



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

OFFICE OF THE CHIEF COUNSEL

July 7, 2009

Number: **INFO 2009-0140**

Release Date: 9/25/2009

CONEX-129068-09

UIL: 36.00-00

The Honorable Thomas E. Petri  
U.S. House of Representatives  
Washington, DC 20515

Attention:

Dear Mr. Petri:

I am responding to your letter, dated May 19, 2009, on behalf of your constituent, \_\_\_\_\_, who is part-owner of a mortgage company. She believes taxpayers should be required to substantiate their home purchase when claiming the refundable first-time homebuyer tax credit. She also asked how taxpayers repay the credit if they erroneously claim it before acquiring a home.

Congress enacted section 36 of the Internal Revenue Code (the Code) to provide a credit for eligible first-time homebuyers for homes they purchase on or after April 9, 2008, and before December 1, 2009. For eligible first-time homeowners who purchase a home in 2008, the maximum credit is \$7,500, which they must repay in equal installments over 15 years. For eligible first-time homebuyers who purchase a home in 2009, the maximum credit is \$8,000, which they are not required to repay if they use the home as their principal residence for at least three years beginning on the date of purchase (See former and current sections 36(b), (f), and (h) of the Code).

To claim the first-time homebuyer credit, taxpayers must complete Form 5405, First-Time Homebuyer Credit (copy enclosed), which specifically requires them to enter the acquisition date of the home and other relevant information. Taxpayers submit Form 5405 with their individual tax return for the year they purchase the home.

Upon examination of their returns, we may require taxpayers who claim the first-time homebuyer credit to substantiate that they acquired a home before claiming the credit. If we determine that a taxpayer has improperly claimed the first-time homebuyer credit, we will adjust his or her tax liability and charge interest. We will also impose penalties in appropriate cases.

Taxpayers who discover that they erroneously claimed the first-time homebuyer credit may file Form 1040X, Amended U.S. Individual Income Tax Return. Taxpayers would redetermine their income tax liability without the erroneously claimed credit and pay any balance due (and interest) with Form 1040X.

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)

Enclosure