

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-140568-05
Date:
December 8, 2005

DO: TY:

Legend

Taxpayer :

Residence :

City :

Date 1 :

Date 2 :

Date 3 :

Date 4 :

Dear :

This is in response to a letter received on August 2, 2005, requesting a ruling that Taxpayer is entitled to exclude gain from the sale of the Residence under section 121(c) of the Internal Revenue Code.

FACTS

According to Taxpayer's statement signed under penalties of perjury, Taxpayer is employed as a narcotic investigator for the Street Crimes Unit of City Police

Department. Taxpayer and his wife purchased a house that they used as their principal residence starting on Date 1.

On Date 2, Taxpayer conducted a highly-publicized arrest of an alleged drug dealer. After the arrest, the City Police Department learned that associates of the arrested individual had discovered Taxpayer's home address and planned to kill Taxpayer in his home. In response to this threat, the police provided 24-hour security for Taxpayer and his family and the City Police Department transferred Taxpayer out of the Street Crimes Unit. Because Taxpayer feared for the safety of his family, Taxpayer's family moved out of the house on Date 3 and Taxpayer sold the Residence on Date 4.

On the sale date of the Residence, Taxpayer had not owned and used the property as Taxpayer's principal residence for two years during the five-year period preceding the sale. However, Taxpayer requests that he be entitled to exclude gain from the sale of the residence under the reduced maximum exclusion provisions of section 121(c) of the Code.

LAW & ANALYSIS

Section 121(a) of the Code provides that a taxpayer's gross income will not include gain from the sale or exchange of property if, during the five-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating two years or more. The full exclusion is available only once every two years.

For a husband and wife who are sole sellers of a residence, section 121(b) of the Code provides that the maximum exclusion amount is \$500,000 if (1) the husband and wife file a joint return for the year of the sale, (2) both spouses meet the 2-year use test, (3) at least one of the spouses meets the 2-year ownership test, and (4) neither spouse used the section 121 exclusion during the last two years.

Under section 1.121-3(a) of the Income Tax Regulations, taxpayers who fail to satisfy the ownership and use tests or the limit of one sale every two years may be eligible for a reduced maximum exclusion if the primary reason for sale or exchange is a change in place of employment, health, or unforeseen circumstances.

A sale is by reason of unforeseen circumstances if the primary reason for the sale or exchange is the occurrence of an event that the taxpayer does not anticipate before purchasing and occupying the residence. A taxpayer's primary reason for the sale or exchange is deemed to be unforeseen circumstances if one of the safe harbor events, such as death, divorce, or multiple births from the same pregnancy, occurs during the period of the taxpayer's ownership and use of the residence as the taxpayer's principal residence. In addition, the Commissioner may designate other events or situations as unforeseen circumstances in published guidance of general applicability or in a ruling directed to a specific taxpayer. See section 1.121-3T(e) of the Income Tax Regulations.

Section 1.121-3(g) of the Income Tax Regulations provides that the reduced maximum exclusion is computed by multiplying the maximum dollar limitation of \$250,000 (\$500,000 for certain joint filers) by a fraction. The numerator of the fraction is the shortest of the following periods: (1) the period of time that the taxpayer owned the property during the 5-year period ending on the date of the sale or exchange, (2) the period of time that the taxpayer used the property as the taxpayer's principal residence during the 5-year period ending on the date of the sale or exchange, or (3) the period of time between the date of a prior sale or exchange of property for which the taxpayer excluded gain under § 121 and the date of the current sale or exchange. The numerator of the fraction may be expressed in days or months. The denominator of the fraction is 730 days or 24 months (depending on the measure of time used in the numerator).

Based on the facts as represented and the authority set forth above, we conclude that Taxpayer's primary reason for the sale was the occurrence of an event that Taxpayer did not anticipate before purchasing and occupying the residence. Thus, Taxpayer's sale of the Residence was by reason of an unforeseen circumstance. Consequently, even though Taxpayer sold the Residence before Taxpayer had owned and used it as Taxpayer's principal residence for two of the preceding five years, Taxpayer is entitled to exclude gain up to the reduced maximum exclusion amount under section 121(c) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William A. Jackson
Branch Chief, Branch 5
(Income Tax & Accounting)

cc: