



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable George LeMieux
United States Senator
201 S. Orange Avenue, Suite 350
Orlando, FL 32801

Attention:

Dear Senator LeMieux:

I am responding to your inquiry, dated April 23, 2010, submitted on behalf of your constituent, . During 2009, he withdrew funds from retirement accounts and reported total adjusted gross income of on his 2009 joint federal income tax return. He and his wife purchased a home on August 31, 2009. He asks why they cannot take the first-time homebuyer credit on their 2009 joint federal income tax return.

Generally, first-time homebuyers are eligible to claim a refundable credit, up to \$8,000 for the purchase of a principal residence (section 36 of the Internal Revenue Code (Code)). A first-time homebuyer is an individual (and that individual's spouse, if married) who has not had an ownership interest in a principal residence during the three years before the date of purchase of the residence.

For residences purchased after April 8, 2008, and before November 7, 2009, the credit is reduced for a taxpayer with modified adjusted gross income over \$75,000 (or \$150,000 if married filing a joint return). The credit is completely eliminated for a taxpayer with adjusted gross income of \$95,000 or more (or \$170,000 or more for married taxpayers filing a joint return). If a taxpayer purchases a residence after 2008, the taxpayer may elect to take the credit on the income tax return for the year prior to the year he or she purchases the residence. The income limits apply to the taxpayer's modified adjusted gross income for the year the taxpayer elects to take the credit.

Because modified adjusted gross income for 2009 exceeds the limits, they cannot take the credit on their 2009 joint federal income tax return. Whether they can elect to take the credit on an amended 2008 joint federal income tax return will depend on whether their modified adjusted gross income for 2008 exceeds the limits.

The law does not grant the Internal Revenue Service administrative authority to expand the scope of the credit.

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

Sincerely,

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