



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Marco Rubio
United States Senator
201 South Orange Avenue
Suite 350
Orlando, FL 32801

Attention:

Dear Senator Rubio:

I am responding to your inquiry, dated March 25, 2011, submitted on behalf of your constituents, _____ and _____ . _____ asked why he cannot take the first-time homebuyer credit for a home he purchased after he married _____ . _____ has never owned a home and _____ owned and used a home as her principal residence within the three years prior to _____ home purchase.

First-time homebuyers may be eligible for a refundable income tax credit for the purchase of a principal residence (section 36(a) of the Internal Revenue Code (Code)). The credit equals ten percent of the purchase price of the residence, up to a maximum credit of \$8,000. For a married taxpayer to qualify for the first-time homebuyer credit, both the taxpayer and the taxpayer's spouse must not have owned an interest in a principal residence for the three years ending on the purchase date of the residence (section 36(a), (b), and (c) of the Code).

_____ cannot claim the first-time homebuyer credit because his spouse had a prior ownership interest in a principal residence during the three years before his home purchase. The law does not grant the Internal Revenue Service administrative authority to create exceptions to these statutory rules.

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

Sincerely,

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