Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-143156-04

Date:
September 30, 2005

Legend

Taxpayer A :

Taxpayer B :

Residence :

Month 1 :

Month 2 :

Year 1 :

Year 2 :

Dear :

This responds to a letter received on August 12, 2004, requesting a ruling on whether the taxpayers may exclude gain from the sale of the Residence under section 121(c) of the Internal Revenue Code.

FACTS

Unmarried Taxpayers A and B jointly purchased the Residence in Month 1, Year 1, using the property as their principal residence. In Month 2, Year 2, approximately seven months after purchasing the Residence, Taxpayer A discovered that she was one-month pregnant. Taxpayer A and the father of the expected child are no longer in a relationship.

According to their representations, Taxpayers A and B plan to sell the Residence and find separate residences because the Residence is not large enough to accommodate two adults and a child and neither A nor B can afford to make the monthly mortgage payments on the Residence alone.

LAW & ANALYSIS

Section 121(a) of the Code provides that a taxpayer's gross income will not include gain from the sale of property if, during the five-year period ending on the date of the sale, the 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 1.121-3(a) of the regulations provides for taxpayers who fail to satisfy the ownership and use tests or the limit of one sale every two years, section 121(c) of the Code provides for a reduced maximum exclusion if the primary reason for the sale is a change in place of employment, health, or unforeseen circumstances.

Section 1.121-3(e) of the regulations provides that 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 reason for the sale 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 may issue rulings addressed to specific taxpayers identifying other events or situations as unforeseen circumstances with regard to those taxpayers.

Section 1.121-3(b) of the regulations 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.

Section 1.121-3(g) of the 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 relevant law as set forth above, we conclude that for Taxpayers A and B, the primary reason for the sale of the Residence will be an unforeseen circumstance. Consequently, if Taxpayers A and B sell the Residence after they have owned and used it as their principal residence for less than two of the preceding five years, A and B may exclude gain up to the reduced maximum exclusion amount under section 121(c) of the Code.

Except as specifically ruled upon above, no opinion is expressed or implied regarding the income tax consequences of any transaction, or any item discussed or referenced in this letter. In addition, no opinion is expressed or implied as to whether Taxpayer A and B have used the Residence as their principal residence.

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 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayers.

Sincerely,

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