



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

OFFICE OF THE CHIEF COUNSEL

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

Attention:

Dear Senator Johanns:

This letter responds to your letter dated December 8, 2009, submitted on behalf of your constituent, . asked about the homebuyer tax credit for long-time residents who are military personnel and who do not satisfy the consecutive five-year home ownership requirement. He said he owns a home that he purchased in November 2005, and is in the process of buying another home.

Taxpayers can take a refundable credit for the first-time purchase of a principal residence. The home buyer generally must enter into a purchase contract before May 1, 2010, and must close the contract before July 1, 2010 (section 36 of the Internal Revenue Code). However, the Congress extended each of these purchase dates for one year for certain military personnel.

On November 6, 2009, the Congress expanded section 36 to make a reduced credit available to certain individuals who bought a new principal residence that was not their first home. These long-time residents qualify for the credit only if, on the purchase date of the new residence, the individual (and the individual's spouse, if married) has owned and used the same home as a principal residence for any consecutive five-year period during the eight-year period ending on the purchase date.

Based on the facts provided, apparently does not qualify for the expanded credit because he has not owned his current home for five consecutive years. Although the law has purchase deadline extensions for certain military personnel, no exception exists to the consecutive five-year ownership requirement for members of the armed forces. We have no authority to modify the statutory requirements.

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I am sorry my response is not more favorable. If you have any questions, please contact _____ at _____.

Sincerely,

William A. Jackson
Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)