

Tax Tips for Real Estate Professionals:

#2010-3

**Unmarried Individuals Co-Owning a Home Are EACH Entitled to the \$250k Exclusion
Relief on the Horizon for Home Buyer Credit?
Owners of S Corporations Likely to Get Hit by SECA**

Unmarried Individuals Co-Owning a Home Are EACH Entitled to the \$250k Exclusion

Pursuant to an ever-increasingly convoluted statutory scheme, individuals are entitled to exclude \$250,000 of gain upon the sale of their principal residence, considering that they meet certain criteria, like having lived in the residence for 2 of the past 5 years. A married couple filing a joint return is entitled to exclude up to \$500,000 of gain under the same circumstance. What about the unmarried couple who lives together and co-own a principal residence? The IRS required them to split the exemption in proportion to their ownership interest. However, in a recent case before the United State Tax Court, it was held that unmarried individuals who co-owned and cohabited in the same principal residence are entitled each to exclude up to \$250,000 of gain upon sale, considering they meet all of the other criteria in the statute. Score one for the little guys!

Relief on the Horizon for the Home Buyer Credit?

Under the Home Buyer Credit, buyers were required to enter a binding contract by April 30, 2010 and close the deal by June 30, 2010. The Home Buyer Credit was put into place to help the ailing housing market and move properties from “sellers in distress”. But with foreclosures tying up the process, banks dragging their feet on short sales, and lenders freezing up the loan process, it seems more likely that the Home Buyer Credit would benefit buyers and sellers who are not in distress. Congress is eyeing a fix to this. On June 17, 2010 around 10:00 a.m., the Senate approved a plan to extend the closing date until September 30, 2010. The House has yet to approve the measure nor has it been sent to the President for signature, so it is not official. But it looks likely to make it through to law. We’ll all have to hang on a little longer to see the outcome.

Owners of S Corporations are Likely to Get Hit by SECA

Realtors and Brokers operating as S Corporation or LLC electing to be treated as an S Corporation: TAKE NOTE. One of the most preferred structures for a small business owner to operate within is the “S” Corporation. This entity gets its name from the laws authorizing a corporation to be treated as a “flow through” entity under subchapter S of the Internal Revenue Code. The election of this special treatment caused no tax to be imposed at the corporate level and all profit and loss to pass through to the owners’ personal returns. The result was that owners of S Corporations escaped the 15.3% self employment tax, imposed under the “Self Employed Contributions Act” or SECA. Basically, the SECA tax was imposed to replace the social security and medicare portion of wages. My own personal point of view is that an owner who elects to not pay into social security is agreeing to not receive a social security benefit and therefore not deplete the social security system. Uncle Sam is apparently considering a different point of view, one that mandates everyone to pay into the social security system. Both the House and the Senate are writing legislation to impose a form of social security tax on the profit that passes through the S Corporation to the individual owner’s income tax return. Since this is likely to kick in for the 2011 tax year, your time for planning is now.