



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

OFFICE OF THE CHIEF COUNSEL

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Dear _____ :

I am responding to your November 14, 2009 letter to President Barack Obama about the \$6,500 credit for long-time residents of the same principal residence. You ask whether the Internal Revenue Service can waive the 5-consecutive-year ownership and use requirement for military taxpayers.

Generally, section 36 of the Internal Revenue Code provides a refundable tax credit to certain first-time homebuyers and long-time residents for the purchase of a principal residence. Long-time residents qualify for a credit of up to \$6,500 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 5-consecutive-year period during the 8-year period ending on the purchase date of the new home (section 36(c)(6) of the Internal Revenue Code (Code)).

Congress did not provide any exceptions to the 5-consecutive-year ownership requirement, including for members of the military. In addition, the statute does not grant the Internal Revenue Service the authority to waive this requirement. Any changes to this rule would require legislative action by Congress.

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)