

NEW HOME TAX CREDIT

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Q *What, in a nutshell, is the \$10,000 new home tax credit?*

A For the period from March 1, 2009 to February 28, 2010, inclusive, a taxpayer who purchases a qualified principal residence that has never been occupied may receive a tax credit of 5% of the purchase price or \$10,000, whichever is less (see Questions 64 and 65). The total new home tax credit for all taxpayers is \$100 million (see Questions 72 to 74).

Q *What is the purpose of this law?*

A The purpose of the new home credit is to help boost the sale of new-home purchases to stimulate the housing market and construction industry.

Q *When is this law in effect?*

A The law pertaining to the new home credit was enacted on February 20, 2009 and went into effect immediately. The law will be repealed on December 1, 2013 (Cal. Rev. & Tax Code § 17059(h)). The time frame, however, for a buyer to purchase a qualified principal residence to receive the new home credit is March 1, 2009 to February 28, 2010, inclusive (Cal. Rev. & Tax Code § 17059(a)(1)).

Q *How is the new home credit calculated?*

A The new home credit is 5% of the purchase price or \$10,000, whichever is less (Cal. Rev. & Tax Code § 17059(a)(1)). For new homes purchased for \$200,000 or more, the new home credit will be capped off at \$10,000.

The new home credit shall be applied in equal amounts over the three successive taxable years starting with the taxable year of purchase (2009 or 2010) (Cal. Rev. & Tax Code § 17059(a)(1)). A taxpayer's maximum credit per year is \$3,333.

The new home credit shall be allowed as a credit against the net tax as defined in section 17039 of the California Revenue and Taxation Code (Cal. Rev. & Tax Code § 17059(a)(1)). The new home credit cannot reduce regular tax below the tentative minimum tax (TMT). If the available credit exceeds the current year net tax, the unused credit cannot be carried over to the following year. The credit is non-refundable (see Question 4 for explanation of a refundable tax credit).

Q *Is there an income restriction to be eligible for the new home credit?*

A No. The new home credit is available to qualified buyers regardless of income.

Q *Is a taxpayer who receives an \$8,000 federal tax credit as a first-time homebuyer also eligible for the \$10,000 new home credit under California law?*

A Yes. A first-time homebuyer as defined can potentially qualify for both the \$8,000 tax credit under federal law (see Question 1) as well as the \$10,000 new home credit under California law.

Q *What is the “purchase date” for purposes of the new home credit?*

A According to the Franchise Tax Board (FTB), the “purchase date” is the date escrow closes. As an example, if a taxpayer enters into a contract to buy a qualified principal residence on February 25, 2010, but does not close escrow until April 10, 2010, the taxpayer will not qualify for the new home credit because, as the law is currently written, the new home credit expires on February 28, 2010.

Q *What is the new home credit if a married couple buys a qualified principal residence?*

A The new home credit for a married couple or registered domestic partners is the same as for individual taxpayers or the lesser of 5% of the purchase price or \$10,000. If two taxpayers are married or registered domestic partners, but filing separate tax returns, the new home credit must be equally apportioned between the two of them even if their ownership percentages are not equal (Cal. Rev. & Tax Code § 17059(c)(1)).

Q *What is the new home credit if two or more people who are not married to each other buy a home together?*

A The new home credit is 5% of the purchase price or \$10,000, whichever is less, even if more than one taxpayer purchases a qualified principal residence. The new home credit shall be allocated among the co-owners in the same manner as each taxpayer’s percentage of ownership. The total amount of credits for all co-owners cannot exceed \$10,000. (Cal. Rev. & Tax Code § 17059(c)(2).)

Q *How does a taxpayer demonstrate to the Franchise Tax Board that a property has not been previously occupied?*

A No credit shall be allowed unless the taxpayer's tax return includes a certification by the seller that the property has never been previously occupied (Cal. Rev. & Tax Code § 17059(b)(2)). This seller's certification must be provided by the seller to the taxpayer and the FTB within one week of the sale of the qualified principal residence (Cal. Rev. & Tax Code § 10759(b)(2)) (see Question 75). One week is seven calendar days.

Q *What is the \$100 million dollar limit to the new home credit?*

A The total amount of new home credit for all taxpayers combined is \$100 million (Cal. Rev. & Tax Code § 17059(d)). The FTB will allocate the credit to taxpayers on a first-come, first-served basis (Cal. Rev. & Tax Code § 17059(e)(1)) (see Questions 73 and 74). Once \$100 million has been allocated, the new home credit will no longer be available. To check on the remaining credit available, go to the FTB website at http://www.ftb.ca.gov/individuals/New_Home_Credit.shtml.

Q *What is the authority of the Franchise Tax Board to allocate the new home credit?*

A The law authorizes the FTB to allocate the new home credit to taxpayers on a first-come first-served basis based upon its receipt of a seller's certification that the home has never been previously occupied (Cal. Rev. & Tax Code § 17059(e)(1)) (see Question 74). The law also authorizes the FTB to determine the date a seller's certification is received (Cal. Rev. & Tax Code § 17059(e)(3)). The FTB's determination of the date and whether a return has been timely filed for purposes of this law is final in that it cannot be reviewed in any administrative or judicial proceeding (Cal. Rev. & Tax Code § 17059(e)(4)(A)).

Q *How is the Franchise Tax Board going to allocate the \$100 million in new home credit?*

A The FTB requires that the seller and buyer complete FTB Form 3582 A, Application for New Home Credit, and that the escrow company delivers the completed form to the FTB by fax at (916) 845-9754. Fax is the only delivery method that will be accepted for consideration for the new home credit because the date and time stamp on the fax will determine the order in which the new home credit is allocated.

Q *What is the procedure for completing and submitting Form FTB 3528 A, Application for New Home Credit?*

A The procedure for completing and submitting Form FTB 3528-A, Application for New Home Credit, to apply for the new home credit is as follows:

- Part I – Seller’s Certification: Within one week (7 calendar days) after close of escrow, the seller must complete this section to certify that the home has never been occupied, and provide a copy of the form to the buyer.
- Part II and III – Escrow and Qualified Buyer’s Information: The buyer must complete these two sections and submit the form to escrow.
- Fax Transmission: Within one week (7 calendar days) after close of escrow, the escrow person acting on behalf of the seller and buyer must fax the completed Form FTB 3528 A to the FTB at (916) 845 9754 and provide a copy to the buyer.

Q *What are the FTB’s instructions for faxing Form FTB 3528-A, Application of New Home Credit?*

A The FTB has provided the following instructions for faxing FTB 3528-A, Application of New Home Credit to (916) 845 9754:

- Fax only one completed application per residence with all qualified buyers listed. Do not include information on nonqualified buyers. An incomplete application may delay or prevent credit allocation.
- Do not fax the application to the FTB before escrow closes.
- Do not fax the application to the FTB more than once.
- Do not fax to any other FTB fax number.
- Escrow should send only one application per fax transmission.
- Applications will be processed in the order received.

Once \$100 million in new home credit has been allocated, the FTB will post a notice on its website as well as disconnect the (916) 845 9754 fax number.

Q *Can the Form FTB 3528-A, Application for New Home Credit, be mailed to the Franchise Tax Board?*

A No. The application should not be mailed to the FTB. Fax is the only acceptable delivery method. The FTB intends to use the date and time stamp on the fax to determine the first-come, first-served order for allocating the \$100 million in new home credit to taxpayers.

Q *Will a buyer receive a notification of credit allocation from the Franchise Tax Board?*

A Yes. The FTB will provide the buyer with confirmation certifying the allocation of tax credit. An allocation of credit, however, may not be issued under any of the following circumstances:

- The home has been previously occupied.
- The application is not received within one week after close of escrow.
- The application is received after the \$100 million total credits available have already been allocated to other people.

The FTB may request other documentation to ensure buyers have complied with the requirements of the new home credit.

Q *How does a taxpayer claim the new home credit?*

A A taxpayer shall claim the credit on timely filed original tax returns, including returns filed on extension (see Cal. Rev. & Tax Code § 17059(e)(2)). No credit shall be allowed unless the taxpayer's tax return includes a certification by the seller that the property has never been previously occupied (Cal. Rev. & Tax Code § 17059(b)(2)).

Furthermore, according to the FTB, the buyer must receive an allocation of credit from the FTB to claim the credit. The credit allocation letter will state the amount the buyer can claim listed by tax year.

FTB will issue Publication 3528 for instructions on claiming the new home credit (to be published by December 2009).

Q *What happens if a taxpayer claims the new home credit on his or her tax returns not realizing that \$100 million dollar has already been allocated?*

A If a credit is disallowed because, among other things, the \$100 million limit has been met, the FTB will treat the tax return as containing a mathematical error and assess the appropriate tax if any (Cal. Rev. & Tax Code § 17059(e)(4)(B)).

Q *What happens if a taxpayer fails to occupy the property as a principal residence for two years after purchase?*

A If a taxpayer fails to occupy the property for at least two years immediately following the purchase, the credit shall be cancelled and the taxpayer must repay any credit allowed on previous tax returns (Cal. Rev. & Tax Code § 17059(b)(3)).

Q *Where can I get more information about the new home tax credit?*

A This law pertaining to the new home tax credit is set forth at section 17059 of the California Revenue and Taxation Code. The full text of this law is available at the California Legislative Counsel website at www.leginfo.ca.gov.

The Franchise Tax Board may prescribe rules, guidelines to carry out the purposes of this law (Cal. Rev. & Tax Code § 17059(f)). It provides additional information on its website at www.ftb.ca.gov/individuals/New_Home_Credit.shtml. Instructions are also available on the “Instructions for 3528 A” attached to Form FTB 3528 A, Application for New Home Credit. The FTB will also issue a Publication 3528 for instructions on claiming the new home credit (to be published by December 2009).