

§ 1.44-2

26 CFR Ch. I (4-1-04 Edition)

§ 1.44-2 Property to which credit for purchase of new principal residence applies.

The provisions of section 44 and the regulations thereunder apply to a new principal residence which satisfies the following conditions:

(a) *Construction.* The construction of the residence must have begun before March 26, 1975. For this purpose construction is considered to have commenced in the following circumstances:

(1)(i) Except as provided in subparagraph (2) of this paragraph, construction is considered to commence when actual physical work of a significant amount has occurred on the building site of the residence. A significant amount of construction requires more than drilling to determine soil conditions, preparation of an architect's sketches, securing of a building permit, or grading of the land. Land preparation and improvements such as the clearing and grading (excavation or filling), construction of roads and sidewalks, and installation of sewers and utilities are not considered commencement of construction of the residence even though they might involve a significant expenditure. However, driving pilings for the foundation, digging of the footings, excavation of the building foundation, pouring of floor slabs, or construction of compacted earthen pads when specifically prepared and designed for a particular residential structure and not merely as a part of the overall land preparation, constitute a significant amount of construction of the residence. In the case of a housing or condominium development construction of recreational facilities no matter how extensive does not by itself constitute commencement of construction of any residential unit. However, where residential units are part of a building structure, as in the case of certain condominium and cooperative housing units, then digging of the footings or excavation of the building foundation constitutes commencement of construction for all units in that building.

(ii) The rules in subdivision (i) of this subparagraph are illustrated by the following examples:

Example 1. A location chosen for a housing development has extremely hilly terrain. In

order to make the location suitable for development, the builder moves large amounts of earth and places it elsewhere on the location. In addition, the earth material which has been moved must be compacted according to government specifications in order to provide a stable base. Such activities constitute land preparation and, therefore, do not constitute the commencement of construction.

Example 2. A location chosen for a housing development has swampy and marshy terrain. In order to make the location suitable for development the builder utilizes large quantities of fill. This activity constitutes land preparation and does not constitute commencement of construction.

Example 3. Assume the same facts as in either *Example 1* or *Example 2* except that the builder also constructs an earthen pad of compacted fill specifically prepared for a particular residential structure and not merely as a part of the overall land preparation. Construction of the compacted earthen pad is considered in the same light as excavation of the building foundation and accordingly constitutes commencement of construction.

(2) Construction of a factory-made home (as defined in paragraph (e) of § 1.44-5) is considered to have commenced when construction of important parts of the factory-made home has commenced. For this purpose, commencement of construction of important parts means the cutting and shaping or welding of structural components for a specific identifiable factory-made home, whether the work was done by the manufacturer of the home or by a subcontractor thereof.

(b) *Acquisition and occupancy.* The residence must be acquired and occupied by the taxpayer after March 12, 1975, and before January 1, 1977. For this purpose a taxpayer "acquires" a residence when legal title to it is conveyed to him at settlement, or he has possession of it pursuant to a binding purchase contract under which he makes periodic payments until he becomes entitled under the contract to demand conveyance of title. A taxpayer "occupies" a residence when he or his spouse physically occupies it. Thus, for example, moving of furniture or other household effects into the residence or physical occupancy by a dependent child of the taxpayer is not "occupancy" for purposes of this paragraph. The credit may be claimed when both the acquisition and occupancy

tests have been satisfied. Thus, where a taxpayer meets the acquisition and occupancy tests set forth above after March 12, 1975, and before January 1, 1976, the credit is allowable for 1975. Where a taxpayer occupied a residence prior to March 13, 1975, without having acquired it (as where his occupancy was pursuant to a leasing arrangement pending settlement under a binding contract to purchase or pursuant to a leasing arrangement where a written option to purchase was contained in the original lease agreement) he will nonetheless satisfy the acquisition and occupancy tests set forth above if he acquires the residence and continues to occupy it after March 12, 1975, and before January 1, 1977.

(c) *Binding contract.* Except in the case of self-construction, the new principal residence must be acquired by the taxpayer (within the meaning of paragraph (b) of this section) under a binding contract entered into by the taxpayer before January 1, 1976. An otherwise binding contract for the purchase of a residence which is conditioned upon the purchaser's obtaining a loan for the purchase of the residence (including conditions as to the amount or interest rate of such loan) is considered binding notwithstanding that condition.

(d) *Self-constructed residence.* A self-constructed residence (as defined in paragraph (d) of §1.44-5) must be occupied by the taxpayer before January 1, 1977. Where self-construction of a principal residence was begun before March 13, 1975, only that portion of the basis of the property allocable to construction after March 12, 1975, and before January 1, 1977, shall be taken into consideration in determining the amount of the credit allowable. For this purpose, the portion of the basis attributable to the pre-March 13 period includes the total cost of land acquired (as defined in paragraph (b) of this section) prior to March 13, 1975, on which the new principal residence is constructed and the cost of expenditures with respect to construction work performed prior to March 13, 1975. The costs incurred in stockpiling materials for later stages of construction, however, are not allocated to the pre-March 13 period. Thus, for example, if

prior to March 13, 1975, a taxpayer who qualifies for the credit has constructed a portion of a residence at a cost of \$10,000 (including the cost of the land purchased prior to March 13, 1975) and the total cost of the residence is \$40,000 and the taxpayer's basis after the application of section 1034(e) (relating to the reduction of basis of new principal residence where gain is not recognized upon the sale of the old residence) is \$36,000, the amount subject to the credit will be \$27,000:

$$(\$30,000 + \$40,000) \times \$36,000.$$

[T.D. 7391, 40 FR 55852, Dec. 2, 1975; 40 FR 58138, Dec. 15, 1975]

§ 1.44-3 Certificate by seller.

(a) *Requirement of certification by seller.* Taxpayers claiming the credit should attach Form 5405, Credit for Purchase or Construction of New Principal Residence, to their tax returns on which the credit is claimed. Except in the case of self-construction (as defined in §1.44-5(d)), taxpayers must attach a certification by the seller that construction of the residence began before March 26, 1975, and that the purchase price is the lowest price at which the residence was offered for sale after February 28, 1975. For purposes of section 44(e)(4) and this section, the term "price" generally does not include costs of acquisition other than the amount of the consideration from the purchaser to the seller. However, for rules relating to adjustments in price due to changes in financing terms and closing costs see paragraph (d)(2) of this section.

(b) *Form of certification.* The following form of the certification statement is suggested:

I certify that the construction of the residence at (specify address) was begun before March 26, 1975, and that this residence has not been offered for sale after February 28, 1975 in a listing, a written private offer, or an offer by means of advertisement at a lower purchase price than (state price), the price at which I sold the residence to (state name, present address, and social security number of purchaser) by contract dated (give date).

(Date, seller's signature and taxpayer identification number.)

However, any written certification filed by the taxpayer will be accepted