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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Charles E. Grassley
United States Senator
150 1st Avenue NE
Suite 325
Cedar Rapids, IA 52401

Dear Senator Grassley:

This letter responds to your enquiry, dated November 12, 2009, submitted on behalf of your constituents, They asked whether they can take a homebuyer credit for another home they anticipate purchasing together. They stated that has never owned a home and may qualify for the first-time homebuyer credit. They also stated that has owned and used a principal residence for at least five consecutive years out of the last eight years and may qualify for the long-time resident homebuyer credit.

On July 30, 2008, Congress provided a first-time homebuyer credit to certain taxpayers who purchase a 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 a principal residence for the three years ending on the purchase date of the residence (see section 36(a), (b), and (c) of the Internal Revenue Code (Code)). Therefore, for a married taxpayer to qualify for the first-time homebuyer credit, both the taxpayer and the taxpayer's spouse must not have had a prior ownership interest for the required time.

On November 6, 2009, Congress changed some of the rules and expanded the credit to include a reduced credit for long-time residents of the same principal residence. This reduced credit equals ten percent of the purchase price of the residence, up to a maximum credit of $6,500. A taxpayer can take the reduced 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). Therefore, for a married taxpayer to qualify for the long-time resident homebuyer credit, both the taxpayer and the taxpayer's spouse must have owned and used the same principal residence for the required time.

Unfortunately, section 36 of the Code does not allow to take either the first-time homebuyer credit or the long-time resident homebuyer credit. does not qualify for the first-time homebuyer credit because her husband had a prior ownership interest in a principal home during the three years before the anticipated date of purchase of another residence. does not qualify for the long-time resident homebuyer credit because his wife has not owned and used the same home that he owned as used as his principal residence for a five-consecutive-year period during the eight-year period ending on the anticipated date of purchase of another residence. The law does not grant the Internal Revenue Service administrative authority to expand the scope of the credit.

I hope this information is helpful. This information, and other information on the first-time homebuyer credit, is available at www.irs.gov/newsroom/article/0,,id=206293,00.html. 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)