

26 U.S. Code § 121 - Exclusion of gain from sale of principal residence

(a) EXCLUSION

Gross income¹ shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the **taxpayer**² as the taxpayer's principal residence for periods aggregating 2 years or more.

(b) LIMITATIONS³

(1) IN GENERAL

The amount of gain excluded from gross income under subsection (a) with respect to any sale or exchange shall not exceed \$250,000.

(2) SPECIAL RULES FOR **JOINT RETURNS**⁴

In the case of a husband and wife who make a joint return for the **taxable year**⁵ of the sale or exchange of the property—

(A) **\$500,000 Limitation for certain joint returns**

Paragraph (1) shall be applied by **substituting**⁶ "\$500,000" for "\$250,000" if—

(i) either spouse meets the ownership requirements of subsection (a) **with respect**⁷ to such property;

(ii) both spouses meet the use requirements of subsection (a) with respect to such property; and

(iii) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

¹ revenu brut

² contribuable

³ restrictions

⁴ déclaration conjointe

⁵ année d'imposition

⁶ remplacer

⁷ à l'égard de

(B) Other joint returns

If such spouses do not **meet the requirements**⁸ of subparagraph (A), the limitation under paragraph (1) shall be the sum of the limitations under paragraph (1) to which each spouse would **be entitled**⁹ if such spouses had not been married. For purposes of the preceding sentence, each spouse shall be treated as owning the property during the period that either spouse owned the property.

(3) APPLICATION TO ONLY 1 SALE OR EXCHANGE EVERY 2 YEARS

Subsection (a) shall not apply to any sale or exchange by the taxpayer if, during the 2-year period ending on the date of such sale or exchange, there was any other sale or exchange by the taxpayer to which subsection (a) applied.

(4) SPECIAL RULE FOR CERTAIN SALES BY **SURVIVING SPOUSES**¹⁰

In the case of a sale or exchange of property by an unmarried individual whose spouse is **deceased**¹¹ on the date of such sale, paragraph (1) shall be applied by substituting "\$500,000" for "\$250,000" if such sale occurs not later than 2 years after the date of death of such spouse and the requirements of paragraph (2)(A) were met immediately before such date of death.

(5) EXCLUSION OF GAIN ALLOCATED TO NONQUALIFIED USE

(A) In general

Subsection (a) shall not apply to so much of the gain from the sale or exchange of property as is allocated to periods of nonqualified use.

(B) Gain allocated to **periods of nonqualified use**

For purposes of¹² subparagraph (A), gain shall be allocated to periods of nonqualified use based on the ratio which—

(i) the aggregate periods of nonqualified use during the period such property was owned by the taxpayer, bears to

⁸ répondre aux exigences

⁹ être admissible, avoir droit à, pouvoir bénéficier de

¹⁰ veufs/veuves

¹¹ décédé

¹² Aux fins de, dans le cadre de...

(ii) the period such property was owned by the taxpayer.

(C) Period of nonqualified use

For purposes of this paragraph—

(i) In general

The term “**period of nonqualified use**”¹³ means any period (other than the portion of any period preceding January 1, 2009) during which the property is not used as the principal residence of the taxpayer or the taxpayer’s spouse or former spouse.

(ii) Exceptions

The term “**period of nonqualified use**” does not include—

(I) any portion of the 5-year period described in subsection (a) which is after the last date that such property is used as the principal residence of the taxpayer or the taxpayer’s spouse,

(II) any period (not to exceed an **aggregate period**¹⁴ of 10 years) during which the taxpayer or the taxpayer’s spouse is serving on **qualified official extended duty**¹⁵ (as defined in subsection (d)(9)(C)) described in clause (i), (ii), or (iii) of subsection (d)(9)(A), and

(III) any other period of temporary absence (not to exceed an aggregate period of 2 years) due to change of employment, health conditions, or such other **unforeseen circumstances**¹⁶ as may be specified by the Secretary.

(D) Coordination with recognition of gain attributable to depreciation

For purposes of this paragraph—

(i) subparagraph (A) shall be applied after the application of subsection (d)(6), and

¹³ période de non-usage

¹⁴ période totale

¹⁵ service prolongé de fonctionnaires qualifiés

¹⁶ circonstances imprévisibles

(ii) subparagraph (B) shall be applied without regard to¹⁷ any gain to which subsection (d)(6) applies.

(c) EXCLUSION FOR TAXPAYERS FAILING TO MEET CERTAIN REQUIREMENTS

(1) IN GENERAL

In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a), and subsection (b)(3), shall not apply; but the dollar limitation under paragraph (1) or (2) of subsection (b), whichever is applicable¹⁸, shall be equal to—

(A) the amount which bears¹⁹ the same ratio to such limitation (determined without regard to this paragraph) as

(B)

(i) the shorter of—

(I) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence; or

(II) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange, bears to

(ii) 2 years.

(2) SALES AND EXCHANGES TO WHICH SUBSECTION APPLIES

This subsection shall apply to any sale or exchange if—

(A) subsection (a) would not (but for this subsection) apply to such sale or exchange by reason of—

(i) a failure to meet the ownership and use requirements²⁰ of subsection (a), or

(ii) subsection (b)(3), and

¹⁷ indépendamment, sans tenir compte de...

¹⁸ selon ce qui est applicable

¹⁹ qui se trouve dans le même ratio

²⁰ satisfaire les exigences en matière de propriété et d'utilisation

(B) such sale or exchange is by reason of²¹ a change in place of employment, health, or, to the extent provided in regulations²², unforeseen circumstances.

(d) SPECIAL RULES

(1) JOINT RETURNS

If a husband and wife make a joint return for the taxable year of the sale or exchange of the property, subsections (a) and (c) shall apply if either spouse²³ meets the ownership and use requirements of subsection (a) with respect to such property.

(2) PROPERTY OF DECEASED SPOUSE

For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, the period such unmarried individual owned and used such property shall include the period such deceased spouse owned and used such property before death.

(3) PROPERTY OWNED BY SPOUSE OR FORMER SPOUSE

For purposes of this section—

(A) Property transferred to individual from spouse or former spouse

In the case of an individual holding property transferred to such individual in a transaction described in section 1041(a), the period such individual owns such property shall include the period the transferor owned the property.

(B) Property used by former spouse pursuant to²⁴ divorce decree²⁵, etc.

Solely²⁶ for purposes of this section, an individual shall be treated as using property as such individual's principal residence during any period of

²¹ en raison de...

²² la mesure prévue dans les règlements

²³ si l'un des époux

²⁴ en vertu de...

²⁵ décret

²⁶ Seulement

ownership while such individual's spouse or former spouse **is granted**²⁷ use of the property under a **divorce or separation instrument**.²⁸

(C) Divorce or separation instrument

For purposes of this paragraph, the term “**divorce or separation instrument**” means—

- (i) a decree of divorce or separate maintenance or a **written instrument**²⁹ incident to such a decree,
- (ii) a written **separation agreement**³⁰, or
- (iii) a decree (not described in clause (i)) requiring a spouse to make payments for the support or maintenance of the other spouse.

(4) TENANT-STOCKHOLDER³¹ IN COOPERATIVE HOUSING CORPORATION³²

For purposes of this section, if the taxpayer **holds stock**³³ as a tenant-stockholder (as defined in **section 216**) in a cooperative housing corporation (as defined in such section), then—

- (A)** **the holding requirements**³⁴ of subsection (a) shall be applied to the holding of such stock, and
- (B)** the use requirements of subsection (a) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.

(5) INVOLUNTARY CONVERSIONS

(A) In general

For purposes of this section, the destruction, **theft, seizure**³⁵, requisition, or condemnation of property shall be treated as the sale of such property.

²⁷ est octroyé, accordé

²⁸ acte de divorce ou de séparation

²⁹ acte écrit

³⁰ accord de séparation

³¹ Locataire-actionnaire

³² coopérative d'habitation (société visant à offrir à ses membres les meilleures conditions possibles de logement au moindre coût).

³³ possède des actions

³⁴ les exigences de détention

³⁵ vol, saisie

(B)Application of section 1033

In applying section 1033³⁶ (relating to involuntary conversions), the amount³⁷ realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

(C)Property acquired after involuntary conversion

If the basis of the property sold or exchanged is determined (in whole or in part) under section 1033(b) (relating to basis of property acquired through involuntary conversion³⁸), then the holding and use³⁹ by the taxpayer of the converted property⁴⁰ shall be treated as holding and use by the taxpayer of the property sold or exchanged.

(6)RECOGNITION OF GAIN ATTRIBUTABLE TO DEPRECIATION⁴¹

Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments⁴² (as defined in section 1250(b)(3)) attributable to periods after May 6, 1997, in respect of such property.

(7)DETERMINATION OF USE DURING PERIODS OF OUT-OF-RESIDENCE CARE⁴³

In the case of a taxpayer who—

(A)becomes physically or mentally incapable of self-care, and

(B)owns property and uses such property as the taxpayer's principal residence during the 5-year period described in subsection (a) for periods aggregating at least 1 year,

³⁶ Dans le cadre de l'application de la section 1033

³⁷ la somme

³⁸ transfert involontaire

³⁹ la possession et l'utilisation...

⁴⁰ propriété transférée

⁴¹ imputable à la dépréciation

⁴² ajustements d'amortissements (l'amortissement comptable permet d'anticiper la dépréciation des biens immobilisés, celui-ci doit être ajusté lorsque la durée d'utilisation d'un bien immobilier est modifiée)

⁴³ périodes de soins hors résidence

then the taxpayer shall be treated as using such property as the taxpayer's principal residence during any time during such 5-year period in which the taxpayer owns the property and **resides in any facility**⁴⁴ (including a **nursing home**⁴⁵) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

(8) SALES OF REMAINDER INTERESTS⁴⁶

For purposes of this section—

(A) In general

At the election of the taxpayer, this section shall not fail to apply to the sale or exchange of an interest in a principal residence by reason of such interest being a remainder interest in such residence, but this section shall not apply to any other interest in such residence which is sold or exchanged separately.

(B) Exception for sales to related parties

Subparagraph (A) shall not apply to any sale to, or exchange with, any person who bears a relationship to the taxpayer which is described in [section 267\(b\)](#) or 707(b).

(9) UNIFORMED SERVICES, FOREIGN SERVICE, AND INTELLIGENCE COMMUNITY

(A) In general

At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving on [qualified official extended duty](#)—

(i) as a member of the **uniformed services**,⁴⁷

(ii) as a **member of the Foreign Service of the United States**⁴⁸, or

⁴⁴ réside dans tout type d'établissement

⁴⁵ maison de retraite

⁴⁶ intérêts résiduels (terme juridique utilisé pour décrire l'intérêt de propriété dans une propriété qui est détenue par quelqu'un d'autre que le propriétaire actuel)

⁴⁷ services en uniforme (ce sont les huit composantes des forces armées des États-Unis d'Amérique)

⁴⁸ membre du Service extérieur des États-Unis (partie importante du corps diplomatique des États-Unis rattachée aux ambassades et missions des États-Unis à l'étranger)

(iii) as an employee of the intelligence community⁴⁹.

(B) Maximum period of suspension

The 5-year period described in subsection (a) shall not be extended more than 10 years by reason of subparagraph (A).

(C) Qualified official extended duty

For purposes of this paragraph—

(i) In general

The term “qualified official extended duty” means any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters.

(ii) Uniformed services

The term “uniformed services” has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

(iii) Foreign Service of the United States

The term “member of the Foreign Service of the United States” has the meaning given the term “member of the Service” by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980, as in effect on the date of the enactment of this paragraph.

(iv) Employee of intelligence community

The term “employee of the intelligence community” means an employee (as defined by section 2105 of title 5, United States Code) of—

(I) the Office of the Director of National Intelligence,

⁴⁹ service de renseignement

(II)the Central Intelligence Agency,

(III)the National Security Agency,

(IV)the Defense Intelligence Agency,

(V)the National Geospatial-Intelligence Agency,

(VI)the National Reconnaissance Office,

(VII)any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs,

(VIII)any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, and the Coast Guard,

(IX)the Bureau of Intelligence and Research of the Department of State, or

(X)any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.

(v)Extended duty

The term “**extended duty**”⁵⁰ means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

(D)Special rules relating to election

(i)Election limited to 1 property at a time

An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

⁵⁰ service prolongé

(ii)Revocation of election

An election under subparagraph (A) may be revoked at any time.

(10)PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE⁵¹

If a taxpayer acquires property in an exchange with respect to which gain is not recognized (in whole or in part) to the taxpayer under subsection (a) or (b) of section 1031, subsection (a) shall not apply to the sale or exchange of such property by such taxpayer (or by any person whose basis in such property is determined, in whole or in part, by reference to the basis in the hands of such taxpayer) during the 5-year period beginning with the date of such acquisition.

[(11)REPEALED. PUB. L. 111-312, TITLE III, § 301(A), DEC. 17, 2010, 124 STAT. 3300]

(12)PEACE CORPS

(A)In general

At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving outside the United States—

(i)on [qualified official extended duty](#) (as defined in paragraph (9)(C)) as an [employee](#) of the Peace Corps, or

(ii)as an enrolled volunteer or volunteer leader under section 5 or 6 (as the case may be) of the [Peace Corps Act](#) (22 U.S.C. 2504, 2505).

(B)Applicable rules

For purposes of subparagraph (A), rules similar to the rules of subparagraphs (B) and (D) of paragraph (9) shall apply.

(e)DENIAL OF EXCLUSION FOR EXPATRIATES

This section shall not apply to any sale or exchange by an individual if the treatment provided by [section 877\(a\)\(1\)](#) applies to such individual.

⁵¹ échange de biens similaires

(f)ELECTION TO HAVE SECTION NOT APPLY

This section shall not apply to any sale or exchange with respect to which the taxpayer elects not to have this section apply.

(g)RESIDENCES ACQUIRED IN ROLLOVERS⁵² UNDER SECTION 1034

For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under [section 1034](#) ^[1] (as in effect on the day before the date of the enactment of this section) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used such property as the taxpayer's principal residence, there shall be included the aggregate periods for which such other residence (and each prior residence taken into account under [section 1223\(6\)](#) ^[1] in determining the holding period of such property) had been so owned and used.