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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Timothy J. Walz
Member, U.S. House of Representatives
1134 7th Street NW
Rochester, MN 55901

Attention:

Dear Congressman Walz:

This letter responds to your inquiry dated June 3, 2010, as to whether the first-time homebuyer credit and long-term homeowner credit apply differently to married couples and to co-purchasers of a home who are not married.

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-term homeowners who bought a new principal residence, 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 residence.

You ask about the situation where Taxpayer A has not had an ownership interest in a home in the last three years and individually would qualify for the first-time homebuyer credit for the purchase of a home. Taxpayer B has owned and used a home for at least five of the last eight years and individually would qualify for the long-term homeowner credit for the purchase of a new home. Taxpayers A and B are married and purchase a new home together. As outlined above, because Taxpayers A and B are married when they buy the new home, the restrictions of section 36(c)(1) of the Code preclude

Taxpayer A from claiming the first-time homebuyer credit. Section 36(c)(6) of the Code precludes Taxpayer B from claiming the long-term homeowner credit.

These restrictions would not apply if Taxpayers A and B were not married when they purchased the new home together. As co-purchasers, they could allocate the credit between them using a reasonable method, with the allocation to each taxpayer limited to the amount of credit for which they qualify (maximum of $8,000 for a first-time homebuyer and a maximum of $6,500 for a long-term homeowner).

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

Sincerely,

William A. Jackson
Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)