

Pub. L. 111-92, §11(a)(3), amended subsec. (g) generally. Prior to amendment, text read as follows: “In the case of a purchase of a principal residence after December 31, 2008, and before December 1, 2009, a taxpayer may elect to treat such purchase as made on December 31, 2008, for purposes of this section (other than subsections (c) and (f)(4)(D)).”

Pub. L. 111-5, §1006(a)(2), (c)(2), substituted “December 1, 2009” for “July 1, 2009” and “subsections (c) and (f)(4)(D)” for “subsection (c)”.

Subsec. (h). Pub. L. 111-92, §11(a)(1), substituted “May 1, 2010” for “December 1, 2009”, designated existing provisions as par. (1), inserted heading, and added par. (2).

Pub. L. 111-5, §1006(a)(1), substituted “December 1, 2009” for “July 1, 2009”.

Subsec. (h)(3). Pub. L. 111-92, §11(f), added par. (3).

#### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-92, §11(j)(1)–(3), Nov. 6, 2009, 123 Stat. 2991, provided that:

“(1) IN GENERAL.—The amendments made by subsections (b), (c), (d), and (g) [amending this section] shall apply to residences purchased after the date of the enactment of this Act [Nov. 6, 2009].

“(2) EXTENSIONS.—The amendments made by subsections (a) [amending this section], (f) [amending this section], and (i) [amending section 1400C of this title] shall apply to residences purchased after November 30, 2009.

“(3) WAIVER OF RECAPTURE.—The amendment made by subsection (e) [amending this section] shall apply to dispositions and cessations after December 31, 2008.”

Pub. L. 111-92, §12(e), Nov. 6, 2009, 123 Stat. 2992, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 6213 of this title] shall apply to purchases after the date of the enactment of this Act [Nov. 6, 2009].

“(2) DOCUMENTATION REQUIREMENT.—The amendments made by subsection (b) [amending this section] shall apply to returns for taxable years ending after the date of the enactment of this Act [Nov. 6, 2009].

“(3) TREATMENT AS MATHEMATICAL AND CLERICAL ERRORS.—The amendments made by subsection (d) [amending section 6213 of this title] shall apply to returns for taxable years ending on or after April 9, 2008.”

Pub. L. 111-5, div. B, title I, §1006(f), Feb. 17, 2009, 123 Stat. 317, provided that: “The amendments made by this section [amending this section and section 1400C of this title] shall apply to residences purchased after December 31, 2008.”

#### EFFECTIVE DATE

Section applicable to residences purchased on or after Apr. 9, 2008, in taxable years ending on or after such date, see section 3011(c) of Pub. L. 110-289, set out as an Effective Date of 2008 Amendment note under section 26 of this title.

### § 36A. Making work pay credit

#### (a) Allowance of credit

In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the lesser of—

- (1) 6.2 percent of earned income of the taxpayer, or
- (2) \$400 (\$800 in the case of a joint return).

#### (b) Limitation based on modified adjusted gross income

##### (1) In general

The amount allowable as a credit under subsection (a) (determined without regard to this paragraph and subsection (c)) for the taxable

year shall be reduced (but not below zero) by 2 percent of so much of the taxpayer’s modified adjusted gross income as exceeds \$75,000 (\$150,000 in the case of a joint return).

#### (2) Modified adjusted gross income

For purposes of subparagraph (A),<sup>1</sup> the term “modified adjusted gross income” means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

#### (c) Reduction for certain other payments

The credit allowed under subsection (a) for any taxable year shall be reduced by the amount of any payments received by the taxpayer during such taxable year under section 2201, and any credit allowed to the taxpayer under section 2202, of the American Recovery and Reinvestment Tax Act of 2009.

#### (d) Definitions and special rules

For purposes of this section—

##### (1) Eligible individual

###### (A) In general

The term “eligible individual” means any individual other than—

- (i) any nonresident alien individual,
- (ii) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual’s taxable year begins, and
- (iii) an estate or trust.

###### (B) Identification number requirement

Such term shall not include any individual who does not include on the return of tax for the taxable year—

- (i) such individual’s social security account number, and
- (ii) in the case of a joint return, the social security account number of one of the taxpayers on such return.

For purposes of the preceding sentence, the social security account number shall not include a TIN issued by the Internal Revenue Service.

##### (2) Earned income

The term “earned income” has the meaning given such term by section 32(c)(2), except that such term shall not include net earnings from self-employment which are not taken into account in computing taxable income. For purposes of the preceding sentence, any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.

##### (e) Termination

This section shall not apply to taxable years beginning after December 31, 2010.

(Added Pub. L. 111-5, div. B, title I, §1001(a), Feb. 17, 2009, 123 Stat. 309.)

#### REFERENCES IN TEXT

Sections 2201 and 2202 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (c),

<sup>1</sup> So in original. Probably should be “paragraph (1),”.

are sections 2201 and 2202 of Pub. L. 111-5, which are set out as notes under section 6428 of this title.

EFFECTIVE DATE

Pub. L. 111-5, div. B, title I, §1001(f), Feb. 17, 2009, 123 Stat. 312, provided that: “This section [enacting this section, amending sections 6211 and 6213 of this title and section 1324 of Title 31, Money and Finance, and enacting provisions set out as notes under this section], and the amendments made by this section, shall apply to taxable years beginning after December 31, 2008.”

TREATMENT OF POSSESSIONS

Pub. L. 111-5, div. B, title I, §1001(b), Feb. 17, 2009, 123 Stat. 310, provided that:

“(1) PAYMENTS TO POSSESSIONS.—

“(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the amendments made by this section [enacting this section and amending sections 6211 and 6213 of this title and section 1324 of Title 31, Money and Finance] with respect to taxable years beginning in 2009 and 2010. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

“(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the amendments made by this section for taxable years beginning in 2009 and 2010 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

“(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No credit shall be allowed against United States income taxes for any taxable year under section 36A of the Internal Revenue Code of 1986 (as added by this section) to any person—

“(A) to whom a credit is allowed against taxes imposed by the possession by reason of the amendments made by this section for such taxable year, or

“(B) who is eligible for a payment under a plan described in paragraph (1)(B) with respect to such taxable year.

“(3) DEFINITIONS AND SPECIAL RULES.—

“(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term ‘possession of the United States’ includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

“(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term ‘mirror code tax system’ means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

“(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 36A of the Internal Revenue Code of 1986 (as added by this section).”

REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS

Pub. L. 111-5, div. B, title I, §1001(c), Feb. 17, 2009, 123 Stat. 311, provided that: “Any credit or refund allowed

or made to any individual by reason of section 36A of the Internal Revenue Code of 1986 (as added by this section) or by reason of subsection (b) of this section [set out as a note above] shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.”

§ 37. Overpayments of tax

For credit against the tax imposed by this subtitle for overpayments of tax, see section 6401.

(Aug. 16, 1954, ch. 736, 68A Stat. 16, §38; renumbered §39, Pub. L. 87-834, §2(a), Oct. 16, 1962, 76 Stat. 962; renumbered §40, Pub. L. 89-44, title VIII, §809(c), June 21, 1965, 79 Stat. 167; renumbered §42, Pub. L. 92-178, title VI, §601(a), Dec. 10, 1971, 85 Stat. 553; renumbered §43, Pub. L. 94-12, title II, §203(a), Mar. 29, 1975, 89 Stat. 29; renumbered §44, Pub. L. 94-12, title II, §204(a), Mar. 29, 1975, 89 Stat. 30; renumbered §45, Pub. L. 94-12, title II, §208(a), Mar. 29, 1975, 89 Stat. 32; renumbered §35, Pub. L. 98-369, div. A, title IV, §471(c), July 18, 1984, 98 Stat. 826; renumbered §36, Pub. L. 107-210, div. A, title II, §201(a), Aug. 6, 2002, 116 Stat. 954; renumbered §37, Pub. L. 110-289, div. C, title I, §3011(a), July 30, 2008, 122 Stat. 2888.)

PRIOR PROVISIONS

A prior section 37 was renumbered section 22 of this title.

SUBPART D—BUSINESS RELATED CREDITS

- Sec. 38. General business credit.
- 39. Carryback and carryforward of unused credits.
- 40. Alcohol, etc., used as fuel.
- 40A. Biodiesel and renewable diesel used as fuel.
- 41. Credit for increasing research activities.
- 41.<sup>1</sup> Employee stock ownership credit.
- 42. Low-income housing credit.
- 43. Enhanced oil recovery credit.
- 44. Expenditures to provide access to disabled individuals.
- [44A-H. Renumbered, Repealed.]
- 45. Electricity produced from certain renewable resources, etc.
- 45A. Indian employment credit.
- 45B. Credit for portion of employer social security taxes paid with respect to employee cash tips.
- 45C. Clinical testing expenses for certain drugs for rare diseases or conditions.
- 45D. New markets tax credit.
- 45E. Small employer pension plan startup costs.
- 45F. Employer-provided child care credit.
- 45G. Railroad track maintenance credit.
- 45H. Credit for production of low sulfur diesel fuel.
- 45I. Credit for producing oil and gas from marginal wells.
- 45K.<sup>2</sup> Credit for producing fuel from a nonconventional source.
- 45J. Credit for production from advanced nuclear power facilities.
- 45L. New energy efficient home credit.

<sup>1</sup> Section 41 repealed by Pub. L. 99-514 without corresponding amendment of subpart analysis.

<sup>2</sup> So in original. Probably should follow item 45J.