



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable John Hoeven
United States Senator
312 Federal Building
Bismarck, North Dakota 58501

Attention:

Dear Senator Hoeven:

I am responding to your inquiry dated January 18, 2011, on behalf of your constituent who owns a home improvement business in . Your constituent asked about the tax credit for exterior windows (section 25C of the Internal Revenue Code (the Code)). He asked for assistance in changing the law to allow a credit to a taxpayer who purchased eligible windows by the end of 2010 instead of requiring the taxpayer to install windows by the end of 2010.

The law provides a tax credit for amounts paid for qualifying building envelope components including exterior windows. The credit is available for improvements to a taxpayer's principal residence or additions or renovations to the principal residence. For taxable years 2009 and 2010, the credit was 30 percent of the costs that a taxpayer paid or incurred for qualifying property with a credit limit of \$1,500 for the combined years.

Legislation enacted in February 2009 limited this credit to property placed in service before January 1, 2011 (section 25C(g) of the Code). The phrase "placed in service" is an often used phrase in tax law. The phrase is defined as when the property is in a condition or state of readiness and availability for a specifically assigned function. Windows are not ready and available for use until installed in the taxpayer's principal residence. Thus, if a taxpayer did not install qualifying windows before the end of 2010, the taxpayer could not qualify for a credit. Recent legislation, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, enacted on December 17, 2010, amended this credit to extend its availability for property placed in service before January 1, 2012.

Although the recent legislation extended this credit for windows that a taxpayer installs in 2011, it also amended the amount of the credit, the limitation on the credit, and certain efficiency requirements including the criteria for windows. These amendments

apply to property installed after December 31, 2010. Therefore, taxpayers who install windows in 2011 may be eligible for a credit; however, as explained below, generally the amount of credit will be less than the amount that would have been allowed if the taxpayer installed the windows in 2010.

Generally, the amended law allows a taxpayer a credit for 10 percent of the costs for qualifying windows installed during 2011. Additionally, a taxpayer installing windows in 2011 is subject to a lifetime limitation on the credit of \$500 of which they can attribute no more than \$200 to windows. Therefore, taxpayers who claimed \$500 of section 25C credits in 2006, 2007, 2009, and 2010 are no longer eligible for any additional credits. Similarly, if a taxpayer has claimed \$200 in credits for windows, a taxpayer cannot claim additional credits for windows. Furthermore, windows installed in 2011 must meet the Energy Star program requirements; windows that qualified under the requirements in the prior law may not meet the Energy Star program requirements.

Your constituent asked that the law allow taxpayers to claim the credit for qualifying windows purchased by December 31, 2010, even if the taxpayer had not installed the windows due to weather conditions. Because the Congress extended the credit, taxpayers who install windows in 2011 are eligible for a credit. These taxpayers, however, will only qualify for a credit using the amended amounts, limits, and efficiency standards under the amended law for property installed after December 31, 2010. The Congress would have to amend the law to allow taxpayers to claim a credit in 2011 based on the rules that applied to windows installed in 2010.

I know this information may be disappointing for your constituent, but I hope this information is helpful. If your constituent or you have further questions on this matter, please contact _____ at _____ or me at _____.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs & Special Industries)