



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

OFFICE OF THE CHIEF COUNSEL

June 25, 2009

Number: **INFO 2009-0137**

Release Date: 9/25/2009

CONEX-127891-09

UIL: 36.00-00

The Honorable Fred Upton
Member, U. S. House of Representatives
157 South Kalamazoo Mall, Suite 180
Kalamazoo, MI 49007-4814

Attention:

Dear Congressman Upton:

I am responding to your inquiry, dated June 3, 2009, on behalf of your constituent, _____, a real estate broker, asked whether an otherwise qualifying taxpayer who buys a home using a Michigan land contract is eligible for the first-time homebuyer credit. He noted that the homebuyer may not receive legal title to the property until years after taking possession of the home.

A refundable tax credit is available to qualifying first-time homebuyers upon the purchase of a principal residence (section 36(a) of the Internal Revenue Code (Code)). For purposes of the first-time homebuyer credit, the term "purchase" generally includes any acquisition. Exceptions apply for certain related party acquisitions and acquisitions in which the homebuyer's basis is determined (in whole or in part) by the transferor's basis or under section 1014, relating to property acquired from a decedent (section 36(c)(3) of the Code).

For federal income tax purposes, a taxpayer acquires real property upon obtaining the "benefits and burdens" of ownership. A taxpayer may thus acquire property for federal income tax purposes even if the taxpayer does not receive legal title for several years.

The courts and the Internal Revenue Service recognize that a purchaser of land under a Michigan land contract typically becomes the owner of the land for federal tax purposes. For example, *Cardinal v. United States*, 26 F.3d 48 (6th Cir. 1994), in holding that a federal tax lien attaches to the fair market value of a purchaser's interest in a Michigan land contract, states that under Michigan law, the purchaser under a land contract takes equitable title to the land. Conversely, the transferor of the land in essence retains only a security interest in the land. See Rev. Rul. 66-342, 1966-2 C.B. 431.

Thus, if they are otherwise eligible, Michigan taxpayers using land contracts to finance the purchase of their homes can generally claim the first-time homebuyer credit when they obtain possession of the home.

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

Sincerely,

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