

RECAPTURE TAX

While very few first-time homebuyers are actually subject to recapture tax, homebuyers, as well as realtors and loan officers, need to be aware of the few, limited situations that could subject a mortgagor to recapture.

A homeowner will be subject to recapture if: the home is sold within nine years of securing an HMFA mortgage **AND** the homeowner exceeds the program's income limits for the year the home is sold **AND** the homeowner realizes a capital gain on the sale. All three elements must be applicable or the homeowner is not subject to recapture.

Attached are the Federal Income Limits for New Jersey dated April 1, 2009 listing the maximum household income limits that are subject to recapture tax, should the buyer sell the home within the first nine years of the mortgage:

How is the recapture tax calculated?

The tax assumes that the amount of federal subsidy realized by the borrowers obtaining one of these loans is equal to 1.25% per year. The tax rate increases in increments of 1.25% for the first five years of ownership, then, it declines by the same rate through the ninth year of ownership. The rate of tax is multiplied by the original loan amount to determine the amount of tax to be paid. The following chart shows the tax rates by year:

YEAR OF RESALE	TAX RATE	
1	1.25%	x original mortgage amount
2	2.50%	x original mortgage amount
3	3.75%	x original mortgage amount
4	5.00%	x original mortgage amount
5	6.25%	x original mortgage amount

6	5.00%	x original mortgage amount
7	3.75%	x original mortgage amount
8	2.50%	x original mortgage amount
9	1.25%	x original mortgage amount
10	No Recapture Tax Due	

As one can see, the maximum amount of the recapture increases during the first five years of ownership and decreases for the next four years. However, in many cases (estimated to be around 90%-95%), a recapture tax will not need to be paid. Several factors will determine whether the tax must be applied. The factors include: the year in which the property is sold; the circumstances surrounding the disposition of the property; the household size and household income at the time of resale and, the amount of capital gain made upon resale.

Recapture tax is not paid if:

- The borrowers live in the house for more than nine years;
- The borrowers do not get a capital gain upon resale;
- The borrowers die; or
- The borrowers' household income at the time of sale has not increased to an amount greater than the maximum income limit (at the time the loan was made) with a 5% annual growth rate.

The Agency believes that in most cases, borrowers will not have to pay a recapture tax because their income will not exceed the allowed amount at the time of resale. If the borrowers income is at or below this adjusted income at the time of resale, they pay no recapture tax. Since our typical borrower's household income is well below the maximum allowed, it would require a borrower to realize huge increases (7%-15% or greater) annually, before exceeding the limit.

How Does The Borrower Pay The Tax?

If the tax must be paid, it will be part of the borrowers tax computation when they file their tax returns for the year in which they sold the property.

For further information, visit the IRS Web site and download Form# 8828 and its accompanying instructions or call 1-800-829-1040.

What If The Borrower Refinances?

When borrowers refinance, any tax they might owe under recapture is frozen in the year of refinancing, which is a good thing. It means the tax, if any, will be less.

(More on this "freeze" later). And even if they do owe a recapture tax, it is not paid at refinancing. It is paid only when they sell their houses.

Now, back to the "freeze." Why does the recapture formula change, or "freeze," upon refinancing? The formula changes because a home mortgage goes from being a government-subsidized loan to one now financed strictly by the private market. This means HMFA and the federal government have a much lower interest in ensuring that borrowers, suddenly well-off, aren't benefiting unfairly from a program really designed to help those of modest means.

How does the freeze work? Recall the chart that shows recapture rates, if applicable, starting at 1.25 percent in year one, reaching a peak of 6.25 percent in year five, then gradually dropping again until they disappear altogether in year 10. This chart applies to HMFA mortgage borrowers who live in their houses a full decade without refinancing. Now, suppose a borrower refinances in the third year of ownership. The recapture tax rate for year three is 3.75 percent. This is the tax rate that "freezes," and it becomes the peak recapture rate for borrowers who refinance in year three. The rate falls to 2.5 percent in year four, 1.25 percent in year five and is gone completely in year six for borrowers in this circumstance. Remember, borrowers never have to pay a recapture tax under any scenario until the day they dispose of their property.

FEDERAL INCOME LIMITS NEW JERSEY
 For Use with the Recapture Provision (1.05xn) of the current Internal Revenue Code
 based on information provided by HUD Federal Income Guidelines dated April 1, 2009
 and formulae provided by the Revenue Reconciliation Act of 1990

TARGETED AREAS

COUNTY	Family Size	Less Than 1 Year	1 Year	2 Years	3 Years	4 Years	5 Years	6 Years	7 Years	8 Years
Atlantic, Burlington Camden, Cape May, Cumberland, Gloucester, Hudson & Salem.	1 -2 Persons	\$102,720.00	\$107,856.00	\$113,248.80	\$118,911.24	\$124,856.80	\$131,099.64	\$137,654.62	\$144,537.36	\$151,764.22
	3 or more	\$119,840.00	\$125,832.00	\$132,123.60	\$138,729.78	\$145,666.27	\$152,949.58	\$160,597.06	\$168,626.91	\$177,058.26
Monmouth & Ocean	1 -2 Persons	\$105,240.00	\$110,502.00	\$116,027.10	\$121,828.46	\$127,919.88	\$134,315.87	\$141,031.67	\$148,083.25	\$155,487.41
	3 or more	\$122,780.00	\$128,919.00	\$135,364.95	\$142,133.20	\$149,239.86	\$156,701.85	\$164,536.94	\$172,763.79	\$181,401.98
Mercer	1 -2 Persons	\$108,120.00	\$113,526.00	\$119,202.30	\$125,162.42	\$131,420.54	\$137,991.56	\$144,891.14	\$152,135.70	\$159,742.48
	3 or more	\$126,140.00	\$132,447.00	\$139,069.35	\$146,022.82	\$153,323.96	\$160,990.16	\$169,039.66	\$177,491.65	\$186,366.23
Essex & Union	1 -2 Persons	\$105,120.00	\$110,376.00	\$115,894.80	\$121,689.54	\$127,774.02	\$134,162.72	\$140,870.85	\$147,914.40	\$155,310.12
	3 or more	\$122,640.00	\$128,772.00	\$135,210.60	\$141,971.13	\$149,069.69	\$156,523.17	\$164,349.33	\$172,566.80	\$181,195.14
Passaic	1 -2 Persons	\$109,440.00	\$114,912.00	\$120,657.60	\$126,690.48	\$133,025.00	\$139,676.25	\$146,660.07	\$153,993.07	\$161,692.72
	3 or more	\$127,680.00	\$134,064.00	\$140,767.20	\$147,805.56	\$155,195.84	\$162,955.63	\$171,103.41	\$179,658.58	\$188,641.51
Middlesex	1 -2 Persons	\$120,120.00	\$126,126.00	\$132,432.30	\$139,053.92	\$146,006.61	\$153,306.94	\$160,972.29	\$169,020.90	\$177,471.95
	3 or more	\$140,140.00	\$147,147.00	\$154,504.35	\$162,229.57	\$170,341.05	\$178,858.10	\$187,801.00	\$197,191.05	\$207,050.61

Figures based on state median income (\$85,600) or area median income, whichever is greater.
 Number of persons in family and income is as of date of sale or transfer of house.

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NON-TARGETED AREAS

COUNTY	Family Size	Less Than 1 Year	1 Year	2 Years	3 Years	4 Years	5 Years	6 Years	7 Years	8 Years
Atlantic, Burlington Camden, Cape May, Cumberland, Gloucester, Hudson, & Salem	1 -2 Persons	\$85,600.00	\$89,880.00	\$94,374.00	\$99,092.70	\$104,047.34	\$109,249.70	\$114,712.19	\$120,447.80	\$126,470.19
	3 or more	\$98,440.00	\$103,362.00	\$108,530.10	\$113,956.61	\$119,654.44	\$125,637.16	\$131,919.01	\$138,514.97	\$145,440.71
Monmouth & Ocean	1 -2 Persons	\$87,700.00	\$92,085.00	\$96,689.25	\$101,523.71	\$106,599.90	\$111,929.89	\$117,526.39	\$123,402.71	\$129,572.84
	3 or more	\$100,855.00	\$105,897.75	\$111,192.64	\$116,752.27	\$122,589.88	\$128,719.38	\$135,155.35	\$141,913.11	\$149,008.77
Mercer	1 -2 Persons	\$90,100.00	\$94,605.00	\$99,335.25	\$104,302.01	\$109,517.11	\$114,992.97	\$120,742.62	\$126,779.75	\$133,118.74
	3 or more	\$103,615.00	\$108,795.75	\$114,235.54	\$119,947.31	\$125,944.68	\$132,241.91	\$138,854.01	\$145,796.71	\$153,086.55
Essex, Morris, Sussex & Union	1 -2 Persons	\$87,600.00	\$91,980.00	\$96,579.00	\$101,407.95	\$106,478.35	\$111,802.26	\$117,392.38	\$123,262.00	\$129,425.10
	3 or more	\$100,740.00	\$105,777.00	\$111,065.85	\$116,619.14	\$122,450.10	\$128,572.60	\$135,001.23	\$141,751.30	\$148,838.86
Warren	1 -2 Persons	\$86,100.00	\$90,405.00	\$94,925.25	\$99,671.51	\$104,655.09	\$109,887.84	\$115,382.23	\$121,151.35	\$127,208.91
	3 or more	\$99,015.00	\$103,965.75	\$109,164.04	\$114,622.24	\$120,353.35	\$126,371.02	\$132,689.57	\$139,324.05	\$146,290.25
Bergen & Passaic	1 -2 Persons	\$91,200.00	\$95,760.00	\$100,548.00	\$105,575.40	\$110,854.17	\$116,396.88	\$122,216.72	\$128,327.56	\$134,743.94
	3 or more	\$104,880.00	\$110,124.00	\$115,630.20	\$121,411.71	\$127,482.30	\$133,856.41	\$140,549.23	\$147,576.69	\$154,955.53
Hunterdon, Middlesex, & Somerset	1 -2 Persons	\$101,100.00	\$106,155.00	\$111,462.75	\$117,035.89	\$122,887.68	\$129,032.07	\$135,483.67	\$142,257.85	\$149,370.75
	3 or more	\$116,265.00	\$122,078.25	\$128,182.16	\$134,591.27	\$141,320.83	\$148,386.88	\$155,806.22	\$163,596.53	\$171,776.36

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