



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Tammy Baldwin
Member, U.S. House of Representatives
10 East Doty Street
Suite 405
Madison, WI 53705

Attention:

Dear Congresswoman Baldwin:

This letter responds to your enquiry, dated April 29, 2009, requesting information about the first-time homebuyer credit submitted on behalf of one of your constituents. Specifically, you asked whether the constituent can take the first-time homebuyer credit for the purchase of a residence from her husband's parents (her in-laws). We understand that the Internal Revenue Service (IRS) has previously informed your constituent that she can not take the credit because of her relationship to the seller.

Generally, section 36 of the Internal Revenue Code (Code) provides for a refundable credit to first-time homebuyers for the purchase of a principal residence. A first-time homebuyer is an individual who has not had an ownership interest in a principal residence at any time during the three year period before the date of the purchase of the residence. If married, both spouses must be first-time homebuyers as of the date of the purchase. For residences purchased in 2009, the amount of the credit is ten percent of the purchase price of the residence, up to a maximum credit of \$8,000.

To qualify for the credit, the taxpayer cannot acquire the residence by gift, but must purchase the residence in a bona fide sale (see section 36(c)(3)(A)(ii) of the Code). Also, the taxpayer cannot acquire the residence from a related person (see section 36(c)(3)(A)(i)). For purposes of the first-time homebuyer credit, family members treated as "related persons" include only the taxpayer's spouse, ancestors, and lineal descendants. The law does not list a person related through marriage (for example, in-laws) as a related person (see sections 36(c)(5) and 267).

You state that your constituent and her husband purchased the residence from her husband's parents. Although her husband cannot take the credit because he acquired his interest from his parents, related persons, she is not prohibited from taking the credit because in-laws are not related persons for purposes of the first-time homebuyer credit. We regret any inconvenience caused by the IRS's prior incorrect information.

I hope this information is helpful. If you have any questions on the first-time homebuyer credit, please contact _____ at _____.

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)