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# EXCLUSION OF GAIN FROM SALE OF HOME

By Victor Sy, CPA, MBA

A new Section 121 in the Internal Revenue Code allows you to exclude gain from the sale of your home. This exclusion is one of the most valuable tax breaks for you and me. Tax savings can be substantial. Let's review 10 rules and tips:

1. You can exclude gain of $250,000 ($500,000 if you are married filing a joint return).

2. To be eligible for the bigger $500,000 exclusion for joint filers,
   A. At least one spouse must pass the ownership test, and
   B. Both spouses must pass the use test.

3. You can avail of this exclusion once every two years.

4. You must have owned the property for at least two of the five-year period ending on the date of sale, and must have used the property as a principal residence for at least two of the same five-years.

5. Only a principal residence is eligible. Second homes and vacation homes are not.

6. If you use two homes, the one that you use majority of the time will be considered your main home.

7. If you can't meet these tests, don't give up. Work out a reduced exclusion.

8. The reduced exclusion is available only if you have a change of job location, health considerations, or unforeseen circumstances.

9. A home that was used as a rental or home office does not disqualify you from the exclusion, as long as you meet the two basic tests for ownership and use (but read new Housing Act below).

10. Be careful when having your residence deeded to a living trust. Upon death, if the A/B trust splits into a revocable trust (Survivor's Trust A) and an irrevocable trust (Bypass Trust B), there could be tax consequences. If the residence is assigned to the irrevocable trust, the exclusion is lost. That may not be a problem initially because of stepped-up basis, but if the value continues to appreciate, the resulting gain on the death of the surviving spouse will be taxable. Be sure to discuss with your estate planner the wisdom of assigning the principal residence to Trust A for the surviving spouse.

<u>Recent Law Helps Homeowners Facing Debt Discharge Income From Foreclosures & Repossessions:</u>
The Mortgage Relief Act created a new exception for certain discharges of home mortgage debts that occur from January 2007 through December 31, 2009 (extended through 2012). The new exception only applies to a debt that's used to acquire, construct, or improve a principal residence. It helps if you borrowed too much to acquire, build, or improve a principal residence. It does <u>not</u> apply to vacation home mortgages, a taxpayer in bankruptcy, and any factor not directly related to a decline in the value of a residence or taxpayer's financial condition. The new law also helps widows and widowers get the bigger $500,000 (instead of $250,000) exclusion.