



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable John Kyl
United States Senator
6840 North Oracle Road
Suite 150
Tuscon, AZ 86704

Attn:

Dear Senator Kyl:

This letter responds to your enquiry, dated June 9, 2010, submitted on behalf of your constituents, _____ and _____ . _____ ask whether they can take a homebuyer credit for the home they purchased on November 23, 2009. In their correspondence, _____ indicate that _____ never owned a home prior to the purchase but _____ owned and used another principal residence for at least five consecutive years out of the eight years prior to the purchase.

Section 36 of the Internal Revenue Code (Code) provides two types of credits for homebuyers. A married taxpayer qualifies for a homebuyer credit only if that taxpayer and the taxpayer's spouse both meet the statutory requirements for the type of credit claimed.

First-Time Homebuyer Credit

Section 36 creates a credit for certain taxpayers purchasing their first principal residence. The credit equals ten percent of the purchase price of the residence, up to a maximum credit of \$8,000. A taxpayer can take the first-time homebuyer credit if the taxpayer (and the taxpayer's spouse, if married) has not owned an interest in another principal residence for the three years ending on the purchase date of the residence. (See section 36(a), (b), and (c) of the Code.) _____ do not qualify for this credit because _____ had a prior ownership interest in another principal residence during the three years prior to the purchase of the new home on November 23, 2009.

Long-Time Residents Homebuyer Credit

Section 36 also creates a credit for certain long-time homeowners purchasing a replacement residence. The credit equals ten percent of the purchase price of the residence, up to a maximum credit of \$6,500. A taxpayer can take the long-time residents homebuyer credit if the taxpayer (and the taxpayer's spouse, if married) has owned and used the same home as a principal residence for any five-consecutive-year period during the eight-year period ending on the purchase date of the new residence. (See section 36(b) and (c) of the Code, as amended.) do not qualify for the credit because did not own or use another home as her principal residence for the statutory five-consecutive-year period prior to purchasing the new home on November 23, 2009.

Unfortunately, do not meet the requirements to qualify for the homebuyer credit under section 36 of the Code. The law does not grant the Internal Revenue Service administrative authority to expand the statutory scope of the credit.

I hope this information is helpful. More on the first-time homebuyer credit is available at: <http://www.irs.gov/newsroom/article/0,,id=204671,00.html>.

If you have any further questions, please contact at

Sincerely,

George J. Blaine
Associate Chief Counsel
(Income Tax and Accounting)