



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

OFFICE OF THE CHIEF COUNSEL

June 15, 2009

Number: **INFO 2009-0132**
Release Date: 9/25/2009

CONEX-125819-09
CC:ITA:B04

UIL: 36.00-00

The Honorable Mike Johanns
United States Senator
115 Railway Street, Suite C102
Scottsbluff, NE 69361

Attention:

Dear Senator Johanns:

I am responding to your letter, dated May 8, 2009, on behalf of your constituent, . A local CPA advised and her husband that they did not qualify for the refundable tax credit for a first-time homebuyer of a principal residence because they owned a mobile home that appears to have been their principal residence. Expressing concern regarding apparent inconsistencies in the definition of first-time homebuyer under different provisions of federal law, asked whether a change in the definition of first-time homebuyer could retroactively qualify her and her husband for the first-time homebuyer credit. She also said the administration of the first-time homebuyer credit lacks oversight, asserting that some taxpayers have claimed the credit prior to closing.

A first-time homebuyer can receive a refundable tax credit upon the purchase of a principal residence (section 36(a) of the Internal Revenue Code (the Code)). Contracting to purchase a principal residence does not constitute a purchase under section 36 of the Code. Rather, a taxpayer qualifies for the credit only upon completing the purchase of the principal residence (section 36(a) and (c) of the Code).

For purposes of the first-time homebuyer credit, the term principal residence has the same meaning as when used in section 121 of the Code (section 36(c)(2) of the Code). Under section 121 of the Code, a principal residence may be a house, a houseboat, a house trailer, a mobile home, a cooperative apartment, or a condominium (section 1.121-1(b)(1) of the Income Tax Regulations *and* page 3 of Publication 523, *Selling Your Home* (enclosed)).

Neither nor her husband will qualify for the first-time homebuyer credit if either used their mobile home as a principal residence within the three-year period

ending on the date of the purchase of a principal residence. also said that some taxpayers are claiming the credit prior to closing. To claim the first-time homebuyer credit, taxpayers must complete Form 5405, First-Time Homebuyer Credit (enclosed), which specifically requires taxpayers to enter the acquisition date of the home and other relevant information. We may require taxpayers who claim the first-time homebuyer credit to substantiate that they completed the purchase of their home before claiming the credit.

If we determine that a taxpayer has improperly claimed the first-time homebuyer credit, we will adjust their tax liability and charge interest. We will also impose penalties in appropriate cases.

I hope this information is helpful. If you have any questions, please contact me or at .

Sincerely,

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

Enclosures (3)