

[4830-01-p]

Published December 24, 2002

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[~~REG-138882-02~~]

RIN 1545-BB01

Reduced Maximum Exclusion of Gain from Sale or Exchange of Principal Residence

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the reduced maximum exclusion available to certain taxpayers who sell or exchange their principal residence but who have not owned and used the property as their principal residence for two years of the preceding five years or who have excluded gain on a previous sale or exchange within the last two years. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 24, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-138882-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC., 20044. Submissions may be hand delivered Monday

through Friday between the hours of 8 a.m. and 4 p.m. to: **CC:ITA:RU (REG-138882-02)**, Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Sara Paige Shepherd, (202) 622-4960; concerning submissions of comments and/or requests for a hearing, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

#### **Background and Explanation of Provisions**

Temporary regulations in the Rules and Regulation section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 121(c) of the Internal Revenue Code (Code). The temporary regulations provide rules for a reduced maximum exclusion of gain from the sale or exchange of the principal residence of a taxpayer who is not entitled to the full maximum exclusion under section 121(a) because the taxpayer has not owned and used the property as the taxpayer's principal residence for two years of the preceding five years or has excluded gain under section 121 on a previous sale or exchange within the last two years. The text of those temporary regulations also serves as the text of these proposed

regulations. The preamble to the temporary regulations explains the amendments.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the regulations do not impose a collection of information and apply only to individuals. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U. S. C. chapter 6) is not required. Pursuant to section 7508(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department

specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### **Drafting Information**

The principal author of these regulations is Sara Paige Shepherd, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

#### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

#### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. In §1.121-3, paragraphs (b) through (f), (h), (k), and (l) are revised to read as follows:

§1.121-3 Reduced maximum exclusion for taxpayers failing to meet certain requirements.

[The text of proposed paragraphs (b) through (f), (h), (k), and (l) of §1.121-3 is the same as the text of paragraphs (b) through (f), (h), (k), and (l) of §1.121-3T published elsewhere

in this issue of the **Federal Register.**]

Robert E. Wenzel

Deputy Commissioner of Internal Revenue.