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-132114-05
Date:
October 18, 2005

Taxpayer A =
Taxpayer B =
Taxpayer C =
Taxpayer D =
Residence =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
x =
y =

Dear :

This responds to your letter dated May 2, 2005, 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:

Taxpayers A & B owned and lived in Residence for approximately x. On Date 1, Taxpayers C & D became joint tenants along with Taxpayers A & B, and their names were added to the deed. Taxpayers C & D represent that after being added to the deed, they used Residence as their personal residence for approximately y. On Date 2, due to their declining health, Taxpayers A & B moved to an assisted living facility. Shortly after moving to the assisted living facility Taxpayer B was moved to the hospice care portion of the facility. The Residence was sold on Date 3 and Taxpayer B died on Date 4.

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 1.121-2(a)(2) of the Income Tax Regulations provides that if taxpayers jointly own a principal residence but file separate returns, each taxpayer may exclude from gross income up to $250,000 of gain that is attributable to each taxpayer's interest in the property, if the requirements of section 121 have otherwise been met.

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.

Section 1.121-3(d)(1) provides that if the primary reason for a sale is to obtain, provide, or facilitate the diagnosis, cure, mitigation, or treatment of disease, illness or injury of a qualified individual or to obtain or provide medical or personal care for a qualified individual suffering from a disease, illness or injury, then the sale is by reason of health. However a sale or exchange that is merely beneficial to the general health or well-being of an individual is not a sale by reason of health.

Under § 1.121-3(f) a qualified individual includes the taxpayer, the taxpayer's spouse, a co-owner of the residence, a person who's principal place of abode is in the same household as the taxpayer, and certain family members.

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 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 your primary reason for the sale of Residence was the health of a qualified individual. 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 C & D have 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,

George F. Wright
Assistant Branch Chief, Branch 4
(Income Tax & Accounting)

Enclosures (2)