



## HOLMES, SIMMONS & OSWALD, PC

Certified Public Accountants



### Housing Assistance Tax Act of 2008

Presented herein are highlights of the Housing Assistance Tax Act of 2008 signed into law by the President on July 30, 2008.

#### First-Time Homebuyer Credit

##### **Available for a limited time only, the credit:**

- Applies to home purchases after April 8, 2008, and before July 1, 2009.
- Reduces a taxpayer's tax bill or increases his or her refund, dollar for dollar.
- Is fully refundable, meaning that the credit will be paid out to eligible taxpayers, even if they owe no tax or the credit is more than the tax that they owe.

However, the credit operates much like an interest-free loan, because it must be repaid over a 15-year period. So, for example, an eligible taxpayer who buys a home today and properly claims the maximum available credit of \$7,500 on his or her 2008 federal income tax return must begin repaying the credit by including one-fifteenth of this amount, or \$500, as an additional tax on his or her 2010 return.

Eligible taxpayers will claim the credit on new IRS Form 5405. This form, along with further instructions on claiming the first-time homebuyer credit, will be included in 2008 tax forms and instructions and be available later this year on IRS.gov, the IRS Web site.

#### Additional Standard Deduction for State and Local Property Taxes for Individuals Who Don't Itemize

Homeowners who claim the standard deduction may claim an additional standard deduction for taxes paid for real estate taxes paid to either their state or local taxing agency or both for any tax year beginning in 2008. The additional standard deduction will be the lesser of: (1) the amount allowable as a deduction for state and local taxes paid or (2) \$500 for single filers and \$1,000 for those who file joint returns.

#### Changes Made to the Exclusion of Gain From the Sale of a Principal Residence

Under prior law, an individual may exclude from income up to \$250,000 (\$500,000 if filing jointly) of gain from the sale of his/her primary residence. The exclusion cannot be used more than once every two years. As a general rule the gain was excluded only if during the five year period that ends on the date of the sale, the individual used the property as his/her primary residence for two or more years.

Under the new law, gain from the sale of a principal residence that is allocable to periods of "nonqualified use" (for example, if the home was rented out and therefore, wasn't your primary residence) is not excluded from income. The gain will be allocated between periods of qualified and nonqualified use on the basis of the respective amounts of time the property is utilized for qualified and nonqualified use.

Nonqualified use refers to any time **after January 1, 2009**. Therefore, any time after January 1, 2009 that your second home is not your principal residence will count as a period of nonqualified use and subject at least in part to a capital gains tax.



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Under the old law, a common tax strategy was to have the taxpayer sell his/her primary residence, take the home exclusion on that property and move into his/her second home. The second home would become the primary residence and if sold after two years the taxpayer would be eligible to use the home exclusion again.

This law change, in effect, closes that loophole in the old law. Taxpayers will no longer be able to convert a second home or vacation property into a primary residence **after 2008** and use the **full** home sale exclusion.

### Non-Profits

The Internal Revenue Service and the Treasury Department have issued new regulations that will streamline the approval process for organizations seeking tax-exempt status as publicly supported charities.

The new regulations do away with the so-called advance rulings that granted public charity status for an initial five-year period but required exempt organizations to demonstrate, after the initial period, that they in fact received a substantial part of their support from public sources to receive a final determination letter.

The IRS was able to eliminate the advance rulings process because of the recent redesign of the Form 990, the tax return filed by organizations exempt from federal income tax.

“The revised Form 990 enhances transparency for exempt organizations and makes it easier for them to show that they are ‘publicly supported’ charities, rather than private foundations,” said IRS Commissioner Doug Shulman.

Private foundations under federal law are subject to more restrictions on the way they operate than publicly supported charities. To apply for exempt status either as a private foundation or as a publicly supported charity, an organization must file a Form 1023, the application for recognition of tax exemption.

Over the years, approximately 95 percent of exempt organizations that received advance rulings were later recognized as publicly supported charities at the end of the five-year period.

“Given the high ‘recognition’ rate and the redesigned Form 990, it makes sense to eliminate the burdensome advance ruling process” said Lois G. Lerner, Director of the IRS Exempt Organizations division. “Not only will the streamlined process aid exempt organizations, but it will also allow the IRS to redirect staffing to other program areas without compromising compliance.”

The IRS will use the new Form 990 and other traditional techniques to continue to ensure organizations are complying with the rules for publicly supported charity status on an ongoing basis.

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The HSO newsletter is published monthly by Holmes Simmons & Oswald, 531 Plymouth Rd, Suite 521, Plymouth Meeting, PA 19462.  
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