

104TH CONGRESS
2D SESSION

H. R. 4231

To amend the Internal Revenue Code of 1986 to provide an exemption from tax for gain on sale of a principal residence.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 1996

Mr. ORTON (for himself and Mr. GIBBONS) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide an exemption from tax for gain on sale of a principal residence.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Principal Residence
5 Tax Exclusion Act of 1996”.

6 **SEC. 2. EXEMPTION FROM TAX FOR GAIN ON SALE OF PRIN-**
7 **CIPAL RESIDENCE.**

8 (a) IN GENERAL.—Section 121 of the Internal Reve-
9 nue Code of 1986 (relating to one-time exclusion of gain

1 from sale of principal residence by individual who has at-
2 tained age 55) is amended to read as follows:

3 **“SEC. 121. EXCLUSION OF GAIN FROM SALE OF PRINCIPAL**
4 **RESIDENCE.**

5 “(a) EXCLUSION.—Gross income shall not include
6 gain from the sale or exchange of property if, during the
7 5-year period ending on the date of the sale or exchange,
8 such property has been owned and used by the taxpayer
9 as the taxpayer’s principal residence for periods aggregat-
10 ing 2 years or more.

11 “(b) LIMITATIONS.—

12 “(1) DOLLAR LIMITATION.—The amount of
13 gain excluded from gross income under subsection
14 (a) with respect to any sale or exchange shall not ex-
15 ceed \$250,000 (\$500,000 in the case of a joint re-
16 turn where both spouses meet the use requirement
17 of subsection (a)).

18 “(2) APPLICATION TO ONLY 1 SALE OR EX-
19 CHANGE EVERY 2 YEARS.—

20 “(A) IN GENERAL.—Subsection (a) shall
21 not apply to any sale or exchange by the tax-
22 payer if, during the 2-year period ending on the
23 date of such sale or exchange, there was any
24 other sale or exchange by the taxpayer or his
25 spouse to which subsection (a) applied.

1 “(B) PREMARRIAGE SALES BY SPOUSE
2 NOT TAKEN INTO ACCOUNT.—If, but for this
3 subparagraph, subsection (a) would not apply
4 to a sale or exchange by a married individual
5 by reason of a sale or exchange by such individ-
6 ual’s spouse before their marriage—

7 “(i) subparagraph (A) shall be applied
8 without regard to the sale or exchange by
9 such individual’s spouse, but

10 “(ii) the amount of gain excluded
11 from gross income under subsection (a)
12 with respect to the sale or exchange by
13 such individual shall not exceed \$250,000.

14 “(C) PRE-1997 SALES NOT TAKEN INTO AC-
15 COUNT.—Subparagraph (A) shall be applied
16 without regard to any sale or exchange before
17 January 1, 1997.

18 “(c) EXCLUSION FOR TAXPAYERS FAILING TO MEET
19 CERTAIN REQUIREMENTS.—

20 “(1) IN GENERAL.—In the case of a sale or ex-
21 change to which this subsection applies, the owner-
22 ship and use requirements of subsection (a) shall not
23 apply and subsection (b)(2) shall not apply; but the
24 amount of gain excluded from gross income under

1 subsection (a) with respect to such sale of exchange
2 shall not exceed—

3 “(A) the amount which bears the same
4 ratio to the amount which would be so excluded
5 if such requirements had been met, as

6 “(B) the shorter of—

7 “(i) the aggregate periods, during the
8 5-year period ending on the date of such
9 sale or exchange, such property has been
10 owned and used by the taxpayer as the
11 taxpayer’s principal residence, or

12 “(ii) the period after the date of the
13 most recent prior sale or exchange by the
14 taxpayer or his spouse to which subsection
15 (a) applied and before the date of such sale
16 or exchange,

17 bears to 2 years.

18 “(2) SALES AND EXCHANGES TO WHICH SUB-
19 SECTION APPLIES.—This subsection shall apply to
20 any sale or exchange if—

21 “(A) subsection (a) would not (but for this
22 subsection) apply to such sale or exchange by
23 reason of—

24 “(i) a failure to meet the ownership
25 and use requirements of subsection (a), or

1 “(ii) subsection (b)(2), and

2 “(B) such sale or exchange is by reason of
3 a change in place of employment, health, or
4 other unforeseen circumstances.

5 “(d) SPECIAL RULES.—

6 “(1) JOINT RETURNS.—For purposes of this
7 section, if a husband and wife make a joint return
8 for the taxable year of the sale or exchange of prop-
9 erty, subsection (a) applies if either spouse meets
10 the ownership and use requirements of subsection
11 (a) with respect to such property.

12 “(2) PROPERTY OF DECEASED SPOUSE.—For
13 purposes of this section, in the case of an unmarried
14 individual whose spouse is deceased on the date of
15 the sale or exchange of property, the period such un-
16 married individual owned such property shall include
17 the period such deceased spouse held such property
18 before death.

19 “(3) TENANT-STOCKHOLDER IN COOPERATIVE
20 HOUSING CORPORATION.—For purposes of this sec-
21 tion, if the taxpayer holds stock as a tenant-stock-
22 holder (as defined in section 216) in a cooperative
23 housing corporation (as defined in such section),
24 then—

1 “(A) the holding requirements of sub-
2 section (a) shall be applied to the holding of
3 such stock, and

4 “(B) the use requirements of subsection
5 (a) shall be applied to the house or apartment
6 which the taxpayer was entitled to occupy as
7 such stockholder.

8 “(4) INVOLUNTARY CONVERSIONS.—

9 “(A) IN GENERAL.—For purposes of this
10 section, the destruction, theft, seizure, requis-
11 ition, or condemnation of property shall be
12 treated as the sale of such property.

13 “(B) APPLICATION OF SECTION 1033.—In
14 applying section 1033 (relating to involuntary
15 conversions), the amount realized from the sale
16 or exchange of property shall be treated as
17 being the amount determined without regard to
18 this section, reduced by the amount of gain not
19 included in gross income pursuant to this sec-
20 tion.

21 “(C) PROPERTY ACQUIRED AFTER INVOL-
22 UNTARY CONVERSION.—If the basis of the
23 property sold or exchanged is determined (in
24 whole or in part) under section 1033(b) (relat-
25 ing to basis of property acquired through invol-

1 untary conversion), then the holding and use by
2 the taxpayer of the converted property shall be
3 treated as holding and use by the taxpayer of
4 the property sold or exchanged.

5 “(5) RECOGNITION OF GAIN ATTRIBUTABLE TO
6 DEPRECIATION.—Subsection (a) shall not apply to
7 so much of the gain from the sale of any property
8 as does not exceed the portion of the depreciation
9 adjustments (as defined in section 1250(b)(3)) at-
10 tributable to periods after December 31, 1996, in re-
11 spect of such property.

12 “(6) DETERMINATION OF USE DURING PERIODS
13 OF OUT-OF-RESIDENCE CARE.—In the case of a tax-
14 payer who—

15 “(A) becomes physically or mentally in-
16 capable of self-care, and

17 “(B) owns property and uses such property
18 as the taxpayer’s principal residence during the
19 5-year period described in subsection (a) for pe-
20 riods aggregating at least 1 year,

21 then the taxpayer shall be treated as using such
22 property as the taxpayer’s principal residence during
23 any time during such 5-year period in which the tax-
24 payer owns the property and resides in any facility
25 (including a nursing home) licensed by a State or

1 political subdivision to care for an individual in the
2 taxpayer's condition.

3 “(7) DETERMINATION OF MARITAL STATUS.—

4 In the case of any sale or exchange, for purposes of
5 this section—

6 “(A) the determination of whether an indi-
7 vidual is married shall be made as of the date
8 of the sale or exchange, and

9 “(B) an individual legally separated from
10 his spouse under a decree of divorce or of sepa-
11 rate maintenance shall not be considered as
12 married.

13 “(e) DENIAL OF EXCLUSION FOR EXPATRIATES.—

14 This section shall not apply to any sale or exchange by
15 an individual if the treatment provided by section
16 877(a)(1) applies to such individual.

17 “(f) ELECTION TO HAVE SECTION NOT APPLY.—

18 This section shall not apply to any sale or exchange with
19 respect to which the taxpayer elects not to have this sec-
20 tion apply.

21 “(g) RESIDENCES ACQUIRED IN ROLLOVERS UNDER

22 SECTION 1034.—For purposes of this section, in the case
23 of property the acquisition of which by the taxpayer re-
24 sulted under section 1034 (as in effect on the day before
25 the date of the enactment of this sentence) in the non-

1 recognition of any part of the gain realized on the sale
2 or exchange of another residence, in determining the pe-
3 riod for which the taxpayer has owned and used such
4 property as the taxpayer’s principal residence, there shall
5 be included the aggregate periods for which such other
6 residence (and each prior residence taken into account
7 under section 1223(7) in determining the holding period
8 of such property) had been so owned and used.”

9 (b) REPEAL OF NONRECOGNITION OF GAIN ON
10 ROLLOVER OF PRINCIPAL RESIDENCE.—Section 1034 of
11 such Code (relating to rollover of gain on sale of principal
12 residence) is hereby repealed.

13 (c) CONFORMING AMENDMENTS.—

14 (1) The following provisions of the Internal
15 Revenue Code of 1986 are each amended by striking
16 “section 1034” and inserting “section 121”: sections
17 25(e)(7), 56(e)(1)(A), 56(e)(3)(B)(i),
18 143(i)(1)(C)(i)(I), 163(h)(4)(A)(i)(I),
19 280A(d)(4)(A), 464(f)(3)(B)(i), 1033(h)(3),
20 1274(e)(3)(B), 6334(a)(13), and 7872(f)(11)(A).

21 (2) Paragraph (4) of section 32(c) of such Code
22 is amended by striking “(as defined in section
23 1034(h)(3))” and by adding at the end the following
24 new sentence: “For purposes of the preceding sen-
25 tence, the term ‘extended active duty’ means any pe-

1 riod of active duty pursuant to a call or order to
2 such duty for a period in excess of 90 days or for
3 an indefinite period.”

4 (3) Subparagraph (A) of 143(m)(6) of such
5 Code is amended by inserting “(as in effect on the
6 day before the date of the enactment of the Prin-
7 cipal Residence Tax Exclusion Act of 1996)” after
8 “1034(e)”.

9 (4) Subsection (e) of section 216 of such Code
10 is amended by striking “such exchange qualifies for
11 nonrecognition of gain under section 1034(f)” and
12 inserting “such dwelling unit is used as his principal
13 residence (within the meaning of section 121)”.

14 (5) Section 512(a)(3)(D) of such Code is
15 amended by inserting “(as in effect on the day be-
16 fore the date of the enactment of the Principal Resi-
17 dence Tax Exclusion Act of 1996)” after “1034”.

18 (6) Paragraph (7) of section 1016(a) of such
19 Code is amended by inserting “(as in effect on the
20 day before the date of the enactment of the Prin-
21 cipal Residence Tax Exclusion Act of 1996)” after
22 “1034” and by inserting “(as so in effect)” after
23 “1034(e)”.

24 (7) Paragraph (3) of section 1033(k) of such
25 Code is amended to read as follows:

1 “(3) For exclusion from gross income of gain
2 from involuntary conversion of principal residence,
3 see section 121.”

4 (8) Subsection (e) of section 1038 of such Code
5 is amended to read as follows:

6 “(e) PRINCIPAL RESIDENCES.—If—

7 “(1) subsection (a) applies to a reacquisition of
8 real property with respect to the sale of which gain
9 was not recognized under section 121 (relating to
10 gain on sale of principal residence); and

11 “(2) within 1 year after the date of the reacqui-
12 sition of such property by the seller, such property
13 is resold by him,

14 then, under regulations prescribed by the Secretary, sub-
15 sections (b), (c), and (d) of this section shall not apply
16 to the reacquisition of such property and, for purposes of
17 applying section 121, the resale of such property shall be
18 treated as a part of the transaction constituting the origi-
19 nal sale of such property.”

20 (9) Paragraph (7) of section 1223 of such Code
21 is amended by inserting “(as in effect on the day be-
22 fore the date of the enactment of the Principal Resi-
23 dence Tax Exclusion Act of 1996)” after “1034”.

24 (10) Paragraph (7) of section 1250(d) of such
25 Code is amended to read as follows:

1 “(7) DISPOSITION OF PRINCIPAL RESIDENCE.—
2 Subsection (a) shall not apply to a disposition of
3 property to the extent used by the taxpayer as his
4 principal residence (within the meaning of section
5 121, relating to gain on sale of principal residence).”

6 (11) Subsection (c) of section 6012 of such
7 Code is amended by striking “(relating to one-time
8 exclusion of gain from sale of principal residence by
9 individual who has attained age 55)” and inserting
10 “(relating to gain from sale of principal residence)”.

11 (12) Paragraph (2) of section 6212(c) of such
12 Code is amended by striking subparagraph (C) and
13 by redesignating the succeeding subparagraphs ac-
14 cordingly.

15 (13) Section 6504 of such Code is amended by
16 striking paragraph (4) and by redesignating the suc-
17 ceeding paragraphs accordingly.

18 (14) The item relating to section 121 in the
19 table of sections for part III of subchapter B of
20 chapter 1 of such Code is amended to read as fol-
21 lows:

 “Sec. 121. Exclusion of gain from sale of principal residence.”

22 (15) The table of sections for part III of sub-
23 chapter O of chapter 1 of such Code is amended by
24 striking the item relating to section 1034.

25 (d) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to sales and exchanges after
3 December 31, 1996.

4 (2) BINDING CONTRACTS, ETC.—At the election
5 of the taxpayer, the amendments made by this sec-
6 tion shall not apply to a sale or exchange after De-
7 cember 31, 1996, if—

8 (A) such sale or exchange is pursuant to a
9 contract which was binding on September 25,
10 1996, and at all times before such sale or ex-
11 change, or

12 (B) without regard to such amendments,
13 gain would not be recognized under section
14 1034 of the Internal Revenue Code of 1986 (as
15 in effect on the day before the date of the en-
16 actment of this Act) on such sale or exchange
17 by reason of a new residence acquired on or be-
18 fore such date.

19 This paragraph shall not apply to any sale or ex-
20 change by an individual if the treatment provided by
21 section 877(a)(1) of the Internal Revenue Code of
22 1986 applies to such individual.

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