



## Tax Reduction Letter

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### Private Letter Ruling 200745011

Gain on Residence

Release Date: 11/9/2007

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Refer Reply To: CC:ITA:B04 - PLR-114443-07

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LEGEND:

Taxpayers = \* \* \*

Residence 1 = \* \* \*

Residence 2 = \* \* \*

Date 1 = \* \* \*

Date 2 = \* \* \*

Date 3 = \* \* \*

Dear \* \* \*:

This letter responds to your request for a ruling under *section 121(c) of the Internal Revenue Code*. Specifically, you have requested that the gain on the sale of Residence 1 may be excluded under the reduced maximum exclusion in *section 121(c)*.

Taxpayers were married and had one child when they purchased Residence 1 on Date 1. Residence 1 had three small bedrooms and one and one-half baths. Husband and Wife used one of the small bedrooms as an office. After the purchase of Residence 1, Wife became pregnant and gave birth to another child. Taxpayers' first child was age 10 at the time. Taxpayers tried, but failed, to make reasonable accommodations for the additional child in Residence 1. On Date 2, Taxpayers purchased Residence 2, which has 3 bedrooms, 2 full baths, and additional space used as their office.

#### LAW AND ANALYSIS

*Section 121(a)* provides that gain from the sale or exchange [\*2] of property is not included in gross income if, during the 5-year period ending on the date of the sale or exchange, the taxpayer has owned and used the property as the taxpayer's principal residence for periods aggregating two years or more.

*Section 121(b)(1)* provides the general rule for the maximum exclusion of gain. *Section 121(b)(3)* provides that subsection (a) shall not apply to any sale if, during the 2-year period ending on the date of the sale, there was any other sale or exchange by the taxpayer to which subsection (a) applied.

*Section 121(c)* provides for a reduced maximum exclusion when a taxpayer fails to satisfy the ownership and use requirements of subsection (a) if the primary reason for the sale is the occurrence of unforeseen circumstances.

The reduced maximum exclusion is computed by multiplying the applicable maximum exclusion 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; (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 [\*3] of the sale; or (3) the period of time between the date of a prior sale or exchange of property for which the taxpayer excluded gain under *section 121* and the date of the current sale. 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).

*Section 1.121-3(b) of the Income Tax Regulations* provides that all the facts and circumstances of a sale will determine whether the primary reason for the sale is the occurrence of unforeseen circumstances. Factors that may be relevant in determining the primary reason for a sale include the following: (1) the suitability of the property as the taxpayer's residence materially changes; (2) the circumstances giving rise to the sale are not reasonably foreseeable when the taxpayer begins using the property as the taxpayer's principal residence; and (3) the circumstances giving rise to the sale occur during the period of the taxpayer's ownership and use of the property as the taxpayer's principal residence.

*Section 1.121-3(e)(1)* provides that a sale is by reason of unforeseen circumstances if the primary reason for the sale is the [\*4] occurrence of an event that the taxpayer could not reasonably have anticipated before purchasing and occupying the residence.

*Section 1.121-3(e)(3)* states that the Commissioner may issue rulings addressed to specific taxpayers identifying events or situations as unforeseen circumstances with regard to those taxpayers.

In the present case, based on the facts, representations, and the relevant law, we conclude that the occurrence of unforeseen circumstances was the primary reason for the sale and that the suitability of Residence 1 as the Taxpayers' principal residence materially changed. Accordingly, the gain on the sale of Residence 1, which Taxpayers owned and used as a principal residence for less than two of the preceding five years, may be excluded under the reduced maximum exclusion of gain in *section 121(c)*.

#### CAVEATS

Except as expressly provided, we express no opinion 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 taxpayers 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 ruling must be attached to any income [\*5] tax return to which it is relevant. Alternatively, if taxpayers file a return electronically, taxpayers may attach a statement to the return that provides the date and control number of the letter ruling.

The ruling contained in this letter is based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by the taxpayers. While

this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Sincerely,

Donna Welsh  
Senior Technician Reviewer,  
Branch 4  
(Income Tax & Accounting)

