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

OFFICE OF CHIEF COUNSEL

March 12, 2009

Number: **INFO 2009-0032**
Release Date: 3/27/2009

CC:ITA:B04
CONEX-107041-09

UIL: 36.00-00

The Honorable James H. Webb
United States Senator
507 East Franklin Street
Richmond, VA 232219

Dear Senator Webb:

This letter responds to your inquiry dated February 10, 2009, on behalf of your constituent, . She asked if the Internal Revenue Service (IRS) may allow a taxpayer to take the first-time homebuyer credit for the 2008 purchase of a home that was financed with tax-exempt mortgage revenue bonds.

To provide a first-time homebuyer credit, Congress added section 36 to the Internal Revenue Code in section 3011 of the Economic and Housing Recovery Act of 2008 (Pub. L. No. 110-289 (122 Stat. 2654, 2888)). Congress amended section 36 in section 1006 of the American Reinvestment and Recovery Tax Act of 2009 (Pub. L. No. 111-5 (123 Stat. 115, 316)). Due to the amendment, the rules for the first-time homebuyer credit are different depending on whether a taxpayer purchases a home in 2008 or in 2009.

Rules for Home Purchases on or After April 9, 2008, and Before January 1, 2009

The following rules apply to taxpayers who purchased their homes on or after April 9, 2008, and before January 1, 2009. A first-time homebuyer may take a credit on his or her federal income tax return equal to 10 percent of the purchase price of the residence, up to a maximum of $7,500 ($3,750 for a married taxpayer who files a separate return). Taxpayers who financed the purchase of a home with tax-exempt mortgage revenue bonds cannot take the credit, and taxpayers who take the credit must repay the credit in equal installments over fifteen years (*See* former sections 36(b), 36(d)(2) and 36(f) of the Code).

Rules for Home Purchases on or After January 1, 2009, and Before December 1, 2009

The following rules apply to taxpayers who purchase their homes on or after January 1, 2009, and before December 1, 2009. The law increases the maximum credit to $8,000 ($4,000 for a married taxpayer who files a separate return). Taxpayers who receive financing from tax-exempt mortgage revenue bonds are eligible to claim the credit. Taxpayers who claim the credit and use the residence as their principal residence for at least three years beginning on the date of purchase are not required to repay the credit. In addition, taxpayers who purchase their homes during 2009 (but before December 1, 2009) may claim the credit on their 2008 or 2009 federal income tax returns (*See* sections 36(b), 36(f), 36(d), and 36(g) of the Code, as amended).

Because bought her residence on May 23, 2008, and she financed her purchase with tax-exempt mortgage revenue bonds, she does not qualify for the first-time homebuyer credit. The statute does not grant the IRS the authority to expand the scope of the credit administratively.

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 & Accounting)