

“First time” homebuyer misunderstanding

To help stabilize the housing market, Congress created an \$8,000 tax credit for homebuyers. However, to mitigate the revenue loss, the credit was limited to “first time” homebuyers, which was defined as persons who had no ownership interest in a principal residence for three years before the purchase of a home.

Francis and Maureen Foster believed that they qualified. They had purchased a house in 1974, but moved out of the home in February 2006. They lived with Maureen’s parents for more than three years, until they bought a new house on July 28, 2009.

Not good enough, said the IRS, and the Tax Court agrees. The old house was put on the market in April, 2006, and did not sell until April, 2007. The contract of sale did not close until June, 2007. That means the Fosters owned an interest in a principal residence within three years of the purchase of the new house.

What’s more, the Court said, the couple continued to identify the old house as their principal residence after July 27, 2006 (the three-year boundary). They filed income tax returns listing the old address, and Maureen renewed her driver’s license using the old address. The family stayed at the old house on occasion, paid the utility bills there, and used the internet there (the grandparents didn’t have internet access in their home).

The Court’s decision means the couple will have to pay back the credit.

This may not be an unusual situation. An IRS inspector general’s report in 2010 identified tens of thousands of improper homebuyer tax credit claims, including: #

- 1,295 prisoners, including 241 serving life sentences, who didn’t file joint returns, so their claims could not have been the result of purchases made with or by their spouses;
- 2,555 taxpayers who claimed the credit for homes purchased before the dates allowed by law;
- 10,282 taxpayers received credits for homes that were also used by other taxpayers to claim the credit;
- 67 taxpayers used the same home to claim the credit.

The IRS reported a total of \$29.7 billion in Homebuyer Credit claims were made by more than 4 million individuals as of May 7, 2011. The taxpayer error rate (incomplete or erroneous information) was 41%. The homebuyer tax credit has now expired, and doesn’t appear likely to be renewed.

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