July 19, 2010

Number: **2010-0176**
Release Date: 9/24/2010

CONEX-123130-10

UIL: 36.00-00

Dear   :

This letter responds to your inquiry dated May 19, 2010, to Senator John F. Kerry. You asked whether you and your wife may claim the first-time homebuyer credit for the residence you purchased in July 2009. Before the purchase, your wife had not owned a home. However, you previously owned a principal residence, which was sold in 2008.

Generally, section 36 of the Internal Revenue Code (the Code) provides a refundable credit to first-time homebuyers for the purchase of a principal residence. A first-time homebuyer is defined as any individual who has not had an ownership interest in a principal residence at any time during the three-year period before the date of the purchase of the home. If married, both spouses must be first-time homebuyers as of the date of the purchase (section 36(c)(1) of the Code). If either spouse owned a principal residence during the three years prior to purchase, then neither spouse qualifies for the first-time homebuyer credit.

Section 36(c)(6) of the Code provides a credit for certain long-time homeowners who bought a new principal residence after November 6, 2009, and who owned and used their former principal residence for five of the eight years preceding purchase of the new home. If married, both spouses must have owned and used the same former principal residence.

Your letter indicates that the Service is reviewing or has reviewed your claim for the first-time homebuyer credit. Please note that we are not addressing that administrative action in this letter. This letter provides only a general explanation of the requirements of section 36 of the Code.

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

          Sincerely,

          George J. Blaine
          Associate Chief Counsel
          Income Tax & Accounting

cc:
  Office of Senator John F. Kerry