Time Homebuyer Credit

First-time homebuyer credit and HUD statements:
The IRS has advised that HUD statements should not be attached to tax returns claiming the FTHC (whether original or amended) unless specifically requested by the IRS in an audit situation. Attaching the statement to the return will not speed up processing or get a refund to your client sooner.

In addition, please do not attach the statement to Form 8453, as it is not one of the allowable attachments to be sent to the IRS with this form. Nonetheless, TaxWorks Institute does strongly recommend that you see the client's HUD statement as evidence of closing on the home purchase and advise the client to keep the copy in case there are any questions about the credit in the future.

The IRS will request additional information via Form 886-H-FTHBC, Supporting Documents to Prove First-time Homebuyer Credit. In addition to asking for HUD statements or other supporting documents, the taxpayer may be asked to explain how he or she qualifies for the credit if mortgage interest and/or real estate taxes were claimed in the last three years.

Legislative update: There has been a great deal of discussion in the news about various proposals to extend the FTHC beyond November 30, 2009. At this time, none of the proposals have made it through Congress and enacted into law. We will keep you informed of any changes in the law. The last possible purchase date to qualify for the credit is still November 30, 2009.

Shared Parenting Plan is Not a Substitute for Form 8832

Court Case: Dyer v. Comm'r, TC Summ Op 2009-148

Facts: Kevin Dyer and Jill Weaver were divorced in 1999. At that time, they entered into a "Parties Proposed Shared Parenting Plan" for their three children born 1987, 1989, and 1992. Primary custody of the children was given to Ms. Weaver. With respect to dependency exemptions, the plan stated: "The father shall have the tax exemptions for all three (3) children beginning tax year 1998 provided he is current in his child support obligation. The Court retains jurisdiction over this as well as all other matters involving the children." Both parents signed the shared parenting plan.

In 2006 (the year in question), Mr. Dyer was current on his child support. On a joint return with his current spouse he claimed dependent exemptions for his three children and for two of his stepchildren, as well as the child tax credit for his youngest child and stepchild. The IRS denied the exemptions and CTC for all of the children.

Background: In the case of divorced or separated parents, under §152(e)(2) a noncustodial parent may claim the dependent exemption for a child if the custodial parent signs a written declaration releasing the exemption to the noncustodial parent and the noncustodial parent attaches such declaration to his return.

(continued on next page)

The declaration must be made on Form 8332, Release of Claim for Exemption for Divorced or Separated Parents, or an acceptable substitute. The IRS accepts a divorce decree or other court document issued before 2009 if it conforms to the substance of Form 8332. The decree must indicate that the custodial parent is releasing the exemption unconditionally for the stated years and will not claim the exemption for those years. Decrees issued after 2008 may no longer be substituted for Form 8332, regardless of their content.

Discussion: In *Boltinghouse v. Comm’r* (TC Memo 2003-134), a separation agreement that was signed by both parents and that unconditionally granted the dependent exemption to the noncustodial parent was held to be an acceptable substitute declaration. Mr. Dyer contended that his shared parenting plan was similar to the Boltinghouse agreement because both parents had signed it. However, unlike Boltinghouse, the Dyers’ shared parenting plan clearly has a condition on it, namely that Mr. Dyer must be current in his child support payments.

Although the condition was met in tax year 2006, the court indicated:

This condition suggests that Mr. Dyer’s compliance with his support obligations may change from year to year, such that his entitlement to the dependency exemption deductions for his children is potentially subject to change each year. Although Mr. Dyer met the condition in 2006, the Internal Revenue Service cannot be expected to police divorce decrees and separation agreements.

The fact that both Mr. Dyer and Ms. Weaver had signed the agreement was found to be irrelevant.

Ruling: Because of the conditional statement contained in the shared parenting plan, the Tax Court held that it did not constitute an equivalent to Form 8332 and was thus not an acceptable substitute written declaration. Therefore, the dependent exemptions for Mr. Dyer’s youngest two children and child tax credit for the youngest child were both denied. Exemptions were allowed for his oldest child, who was a full-time student living in Mr. Dyer’s home for the year, and for the two stepchildren in his home as well as the child tax credit for the youngest stepchild.

The Tax Court pointed out that Mr. Dyer had not attached a copy of the shared parenting plan to his tax return and so the court could have sustained the denial of the exemptions on that fact alone. It was suggested for future tax years that Ms. Weaver properly complete and execute Form 8332 and that Mr. Dyer attach it to his return so that he “might succeed in avoiding the issues that have arisen in the present case.”

For the Tax Pro **QUESTION OF THE MONTH**

Q. My client’s 30-year-old son was seriously injured in an accident several years ago and has not been able to work since that time. My client cares for him in her home and has been claiming him as a qualifying child for the dependent exemption. (He is totally and permanently disabled.) Before 2009, his only income has been a small pension distribution (about \$1,200 a year) from his late father’s retirement account, and my client has provided most of his support. This year, he was approved retroactively for social security disability benefits and received a large lump-sum payout. Are the social security benefits taxable, or is there a special exception for disability benefits? Will my client still be able to claim her son as a dependent?

A. Taxability: Social security disability benefits are taxed in the same way as all social security benefits. There is no special exception for social security disability. If provisional income is more than the base amount (generally, \$25,000 for a single filer), then some portion of the social security benefits will be taxable. Provisional income is equal to one-half of social security benefits plus all other income including tax-exempt interest.

It is not uncommon for an individual who does not ordinarily have a filing requirement to have one in a year that a social security lump-sum payout is received. Complete the social security benefits worksheet and, if benefits are taxable, complete the lump-sum payment worksheets to determine if a lump-sum election is appropriate.

Dependency: Regardless of whether the social security benefits are taxable, your client cannot claim her son as a dependent qualifying child if he provides more than one-half of his own support. This apparently wasn’t an issue before this year because he had little income and you’ve stated that your client provided most of the support. The issue now is not how much income he has but whether his funds are being used for his support. Social security benefits paid in the son’s name and used for support are treated as support provided by the son. Complete the support worksheet for 2009 to determine if the support test for a qualifying child is met. Even if the test is not met in 2009, it may be met in 2010 because there won’t be a large payout—but complete a new support worksheet to be sure the test is met.



TS10 Tax Law Changes

The chart below and on the following pages shows the changes that will go into effect for 2009. With all of the changes made by the American Recovery and Reinvestment Act of 2009, the Emergency Economic Stabilization Act of 2008, and other changes that are first effective with this tax year, it's likely that you'll get questions well before the season starts.

Provision	Description	Notes	
A. Children/family/work			
1	UDC changes §§152, 24 (1/1/09 and ongoing)	<ul style="list-style-type: none"> • <i>Age requirement modification:</i> QC must be younger than taxpayer (exception if QC is totally and permanently disabled) • <i>CTC modification:</i> QC must be taxpayer's dependent • <i>Tie-breaker modification:</i> If parent is in home, other taxpayer for whom child is QC may claim exemption only if other taxpayer's AGI is higher than parent's AGI 	<ul style="list-style-type: none"> • Form 8901 now obsolete • Parent may no longer choose to let household member with lower AGI claim exemption
2	EITC §32 (2009 and 2010)	<ul style="list-style-type: none"> • Higher EITC for families with three or more children • Additional marriage penalty relief (phaseout threshold for MFJ increased to \$5,000 over unmarried filers) 	<ul style="list-style-type: none"> • Higher EITC for many families • More families qualify for EITC
3	ACTC §24 (2009 and 2010)	Additional child tax credit threshold lowered to \$3,000	More families will be eligible for the ACTC
4	MWPC §36A (2009 and 2010)	<ul style="list-style-type: none"> • 6.2% of earned income • Maximum \$400 (\$800 MFJ) • Advanced to most taxpayers via reduced payroll withholding • Phaseout \$75,000-\$95,000 MAGI (\$150,000-\$190,000 MFJ) 	<ul style="list-style-type: none"> • New Schedule M • Taxpayers with more than one job, married taxpayers with two working spouses, taxpayers who receive ERP or GRC, and dependents may be underwithheld
5	Unemployment benefits (2009 only)	First \$2,400 of unemployment benefits per taxpayer are not taxed	
6	COBRA subsidy (beginning with COBRA premiums paid after 2/16/09)	<ul style="list-style-type: none"> • COBRA premiums 65% subsidized for nine months • Applies to involuntary terminations 9/1/08-12/31/09 • Subsidy is taxable dollar-for-dollar for MAGI over \$125,000 (\$250,000 MFJ) 	Any tax due (for higher income taxpayers) will be added to and paid with the taxpayer's tax return

TS10 Tax Law Changes (continued)

Provision		Description	Notes
B. Homeowners			
1	Nonbusiness energy property credit §25C (2009 and 2010)	<ul style="list-style-type: none"> Maximum for 2009 and 2010 is \$1,500 Percentage increased to 30% of costs No caps on individual property or improvements Includes bio-fuel heat stoves 	<ul style="list-style-type: none"> No reduction for previous 2006-2007 \$500 maximum Could be confused with the REEP because both are now a 30% credit
2	Residential energy efficient property credit "REEP" §25D (2009-2016)	Caps on wind, solar, and geothermal heat pump property are removed	
3	First-time homebuyer credit §36 (effective 1/1/09)	<ul style="list-style-type: none"> Maximum increased to \$8,000 No repayment unless taxpayer moves out of home within 3 years For homes purchased 1/1/09-11/30/09 	<ul style="list-style-type: none"> Can be used by IRS to offset federal debts Accelerated 2008 payment and 2009 payment will not be obvious
4	Principal residence sale changes §121	<ul style="list-style-type: none"> Gain on sale of principal residence may not be excluded for a period of nonqualified use (even if the 2 out of 5 year ownership/use requirement met). Nonqualified use is a period starting 1/1/09 or later in which the taxpayer owns the home but has not yet occupied it as principal residence. Excludable gain is ratio of qualified use over total ownership period. Exceptions for military, unforeseen circumstances, etc. Once home occupied as principal residence, qualified use continues up to 5 years after taxpayer moves out. 	<ul style="list-style-type: none"> Determining "nonqualified use," especially if there are intermittent periods of qualified and nonqualified use (i.e. taxpayer moves in, moves out, moves in again, etc.) could be problematic Effect of law change will be minimal for the first year but will increase each year
5	Casualty losses §165 (2009 only)	The \$100 per casualty floor is temporarily raised to \$500	Applies to personal casualty losses
C. Education			
1	Hope credit §25A (2009 and 2010)	<ul style="list-style-type: none"> Maximum increased to \$2,500 40% refundable (up to \$1,000) unless claimed by a child subject to kiddie tax First four years of college Phaseout increased to \$80,000-\$90,000 (\$160,000-180,000 MFJ) Allows textbooks and other course materials as qualifying expenses 	For 2009, students in Mid-western Disaster Area may opt for enhanced credit of \$3,600 instead

TS10 Tax Law Changes (continued)

Provision	Description	Notes
C. Education (continued)		
2 Section 529 plans (2009 and 2010)	Computer technology and equipment allowed as qualifying expense	
D. Vehicles		
1 Vehicle sales tax deduction §164(a)(6)	<ul style="list-style-type: none"> • Deduction for state and local sales and excise tax for vehicles purchased after 2/16/09 through 12/31/09 • May be claimed as an itemized deduction or as an additional standard deduction • Maximum deduction is the tax on a vehicle costing \$49,500 	<ul style="list-style-type: none"> • New Schedule L for the additional standard deduction • Expect to have issues around “original use” requirement
2 Bicycle commuting §132(f)(1) (D) (effective 1/1/09 and ongoing)	Qualified transportation fringe benefit up to \$20/month (maximum \$240/year) to reimburse employees who regularly commute via bicycle	Often mistakenly described as a credit; Clients may be confused
3 Conversion kits §30B(a)(5) (2/18/09-12/31/11)	<ul style="list-style-type: none"> • Credit is 10% of cost of converting to plug-in electric drive vehicle (see #5) • Maximum \$4,000 • May be claimed for vehicle that also qualifies for hybrid vehicle credit 	Expect confusion regarding what qualifies as a conversion kit
4 Plug-in electric vehicle credit §30(a) (2/18/09-12/31/11)	<ul style="list-style-type: none"> • Low speed 4-wheel electric vehicles with maximum speed 25 mph • 2- and 3-wheeled electric vehicles • 10% of cost to maximum of \$2,500 • Must be powered by electric motor that draws electricity from a battery • For use on street or highway 	Expect confusion between this credit and the §30D credit (see below); many questions about whether various types of vehicles qualify
5 Plug-in electric drive motor vehicle credit modifications §30D (after 2009)	<ul style="list-style-type: none"> • Newly purchased vehicle with GVWR of less than 14,000 lbs which draw propulsion from a battery with at least 4 KW hours of capacity and that can be recharged from external source or electricity • For use on street or highway • Credit ranges from \$2,500-\$7,500 • Phaseout triggered at 200,000th vehicle 	<ul style="list-style-type: none"> • Credit was introduced in 2009 by EESA and expanded for 2010 by ARRA • To date, no qualifying vehicles produced
E. Retirement		
1 RMD waiver §401(a) (2009 only)	<ul style="list-style-type: none"> • RMDs not required for 2009 • Taxpayer turning 70½ in 2009 need not take RMD by 4/1/10 	Taxpayer turning 70½ in 2008 must take RMD by 4/1/09

TS10 Tax Law Changes (continued)

Provision		Description	Notes
E. Retirement (continued)			
2	Economic Recovery Payment (ERP) (2009 only)	<ul style="list-style-type: none"> One-time payment of \$250 for recipients of SS, SSI, VA, and RRB Must have received SS, SSI, VA or RRB benefit 11/08, 12/08, or 1/09 	No action required but reduces MWPC (see above)
3	Government Retirees Credit (GRC) (2009 only)	<ul style="list-style-type: none"> \$250 (\$500 MFJ if both spouses eligible) For taxpayers who receive government pension in 2009 Credit claimed on 2009 tax return 	<ul style="list-style-type: none"> May not claim if ERP received Reduces MWPC (see above)
F. AMT			
1	AMT patch §55 (2009 only)	<ul style="list-style-type: none"> AMT exemption increased to \$46,700 (\$70,950 MFJ) Nonrefundable personal credits allowed for AMT 	Patch was put in place early in the year, which removes the usual uncertainty about forms, credits, etc.
G. Business			
1	Depreciation (2009 only)	50% bonus depreciation and enhanced §179 deduction of \$250,000 extended through 2009	Some states do not allow bonus depreciation or the enhanced §179 deduction
2	Farms §168(e)(3)(b)(vii) (property placed in service in 2009)	<ul style="list-style-type: none"> Qualified farm machinery eligible for 5-year MACRS depreciation Generally, any original use machinery used in farming business other than grain bin, cotton ginning asset, land, or other land improvements 	
H. Expiring provisions			
<p>In addition to the provisions cited above that do not apply after 2009, the following provisions are slated to expire after 12/31/09. However, it is certainly possible that many of them will be extended by legislation enacted later in the year and, as always, we will keep you posted:</p> <ol style="list-style-type: none"> Casualty losses in federal disaster area not subject to 10% of AGI limitation §165 Educator's expense deduction §62(a)(2)(D) Qualified charitable distributions from IRAs §408(d)(8) Standard deduction for federal disaster losses §63(c) Standard deduction for real property taxes §63(c) State and local sales deduction in lieu of income tax deduction §164 Tuition and fees deduction §222 			