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EXCEPTIONS TO SALE OF HOME REPORTING REQUIREMENTS

By Victor Sy, CPA, MBA

A [new revenue procedure](#) updates the acceptable form of the [written assurances \(certification\)](#) that a real estate reporting person must obtain from the [seller of a principal residence](#) to except (not required) the sale from the reporting requirements for real estate transactions. It reflects changes to the Code Sec. 121 home sale exclusion made by the American Jobs Creation Act of 2004, as amended by the Gulf Opportunity Zone Act of 2005.

Background on reporting:

A seller is required to file an information return for a real estate transaction. It must include the name, address, and taxpayer identification number (TIN) of the seller, and the gross proceeds of the real estate transaction. This information is reported on [Form 1099-S](#), Proceeds From Sale of Real Estate.

The law excepts a sale of a principal residence from reporting requirements if the seller provides the real estate reporting person with a certification, including an assurance that the residence is the seller's principal residence and an assurance that the full amount of the gain is excludable from gross income under Code Sec. 121.

Background on home sale exclusion:

A taxpayer can exclude up to \$250,000 (\$500,000 if married filing joint) of gain from the sale of a home owned and used by him/her as a principal residence for at least 2 of the 5 years before the sale.

Required seller certification:

To be excepted from the information requirement (and therefore not required to file Form 1099-S), the reporting person must obtain from the seller a written certification, signed under penalties of perjury, that:

1. The seller [owned and used the residence as his/her principal residence for periods aggregating 2 years or more during the 5-year period](#) ending on the date of the sale or exchange of the residence.
2. The seller has [not sold or exchanged another principal residence during the 2-year period](#) ending on the date of the sale or exchange of the residence.
3. [No portion of the residence has been used for business or rental purposes after May 6, 1997](#), by the seller (or by the seller's spouse or former spouse, if the seller was married at any time after May 6, 1997).
4. At least one of the following three statements applies:
 - A. The sale or exchange is of the entire residence for \$250,000 or less.
 - B. The seller is married, the sale or exchange is of the entire residence for \$500,000 or less, and the gain on the sale or exchange of the entire residence is \$250,000 or less.
 - C. The seller is married, the sale or exchange is of the entire residence for \$500,000 or less, and (a) the seller intends to file a joint return for the year of the sale or exchange, (b) the seller's spouse also used the residence as her principal residence for periods aggregating 2 years or more during the 5-year period ending on the sale date, and (c) the seller's spouse also has not sold or exchanged another principal residence during the 2-year period ending on that date.
5. During the [5-year period](#) ending on the date of the sale or exchange of the residence, the seller did [not acquire the residence in an exchange to which Code Sec. 1031](#) applied.

Obtaining and retaining seller certification:

The real estate reporting person may obtain a certification at any time on or before January 31 of the year following the year of the sale or exchange of the residence. The certification must be retained by the real estate reporting person for 4 years after the year of the sale or exchange of the residence to which the certification applies.

Effective date: Sales or exchanges of a principal residence occurring after Jan. 22, 2007.