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

OFFICE OF
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The Honorable Bill Nelson
United States Senator
Landmark Two
225 East Robinson Street, Suite 410
Orlando, FL 32801

Dear Senator Nelson:

This letter responds to your letter dated May 23, 2008, submitted on behalf of your constituent, . He asked whether the two year period in section 121(b)(4) of the Internal Revenue Code (Code) for a surviving spouse to exclude $500,000 of gain from the sale of a principal residence after the death of a spouse may be extended because of the current depressed real estate market conditions.

Section 121 allows a taxpayer to exclude from gross income the gain from the sale property if the taxpayer owned and used the property as the taxpayer's principal residence for two years or more years out of the five year period ending on the date of the sale. In general, the amount of the exclusion is $250,000 of gain for an unmarried filer or $500,000 of gain for a husband and wife who file a joint return.

For sales or exchanges occurring on or before December 31, 2007, an individual whose spouse died during the taxable year of the sale or exchange could exclude $500,000 of gain if the surviving spouse filed a joint return for the taxable year. However, if the sale or exchange occurred in any year after the year of the death of the spouse, or if the surviving spouse did not elect to file a joint return for the year of death, then the surviving spouse could exclude only $250,000 of gain, not $500,000. *See* Example 5 & Example 6, of §1.121-2(a)(4) of the Income Tax Regulations.

For sales or exchanges occurring after December 31, 2007, Congress added section 121(b)(4) to the Code to provide a special rule for an unmarried individual whose spouse is deceased on the date of the sale if the sale occurs no later than two years after the death of the spouse. In this situation, the surviving spouse may exclude

$500,000 of gain. There is no provision in section 121 to extend the two year period in section 121(b)(4) for any reason, including depressed real estate market conditions.

The Congress enacted section 121(b)(4) in the Mortgage Forgiveness Debt Relief Act of 2007 (Act) (Pub. L. 110-142) as part of its response to the current real estate market conditions. Although there is no specific reference to the special rule in section 121(b)(4) in the legislative history or Congressional record, the Act's purpose as a whole was to address the current mortgage crisis and provide "homeowners peace of mind as they navigate the current difficulties in the housing market." 153 Cong. Rec. H16768-02 (Dec. 18, 2007) (statement of Rep. Jones).

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

Sincerely,

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