



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Suzanne M. Kosmas  
Member U.S. House of Representatives  
1000 City Center Circle, 2<sup>nd</sup> Floor  
Port Orange, FL 32129

Attention:

Dear Congresswoman Kosmas:

I am responding to your letter dated May 6, 2010, submitted on behalf of your constituent, . She asked if she and her husband are eligible for the long-time residents homebuyer tax credit for the home they purchased on September 29, 2009. became a U.S. permanent resident alien in January 2009. She did not previously own a home. Her husband owned his prior home since 2001. I hope that the following information is helpful.

**Credit for first-time homebuyers.** A married individual who has never owned a home does not qualify for the first-time homebuyer credit if the individual's spouse had an ownership interest in a principal residence during the three-year period ending on the date of purchase of the principal residence (section 36(c)(1) of the Internal Revenue Code (Code)). Because husband owned his prior home during the last three years, she does not qualify for the first-time homebuyer credit.

**Credit for long-time residents of the same residence.** A married individual may be eligible for an income tax credit for the purchase of a home if the individual and his spouse owned and used the same home as their principal for any 5-consecutive-year period during the 8-year period ending on the date of purchase of the replacement residence. (section 36(c)(6) of the Code). This credit equals 10 percent of the purchase price of the home, up to a maximum credit of \$6,500 (section 36(a) and (b)(1)(D) of the Code). In addition, this credit applies only if the taxpayer purchases the residence on or after November 7, 2009 (section 11(j)(1) of the Worker, Homeownership, and Business Assistance Act of 2009). Because and her husband purchased their home before the November 7, 2009, effective date, they cannot take this credit.

Further, even if they purchased their home on or after November 7, 2009, they would not qualify for this credit unless \_\_\_\_\_ owned and used her husband's home as her principal residence for any consecutive 5-year period beginning on September 30, 2001.

The law does not grant the IRS authority to make exceptions to these rules. I have enclosed pages 260-261 of Publication 17, *Your Federal Income Tax*, which provides a more detailed explanation of the first-time homebuyer credit. 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