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

**OFFICE OF
CHIEF COUNSEL**

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The Honorable Patrick J. Tiberi
Member, U.S. House of Representatives
300 Corporate Exchange Drive
Suite 310
Columbus, OH 43251

Attention:

Dear Congressman Tiberi:

This letter responds to your inquiry dated March 17, 2009, on behalf of your constituent, . He asked if he and his wife are eligible for the first-time homebuyer credit for the home they plan to purchase this year. Specifically, he asked if they are first-time homebuyers even though his wife purchased a condominium two years ago.

A credit is available for first-time homebuyers of 10 percent of the purchase price of the home, up to a maximum credit of $8,000 (section 36(a) of the Internal Revenue Code (Code)). A first-time homebuyer is any individual if that individual (and the individual's spouse, if married) has not had any ownership interest in a principal residence (as defined in section 121 of the Code) within three years of the purchase date of the home (section 36(c)(1) of the Code).

Neither nor his wife will qualify for the first-time homebuyer credit if his wife used the condominium as her principal residence at any time during the three years prior to the purchase date of their new home. Whether she used the condominium as her residence or as her principal residence depends on all the facts and circumstances. Sometimes a taxpayer uses more than one property as a residence. If this is so, factors in determining which is the principal residence include the amount of time the taxpayer used a property as a residence during the year, and the address listed on the taxpayer's federal and state tax returns, driver's license, automobile registration, voter registration card, bills, and other correspondence (*see* section 1.121-1(b)(1) and (2) of the Income Tax Regulations).

The Internal Revenue Service does not issue private letter rulings on whether property is a taxpayer's principal residence (section 3.01(18) of Revenue Procedure 2009-3, 2009-1 Internal Revenue Bulletin 107).

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)