



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Henry E. Brown, Jr.
Member, U.S. House of Representatives
1800 North Oak Street, Suite C
Myrtle Beach, SC 29577

Attention:

Dear Congressman Brown:

This letter responds to your enquiry dated June 25, 2009, on behalf of your constituent, _____, who questioned the implications of a Q&A on the first-time homebuyer credit posted on the IRS website. The Q&A involved a taxpayer who acquired property through a contract for deed. The Q&A could have been read to imply that a taxpayer must obtain legal title to claim the first-time homebuyer credit.

We have revised the Q&A posted on the website to clarify that taxpayers who obtain the "benefits and burdens" of ownership of a residence in a seller financing arrangement (for example, a contract for deed) can claim the first-time homebuyer credit even though the seller retains legal title. As of July 2, 2009, "First-Time Homebuyer Credit Question and Answers: Basic Information," posted on the website, states the following:

Q. Can a taxpayer claim the first-time homebuyer credit if the purchase is pursuant to a seller financing arrangement (for example, a contract for deed, installment land sale contract, or long-term land contract), and the seller retains legal title to secure the taxpayer's payment obligations?

A. If the taxpayer obtains the "benefits and burdens" of ownership of a residence in a seller financing arrangement, then the taxpayer can claim the credit even though the seller retains legal title. Factors that indicate that a taxpayer has the benefits and burdens of ownership include: 1. the right of possession, 2. the right to obtain legal title

upon full payment of the purchase price, 3. the right to construct improvements, 4. the obligation to pay property taxes, 5. the risk of loss, 6. the responsibility to insure the property and 7. the duty to maintain the property.

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

Sincerely,

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