

child and represent that House 1 was no longer large enough for their family. Accordingly, House 1 was sold on Date 6.

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 121(b) provides that the maximum exclusion amount is \$500,000 if (1) a husband and wife file a joint return for the year of the sale, (2) both spouses meet the 2-year use test, (3) at least one of the spouses meets the 2-year ownership test, and (4) neither spouse used the section 121 exclusion during the last two years.

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.

A sale is by reason of unforeseen circumstances if the primary reason for the sale is the occurrence of an event that the taxpayer does not anticipate before purchasing and occupying the residence. A taxpayer's primary reason for the sale or exchange is deemed to be unforeseen circumstances if one of the safe harbor events, such as involuntary conversion of the residence, death, or divorce, 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 in a ruling directed to a specific taxpayer. See § 1.121-3T(e) of the Income Tax Regulations.

Section 1.121-3(b) 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.

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 House 1 was an unforeseen circumstance. Consequently, the sale of House 1, 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 and Spouse have used House 1 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.

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

Sincerely,

George F. Wright
Assistant Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)