

**TECHNICAL EXPLANATION OF H.R. 3590, THE
“SERVICE MEMBERS HOME OWNERSHIP TAX ACT OF 2009”
SCHEDULED FOR CONSIDERATION BY THE
HOUSE OF REPRESENTATIVES ON OCTOBER 7, 2009**

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of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a technical explanation of H.R. 3590, the Service Members Home Ownership Tax Act of 2009.

¹ This document may be cited as follows: Joint Committee on Taxation, *Technical Explanation of H.R. 3590, the "Service Members Home Ownership Tax Act of 2009" Scheduled for Consideration by the House of Representatives on October 7, 2009* (JCX-39-09), October 6, 2009. This document can also be found on our website at www.jct.gov.

**A. Waiver of Recapture of First-Time Homebuyer Credit for Individuals on Qualified Official Extended Duty; Extension of Credit for Individuals on Qualified Official Extended Duty Outside the United States
(secs. 1 and 2 of the bill and sec. 36 of the Code)**

Present Law

In general

An individual who is a first-time homebuyer is allowed a refundable tax credit equal to the lesser of \$8,000 (\$4,000 for a married individual filing separately) or 10 percent of the purchase price of a principal residence. The credit is allowed for qualifying home purchases on or after April 9, 2008, and before December 1, 2009.²

The credit phases out for individual taxpayers with modified adjusted gross income between \$75,000 and \$95,000 (\$150,000 and \$170,000 for joint filers) for the year of purchase.

An individual is considered a first-time homebuyer if the individual had no ownership interest in a principal residence in the United States during the 3-year period prior to the purchase of the home.

An election is provided to treat a residence purchased after December 31, 2008, and before December 1, 2009, as purchased on December 31, 2008, so that the credit may be claimed on the 2008 income tax return.

Recapture

For homes purchased on or before December 31, 2008, the credit is recaptured ratably over fifteen years with no interest charge beginning in the second taxable year after the taxable year in which the home is purchased. For example, if an individual purchases a home in 2008, recapture commences with the 2010 tax return. If the individual sells the home (or the home ceases to be used as the principal residence of the individual or the individual's spouse) prior to complete recapture of the credit, the amount of any credit not previously recaptured is due on the tax return for the year in which the home is sold (or ceases to be used as the principal residence).³ However, in the case of a sale to an unrelated person, the amount recaptured may not exceed the amount of gain from the sale of the residence. For this purpose, gain is determined by reducing the basis of the residence by the amount of the credit to the extent not previously recaptured. No amount is recaptured after the death of an individual. In the case of an involuntary conversion of the home, recapture is not accelerated if a new principal residence is acquired within a two-year period. In the case of a transfer of the residence to a spouse or to a

² For purchases before January 1, 2009, the dollar limits are \$7,500 (\$3,750 for a married individual filing separately).

³ If the individual sells the home (or the home ceases to be used as the principal residence of the individual and the individual's spouse) in the same taxable year the home is purchased, no credit is allowed.

former spouse incident to divorce, the transferee spouse (and not the transferor spouse) will be responsible for any future recapture.

For homes purchased after December 31, 2008 and before December 1, 2009 the credit is recaptured only if the taxpayer disposes of the home (or the home otherwise ceases to be the principal residence of the taxpayer) within 36 months from the date of purchase.

Explanation of Provision

Waiver of recapture for individuals on qualified extended duty

In the case of a disposition of principal residence by an individual (or a cessation of use of the residence that otherwise would cause recapture) after December 31, 2008, in connection with Government orders received by the individual (or the individual's spouse) for qualified official extended duty, no recapture applies by reason of the disposition of the residence,⁴ and any 15-year recapture with respect to a home acquired before January 1, 2009, ceases to apply in the taxable year the disposition occurs.

Qualified official extended duty means service on official extended duty as a member of the uniformed services, a member of the Foreign Service of the United States, or an employee of the intelligence community.

Qualified official extended duty is any period of extended duty while serving at a place of duty at least 50 miles away from the taxpayer's principal residence or under orders compelling residence in government furnished quarters. Extended duty is defined as any period of duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

The uniformed services include: (1) the Armed Forces (the Army, Navy, Air Force, Marine Corps, and Coast Guard); (2) the commissioned corps of the National Oceanic and Atmospheric Administration; and (3) the commissioned corps of the Public Health Service.

The term "member of the Foreign Service of the United States" has the same meaning as under the exclusion of gain on the sale of certain principal residences.⁵

The term "employee of the intelligence community" means an employee of the Office of the Director of National Intelligence, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, or the National Reconnaissance Office. The term also includes employment with: (1) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; (2) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of the Treasury,

⁴ If the individual sells the home (or the home ceases to be used as the principal residence of the individual and the individual's spouse) in connection with such orders in the same taxable year the home is purchased, the credit is allowable.

⁵ Sec. 121.

the Department of Energy, and the Coast Guard; (3) the Bureau of Intelligence and Research of the Department of State; and (4) the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.

Extension of the first-time homebuyer credit for individuals on qualified official extended duty outside of the United States

In the case of any individual (and the individual's spouse) who serves on qualified official extended duty service outside of the United States for at least 90 days in calendar year 2009 the expiration date of the first-time homebuyer credit is extended for one year, through November 30, 2010. An individual purchasing a home after December 31, 2009, and before July 1, 2010, may elect to treat the residence as purchased on December 31, 2009, in order to claim the credit on the 2009 income tax return.

Effective Date

The waiver of recapture provision applies to dispositions and cessations after December 31, 2008.

The extension of the first-time homebuyer credit applies to residences purchased after November 30, 2009 and before December 1, 2010.

**B. Exclusion from Gross Income of Qualified Military Base
Realignment and Closure Fringe
(sec. 3 of the bill and sec. 132 of the Code)**

Present Law

Homeowners Assistance Program payment

The Department of Defense Homeowners Assistance Program (“HAP”) provides payments to certain employees and members of the Armed Forces to offset the adverse effects on housing values that result from a military base realignment or closure.

In general, under HAP, eligible individuals receive either: (1) a cash payment as compensation for losses that may be or have been sustained in a private sale, in an amount not to exceed the difference between (a) 95 percent of the fair market value of their property prior to public announcement of intention to close all or part of the military base or installation and (b) the fair market value of such property at the time of the sale; or (2) as the purchase price for their property, an amount not to exceed 90 percent of the prior fair market value as determined by the Secretary of Defense, or the amount of the outstanding mortgages.

The American Recovery and Reinvestment Act of 2009⁶ expands the HAP in various ways. It amends the Demonstration Cities and Metropolitan Development Act of 1966⁷ to allow, under the HAP under such Act, the Secretary of Defense to provide assistance or reimbursement for certain losses in the sale of family dwellings by members of the Armed Forces living on or near a military installation in situations where: (1) there was a base closure or realignment; (2) the property was purchased before July 1, 2006, and sold between that date and September 30, 2012; (3) the property is the owner's primary residence; and (4) the owner has not previously received benefits under the HAP. Further, it authorizes similar HAP assistance or reimbursement with respect to: (1) wounded members and wounded civilian Department of Defense and Coast Guard employees (and their spouses); and (2) members permanently reassigned from an area at or near a military installation to a new duty station more than 50 miles away (with similar purchase and sale date, residence, and no-previous-benefit requirements as above). It allows the Secretary to provide compensation for losses from home sales by such individuals to ensure the realization of at least 90 percent (in some cases, 95 percent) of the pre-mortgage-crisis assessed value of such property.

Tax treatment

Present law generally excludes from gross income amounts received under the HAP (as in effect on November 11, 2003).⁸ Amounts received under the program also are not considered

⁶ Pub. L. No. 111-5

⁷ Pub. L. No. 89-754, 42 U.S.C. 3374

⁸ Sec. 132(n).

wages for FICA tax purposes (including Medicare). The excludable amount is limited to the reduction in the fair market value of property.

Explanation of Provision

The bill expands the exclusion to HAP payments authorized under the American Recovery and Reinvestment Act of 2009.

Effective Date

The provision is effective for payments made after February 17, 2009 (the date of enactment of the American Recovery and Reinvestment Act of 2009).

**C. Modification of Penalty for Failure to File Partnership or S Corporation Returns
(sec. 4 of the bill and secs. 6698 and 6699 of the Code)**

Present Law

Both partnerships and S corporations are generally treated as pass-through entities that do not incur an income tax at the entity level. Income earned by a partnership, whether distributed or not, is taxed to the partners. Distributions from the partnership generally are tax-free. The items of income, gain, loss, deduction or credit of a partnership generally are taken into account by a partner as allocated under the terms of the partnership agreement. If the agreement does not provide for an allocation, or the agreed allocation does not have substantial economic effect, then the items are to be allocated in accordance with the partners' interests in the partnership. To prevent double taxation of these items, a partner's basis in its interest is increased by its share of partnership income (including tax-exempt income), and is decreased by its share of any losses (including nondeductible losses). An S corporation generally is not subject to corporate-level income tax on its items of income and loss. Instead, the S corporation passes through its items of income and loss to its shareholders. The shareholders take into account separately their shares of these items on their individual income tax returns.

Under present law, both partnerships and S corporations are required to file tax returns for each taxable year.⁹ The partnership's tax return is required to include the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual. The S corporation's tax return is required to include the following: the names and addresses of all persons owning stock in the corporation at any time during the taxable year; the number of shares of stock owned by each shareholder at all times during the taxable year; the amount of money and other property distributed by the corporation during the taxable year to each shareholder and the date of such distribution; each shareholder's pro rata share of each item of the corporation for the taxable year; and such other information as the Secretary may require.

In addition to applicable criminal penalties, present law imposes assessable civil penalties for both the failure to file a partnership return and the failure to file an S corporation return.¹⁰ Each of these penalties is currently \$89 times the number of shareholders or partners for each month (or fraction of a month) that the failure continues, up to a maximum of 12 months for returns required to be filed after December 31, 2008.

Explanation of Provision

Under the provision, the base amount on which the penalties for failure to file a partnership and for failure to file an S corporation are computed is increased to \$110 per partner or shareholder.

⁹ Secs. 6031 and 6037, respectively.

¹⁰ Secs. 6698 and 6699, respectively.

Effective Date

The provision applies to returns for taxable years beginning after December 31, 2009.

D. Time for Payment of Corporate Estimated Taxes
(sec. 5 of the bill and sec. 6655 of the Code)

Present Law

In general, corporations are required to make quarterly estimated tax payments of their income tax liability.¹¹ For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15. In the case of a corporation with assets of at least \$1 billion (determined as of the end of the preceding tax year), payments due in July, August, and September, 2014, shall be increased to 100.25 percent of the payment otherwise due and the next required payment shall be reduced accordingly.¹²

Explanation of Provision

The provision increases the required payment of estimated tax otherwise due in July, August or September, 2014, by 0.5 percentage points.

Effective Date

The provision is effective on the date of the enactment of this Act.

¹¹ Sec. 6655.

¹² Pub. L. No. 111-42, Sec. 202(b)(1).