

January 13, 2008
Show Questions

First Time Homebuyer's Credit

Question

I know the credit needs to be paid back over 15 years but can individuals pay it off earlier since it is an interest free loan? If an individual pays \$500 each year, then in year 10 they would like to get rid of the debt and pay it off - are they able to pay it all early as long as each year they pay more than the minimum?

Answer

Individuals cannot repay the first-time homebuyer credit early. The law does not provide for a **voluntary** accelerated recapture of the credit. It specifically states that, if the credit is allowed, the tax is increased by 1/15 of the amount of the credit during the recapture period.

Question

If my client purchased a duplex and lives in 1/2, 1st time home buyer, can he take full credit on total purchase price?

Answer

The credit is based on the purchase price of the client's half of the duplex that is his principal residence. If the duplex costs \$100,000, for example, the maximum allowable credit is \$5,000 (10% of the cost of the 1/2 of the house that is the principal residence).

Question

If an individual currently owns a mobile home, but not the real estate it resides on and sells the mobile home only and purchases a new home with land, do they qualify for the first time homebuyers' credit?

Answer

The individual will qualify for the first time homebuyer credit if the mobile home that was sold was personal property that is not a fixture under local law. See Regulations section 1.121-1(b)(1).

Question

One of our clients received a letter from HUD that states that she does not qualify for the first time homebuyer's credit, but does not say why. No one at the Minnesota Housing Finance Agency where she got the loan from, as a first time homebuyer, knows why. Could this loan possibly be part of the restriction relating to loan financed by the proceeds of tax exempt mortgage revenue bonds, and how we would go about finding this out? How does someone know that their loan is financed by these tax exempt mortgage revenue bonds?

Answer

The Minnesota Housing Finance Agency should be able to tell the client if the mortgage was financed with tax-exempt mortgage revenue bonds. Please note that this rule only includes homes actually purchased in 2008.

Question

If my client purchased a duplex and lives in 1/2, 1st time home buyer, can he take full credit on total purchase price?

See second question above.

Question

For the First Time homebuyers, what if a taxpayer purchases a home between Jan 1 through April 7 of 2008; would the government consider expanding the purchase time to cover that time frame?

Answer

No, the statute does not give the government discretion to expand the purchase time.

Question

If a person owned a mobile home but sold it 2 years ago, does it disqualify them for the \$7500 loan?

Answer

See third question above.

Question

Is the eligibility requirement extended to principal residences owned in other countries or just owned in the US only? For example, a taxpayer had a principal residence in Canada up until a year ago (sold a year ago) and now buys a house in the US which is now his principal residence. Would that taxpayer be eligible for the home buyer credit?

Answer

The law is very clear that the new home must be in the United States, but does not refer to the location of any previous principal residence. The only restriction on previous home ownership is that the individual must not have owned a "principal residence" during the previous 3-year period. There is no requirement that this previous principal residence must have been in the United States. Section 121, dealing with excluding gain on the sale of a principal residence, does not require that the principal residence be located in the United States, and that section is the basis for the definition of "principal residence" in the law providing for the first-time homebuyer credit.

Question

Home is purchased and qualifies for credit. Taxpayer converts garage into home business. Does the purchase price have to be allocated for the home vs. business, or is the purchase now disqualified?

Answer

This answer is awaiting a response from Chief Counsel.

Question

Couple married in 2007 - wife owned a primary residence - husband did not own a home - she sells the original residence and they buy a home jointly in late 2008. Any part of \$7500 credit allowed considering husband is a "first time homeowner?"

Answer

No part of the credit is allowed to the husband. The law states that an individual is a first-time homebuyer if the individual (and if married, the individual's spouse) had no ownership interest during the previous 3-year period.

Question

I have a question regarding the first-time homeowner credit. If two people who aren't married buy a home together and one person has never owned a home and the other person has owned a home within the last 2-3 years, can the person who never owned a home, take the full amount of the credit. The person on the podcast said yes but didn't specify whether the credit should be half or if the full amount of credit can be taken.

Answer

The qualifying individual can claim 100% of the allowable credit.

Question

The rules for this credit appear to exclude a purchase of a home by a related person. If the homeowner dies and property then becomes owned by the irrevocable trust (via beneficiary deed), can a beneficiary of the trust (a daughter) be eligible for the credit if she purchases the home from the trust?

Answer

"Related persons" include a trust and a beneficiary of the trust. The daughter could not purchase the home from the trust and qualify for the credit.

Economic Stimulus Payment

Question

Taxpayer filed late for 2007 otherwise would have qualified for stimulus. If they do not qualify in 2008 will they receive the stimulus based on 2007?

Answer

If the taxpayer does not qualify for the recovery rebate credit in 2008, the taxpayer will receive neither a credit nor a stimulus payment.

Question

In 2007 my son (age 17) did not qualify for the rebate when he filed his tax return since we claimed him as a dependent. However, we did not receive the \$300 rebate either since he was not a qualified dependent. Was this situation intentionally excluded from receiving the rebate?

Answer

Yes.

Question

If you received an economic stimulus payment that was lowered due to 2007 income limitations and in 2008 you are below the income limitations will you receive the difference?

For example, you were single and had AGI over \$75k on your 2007 tax return and received only \$28 economic stimulus check during the year and on your 2008 tax return you have an AGI lower than \$75k will you receive a recovery rebate credit of \$272.

Answer

The taxpayer should fill out the Recovery Rebate Credit worksheet in the instructions for their income tax return to figure the amount of the recovery rebate credit for 2008.

EITC

Question

If a taxpayer can't claim the dependent exemption for their child, but qualifies for the EIC, can they still claim the EIC?

Answer

A taxpayer does not need to have dependents to qualify for the earned income credit. The income level at which the credit goes away is lower if the taxpayer does not have children. Also, although the definition of a child qualifying for EIC purposes and a child qualifying as a dependent are similar, the definitions are not identical.

Question

Can a single mother claim both daughters that live at home for EITC, even though her ex-husband is allowed to claim one through the divorce papers?

Answer

The mother can claim both daughters for EITC.

Question

Do the EIC income limits apply for self employed individuals if that is their only source of income?

Answer

Yes.

Question

Can the live in boy friend or live in girlfriend's minor child, be considered the qualifying relative for EITC purposes of the t/p? Up until 1996 they could. What is it now and during the previous 2 years?

Answer

A qualifying child for EIC is a child who is the taxpayer's son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, or a descendant of any of them (for example a grandchild, niece, or nephew). The child of a live-in boyfriend or girlfriend will qualify as the taxpayer's child for purposes of the EIC only if the child is the taxpayer's eligible foster child or adopted child. An eligible foster child is an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

Required Minimum Distribution

Question

Since the RMDs have been suspended for 2009, may the taxpayer still make a charitable contribution from an IRA which does not need to be included in ordinary income?

Answer

Yes

Question

Regarding the relaxing of the RMD rules for those over age 70 and 1/2 in 2009, what about those individuals that inherited an IRA and are under age 70 and 1/2. Can an RMD for individuals under 70 and 1/2 be skipped in 2009?

Answer

All RMDs from IRAs are suspended for 2009. This includes RMDs of individuals who inherited an IRA.

Question

If the taxpayer does not take the RMD in year 2009, will she be required to take out the 2009 and 2010 RMD in 2010?

Answer

No RMD will be required for the tax year 2009, except for section 457(b) defined contribution plans maintained by a tax-exempt organization. It does not matter if the RMD could have been made during 2009 or 2010.

Question

You probably can't answer this question, but I am wondering why congress allowed the taxpayer at 70 1/2 to waive the required distribution in 2009, but not in 2008. It seems the reason for allowing this was to prevent people from depleting their IRA resources due to this economic downturn, however the distribution they must take is based on the value of their account on 12/31 of the prior year. It would seem that those accounts would have been worth a lot more on 12/31/07 then they are at 12/31/08, wont' they be depleting a large amount of their retirement income when they withdraw in 2008 based on 2007 values?

Answer

This is a question for Congress, not the IRS.

Question

I believe the RMD is suspended for Keogh plans (defined contribution plans) as well as the IRA, 401k etc Is this correct?

Answer

The suspension of the RMD applies to all individual retirement plans and most defined contribution plans. See IRC section 401(a)(9)(H)(i) for exceptions.

Question

Does the waiver of penalty for RMD also apply to those required to take a distribution from a beneficiary IRA?

Answer

Yes.

Disaster Relief

Question

How can we determine if the school was in the disaster relief area?

Answer

Publication 4492-B, Information for Affected Taxpayers in the Midwestern Disaster Areas, lists all areas covered by the Midwestern disaster relief.

Question

What about online students such as University of Phoenix which has campuses all over the U.S. How would you determine if they qualify?

Answer

A student taking online courses without actually attending a school is not eligible for the special education benefits. The student must attend an eligible institution located in the Midwestern disaster area. Taking online classes at a university with campuses located all over the United States does not qualify.

Question

Are college students in Galveston included in any of these credits, from Hurricane Ike?

Answer

There are no special education benefits available for students attending schools in areas affected by Hurricane Ike.

Question

Where can you easily find a list of disaster areas that qualify for the doubling of the education credit?

Answer

Pub 4492-B

Question

Please explain the Exclusion of Income for volunteer Firefighters and EMT responders. Living in a rural area of NY State I have several clients who are volunteer Firefighters and EMT Responders.

Answer

The client must be a member of a qualified volunteer emergency response organization. This is a volunteer organization that is (1) organized and operated to provide firefighting or emergency medical services for persons in the state or political subdivision and (2) required (by written agreement) by the state or political subdivision to furnish firefighting or emergency medical services in the state or political subdivision. The members can exclude from gross income a qualified state or local tax benefit or any other qualified payment. The qualified tax benefit is a reduction or rebate of a real property, personal property, or income tax of the state or political subdivision because of the services performed as a member of the emergency response organization. A qualified payment is

any payment, whether it is a reimbursement or something else, provided because of the performance of services as a member of a qualified volunteer emergency response organization. If the benefit is a qualified payment rather than a qualified tax benefit, the taxpayer can exclude only \$30 times the number of months during which the taxpayer performed the qualified volunteer emergency services.

Question

Education credits don't automatically double do they? Don't you have to have incurred some type of loss as a result of the disaster, or is the fact that you attend school in a disaster area simply enough?

Answer

You do not have to incur any type of loss. It is simply enough to attend a school located in a Midwestern disaster area.

Question

Would a business in the Midwest have to decide taking the 50% bonus depreciation from the ESP provision vs. the 50% incentive as a business affected by a **federally** declared disaster.

Answer

If the property qualifies for the 50% bonus depreciation available to all taxpayers, it cannot qualify for the 50% bonus depreciation for a federally declared disaster.

Question

Will the 10% of adjusted gross income deduction from the loss be relieved for Hurricane Ike and Hurricane Gustav victims?

Answer

The relief from the 10%-of-AGI limitation is available for losses in any federally declared disaster.

Other

Question

A panelist said there was mortgage debt relief on owner occupied homes. Is there not a limitation based on qualified mortgage debt. Is there liability if the homeowner refinanced and took cash out that was not used to improve their home?

Answer

If the homeowner refinanced and took cash out that was not used to improve the home, the amount of refinancing above the balance owed on the original debt

and not used to improve the home is not qualified mortgage debt for purposes of the exclusion.

Question

Will the seller qualify for the 2 out of 5 year capital gain exclusion if short selling the property? If the sale is completed in 2009 do you have to then prorate the capital gain exclusion?

Answer

In determining whether the taxpayer satisfied the 2-out-of-5-years ownership and use tests, the fact that the sale is a short sale is not relevant.

Question

On the amount forgiven does the insolvency exclusion apply or can seller still claim the principal residence exclusion due to the 2/5 year rule? If the insolvency exclusion does apply does the seller have to be insolvent before and after the sale of the property?

Answer

Yes, the seller still can claim the principal residence exclusion due to the 2/5 year rule. The insolvency test is made immediately before the sale and cancellation of debt.

Question

When a business corporation closes, then 2 yrs. later the building is sold. How is this reported on the tax return for an S Corp?

Answer

The fact that the business corporation closes does not relieve it of the requirement to file a return, even in years with little or no business activity. There are no special rules for reporting the sale of this building, even though the sale may be the corporation's only activity during that year. This assumes that the corporation is still in existence at the time the building is sold.

Question

Does the exemption from tax on debt forgiven on primary residence debt apply to short sales and re-negotiations as well as foreclosures?

If the owner has had to move out of the house before the forgiveness can the house still qualify as primary residence? Do the sec 121 rules apply?

Answer

The exemption from income for the cancellation of debt applies to short sales, mortgage renegotiations where debt is forgiven, and foreclosures where debt is forgiven. The home has to be your principal residence at the time of the debt

cancellation. If the taxpayer moved shortly before the cancellation and solely because of the cancellation, the house still qualifies as the taxpayer's principal residence. Section 121 only applies if there is gain on the sale of the house. Any portion of section 121 that could apply will apply.

Question

Taxpayer has canceled debt for less than \$12,000 on single family residence he sold on an installment contract (Form 6252). Taxpayer would like to issue Form 1099C to debtor for the amount of debt canceled and claim a credit or deduction for the loss of income. Taxpayer will be filing Form 1040 which includes schedule E and Form 6252. The property was not sold to a relative.

Answer

The taxpayer should revise Form 6252 and reduce the amount of gain recognized. The taxpayer cannot claim a loss on the sale of a principal residence or other property that is not investment property or property that was used in a trade or business. Please note that Form 1099-C should not be issued unless the issuer is a financial institution or organization whose main business is the lending of money. This does not appear to be the case here.

Question

If mortgage consists of refinanced debt which includes payoff of personal debt, will that debt be required to be claimed on tax return?

Answer

If the debt is cancelled, the part of the debt used to pay off personal debt, rather than to purchase, construct, or substantially improve the principal residence, must be included in income unless excluded under Internal Revenue Code section 108.

Question

A client has a negative basis in his Sub S Corp. Can the corporate loss be carried forward to the 1040 or does he have to have a 0 or positive basis?

Answer

A corporate loss from an S corporation is allowed only to the extent of the shareholder's basis in stock and debt owed by the corporation to the shareholder.

Question

A number of my clients have home based businesses- they have a business need to use the internet- however the internet connection is also used for personal use- is the internet connection fee a deductible expense? If so is all of it deductible? part of it?

Answer

An expense for something like an Internet connection that is used partly for business and partly for personal purposes should be divided into business and personal parts. These clients may need to keep track of the time used for both personal and business purposes to determine the business percentage of the expense. Only the business part is deductible.

Question

I have a client that has two businesses; one of them is a real estate office that has only losses without income. The other one have profit. Can I deduct the losses of the real estate from the profit of the other business? How do I treat the losses of the real estate office, do I file sch. C?

Answer

The real estate office may be a passive activity. If it is, the loss can generally only be used to offset passive income. The passive activity rules are discussed in Publication 925, Passive Activity and At-Risk Rules. Schedule E should be used to report losses from rental real estate. Schedule C should be used to report other, non-farm, losses. If the losses are passive, you also would need to complete Form 8582, Passive Activity Loss Limitations, to determine the deductible loss.

Question

Should reporting the sale of buildings that were used 3 yrs. ago for business purposes be reported on Sch D or form 4797, that were sold in 2008? The buildings were depreciated for several years on tax returns.

The buildings were empty for 2 or 3yr's. listed in the real estate for sale before selling in 2008. Will the gain on the sale be taxed as a typical capital gain on Sch D only? Or reported first on 4797 showing depreciation taken when the buildings were used for business purposes, then depending on the outcome some be carried to Sch D and some to the front of the 1040 line 14 other gains and losses?

Answer

The sale first should be reported on Form 4797 to determine whether any previous depreciation needs to be recaptured. Depreciation would be recaptured as ordinary income on page 1 of Form 1040 and the rest of the gain would be carried to Schedule D.

Question

What should be done, if anything, with Form 1099-A when there is a short-sale of a primary residence?

What should be done, if anything, with Form 1099-A when there is a short-sale of a rental property?

Answer

See Publication 4681, Canceled Debts, Foreclosures, Repossessions, and Abandonments, for the rules involving the abandonment and cancellation of debt.

Question

I have heard that the Capital Gains tax laws are changing in 2009 with regards to Residential Rental Property (specifically the 2 out of 5 year rule is going away?)

Answer

This is a 2009 question. There never was an exclusion for gain from the sale of residential rental property. How you determine the amount of excludible gain on the sale of a principal residence that was residential rental property in the past will change.

Question

What is considered reasonable cause for the late s-corp election? A new client's previous accountant failed to file the form for the return due this year, would that be considered reasonable cause?

Answer

The "reasonable cause" determination is made during the processing of the Form 2553 and is evaluated based on the facts and circumstances. The determination cannot be made until Form 2553 is filed with Form 1120S as described under "Relief for Late Elections" in the instructions for Form 2553.

Question

Are there any energy related credits available for residential rental properties?

Answer

Energy related credits are claimed on Form 3468. See the Instructions for Form 3468 for details.

Question

Are "Pellett Stoves", used for heating, considered "bio-mass heat source" and is there a credit for purchasing them in 2008?

Answer

The credit for nonbusiness energy property is not available in 2008. It will be reinstated in 2009. Stoves using biomass fuel, which includes fuel from wood and wood waste and residues, including wood pellets, are eligible for the credit in 2009.

Question

What is the deadline (Dec.31, 2008 or Apr 15, 2009) for 529 contributions for 2008 tax deductions?

Answer

You cannot deduct contributions to section 529 plans.

Question

IRA is in name of husband, HSA is in wife's name, and family insurance policy is high deductible and is through wife's work. Holder of IRA says cannot do trustee to trustee transfer since HSA is in wife's name. Can you solve this?

Answer

No

Question

Have a client that travels for a military organization as a volunteer. Are her travel costs deductible if she has a statement from the organization stating that she is a delegate for the organization?

Answer

Is this a section 501(c)(3) organization? If so, her actual costs are deductible.

Question

Can't deduct services donated to a charity? I thought I read somewhere, possibly in IRC Sec 170, that professional services are deductible as long as they are included in income. A doctor or lawyer can donate the value of professional services that they provide to a charitable organization but they can't deduct their time if they're providing general or administrative services.

Answer

No deduction can be taken for the value of any services provided to a charitable organization. See Publication 526, Charitable Contributions.

Question

Do photo's of donated items need to be taken to meet the "condition" of Household items and clothing to meet the new documentation requirements?

Answer

There is no requirement to take photos, but that would be excellent support in an audit.

Question

Taxpayer delivered twins, one born at 11:58 p.m. on 12/31/08, and the second born five minutes later (1:03 am on 1/01/09). Is the taxpayer entitled to one or two additional dependents in 2008?

Answer

The taxpayer is entitled to claim one exemption for 2008 and two exemptions for 2009.

Question

Does a charitable organization have to give an individual a letter of receipt for each \$250 or more donation or is 1 letter per year sufficient.

Answer

One letter of acknowledgement per year is sufficient **if** it lists each contribution and the date of each contribution and shows the total contributions.

Question

Another comment has to do with lifetime maximum energy credits to a taxpayer. Is there any chance that will be modified? It is quite unreasonable that the incentive is taken away to a certain extent with this limitation.

Answer

Yes. In Public Law Number 111-5, the American Recovery and Reinvestment Act of 2009, the old \$500 limit was repealed. It was replaced with a \$1500 limit for tax years beginning in 2009 and 2010.

Question

For the 2 lowest tax rate filers: does the zero capital gain tax rate only apply if TOTAL taxable income puts the taxpayer in the lowest two tax rates, as opposed to only any capital gains which push the taxpayer into the next tax bracket?

Answer

Capital gains will be taxed at the 0% rate until total taxable income reaches the beginning of the 25% rate bracket. For a single taxpayer, the 15% bracket stops at \$32,550. If the taxpayer's income without capital gains was \$25,000, and the taxpayer has a \$10,000 capital gain, \$7,550 of the gain will be taxed at 0% and \$2,450 of the gain will be taxed at 15%.