

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:B04
PLR-114009-06

Date:
April 28, 2006

Taxpayer =
Residence =

Date 1 =
Date 2 =
Date 3 =

Dear :

This responds to your letter dated February 10, 2006, requesting a ruling on whether you are eligible to exclude gain from the sale of a residence under § 121(c) of the Internal Revenue Code.

FACTS:

On Date 1, Taxpayer purchased and moved into Residence. On Date 2, as Taxpayer was leaving Residence, an assailant held a gun to Taxpayer's head and forced Taxpayer into Taxpayer's automobile. The assailant was agitated, unpredictable, and made repeated threats upon Taxpayer's life. For approximately one hour, Taxpayer was forced, at gunpoint, to drive the assailant to several locations including an ATM where Taxpayer had to withdraw money for the assailant.

As a result of the traumatic and violent nature of the crime, Taxpayer moved out of Residence on Date 3 and has not since returned to live in Residence. Subsequently, Taxpayer rented out Residence and because the tenant's lease has now terminated, Taxpayer desires to sell Residence.

LAW AND ANALYSIS:

Section 121(a) 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.

Section 121(c) provides for a reduced maximum exclusion for taxpayers who fail to satisfy the ownership and use tests or the limit of one sale every two years 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 is the occurrence of an event that the taxpayer could not reasonably have anticipated 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 involuntary conversion of the residence, death, or divorce, 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 § 1.121-3(e) of the Income Tax Regulations.

Section 1.121-3(b) provides that if a safe harbor does not apply, a sale is by reason of unforeseen circumstances only if the primary reason for the sale is unforeseen circumstances. Factors that may be relevant in determining the taxpayer's primary reason for the sale include (but are not limited to) the extent to which (1) the sale and the circumstances giving rise to the sale are proximate in time; (2) the suitability of the property as the taxpayer's principal residence materially changes; (3) the taxpayer's financial ability to maintain the property is materially impaired; (4) the taxpayer uses the property as the taxpayer's residence during the period of ownership of the property; (5) 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 (6) 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.

The reduced maximum exclusion is computed by multiplying the maximum dollar limitation of \$ 250,000 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 section 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, representations, and the relevant law as set forth above, we conclude that the primary reason for the sale of Residence was an unforeseen circumstance. Consequently, the sale of Residence, which you owned and used as your principal residence for less than two of the preceding five years, will allow you to exclude gain up to the reduced maximum exclusion amount under § 121(c).

CAVEATS:

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter. In addition, no opinion is expressed or implied as to whether Taxpayer used Residence as their principal residence.

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

Sincerely,

Michael J. Montemurro
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)