

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date: August 20, 2002

Dear [REDACTED]

[REDACTED] asked that I respond to your letter of February 20, 2002, concerning §121 of the Internal Revenue Code, which relates to the exclusion of gain from the sale of a principal residence. In your letter, you raised an issue about the application of that section to a sale of a principal residence after the death of a spouse. The local IRS office advised you that the maximum exclusion is \$250,000, rather than \$500,000, if the sale does not occur in the year of the death of a spouse. You recommend a rule that would allow the surviving spouse at least 2 tax years to complete a sale of a principal residence and still be eligible for a maximum \$500,000 exclusion.

Subject to certain limitations, § 121(a) provides an exclusion of gain from the sale of a taxpayer's principal residence if the taxpayer meets certain ownership and use requirements. In general, the maximum amount of the exclusion is limited to \$250,000. Section 121(b)(2) provides, however, that the maximum amount of the exclusion is \$500,000 in the case of certain joint returns for the taxable year of the sale of the property.

Section 6013(a)(3) allows a surviving spouse to file a joint return in certain circumstances for the taxable year of the death of a spouse. As the \$500,000 limitation only applies in the case of certain joint returns, the \$500,000 exclusion would not apply for a taxable year in which the taxpayer may not file a joint return.

We recognize that the application of the present law may have harsh results in certain circumstances. However, the rule that you recommend would require a legislative change by Congress. I am forwarding a copy of your letter and this letter to [REDACTED] so that she can consider your recommendation when making recommendations for legislative changes.

Thank you for your time and interest in writing.

Sincerely,
Robert A. Berkovsky
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)