Exclusion of gains; sale of principal residence., Rev. Rul. 83-50, 1983-1 CB 41, Internal Revenue Service, (Jan. 1, 1983)

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Section 121.--One-Time Exclusion of Gain from Sale of Principal Residence by Individual Who Has Attained Age 55

26 CFR 1.121-1: Gain from sale or exchange of residence of individual who has attained age 55.

(Also Sections 1034, 7805; 1.1034-1, 301.7805-1.)

[IRS Headnote] Exclusion of gains; sale of principal residence.--

The gain realized when a taxpayer sells the land on which the taxpayer's principal residence is located and moves the house to another lot is not excludable from gross income under section 121 of the Code. Rev. Rul. 54-156 modified andrevoked.

[Text]

ISSUE

Under the circumstances described below, if a taxpayer sells the land on which the taxpayer's principal residence is located and moves the house to another lot, may the taxpayer exclude from gross income, under section 121 of the Internal Revenue Code, the gain on the sale of the property?

FACTS

The taxpayer was over age 55 and lived in a house that had been owned and used as the taxpayer's principal residence continuously for more than five years when the taxpayer sold the land on which the house was located. Shortly thereafter, the taxpayer purchased a lot and moved the house to it. The amount realized from the sale of the lot did not exceed $125,000.

LAW AND ANALYSIS

Under section 121(a) of the Code, a taxpayer may elect to exclude from gross income the gain realized on the sale or exchange of property if (1) the taxpayer has attained the age of 55 before the date of the sale or exchange, and (2) during the five-year period ending on the date of the sale or exchange, the property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating three years or more. Section 121(b) provides that the amount so excluded may not exceed $125,000 ($100,000 for a sale or exchange before July 21, 1981).

Section 1.121-3(a) of the Income Tax Regulations states that "principal residence" has the same meaning as in section 1034 of the Code (relating to rollover of gain on the sale or exchange of a principal residence).

Section 1.1034-1(c)(3)(i) of the regulations states that whether or not property is used by the taxpayer as the taxpayer's principal residence depends upon all the facts and circumstances in each case.

The legislative history behind section 112 of the 1939 Code, the predecessor of section 1034 of the 1954 Code, indicates that Congress was trying to relieve the tax burden of taxpayers who were forced to sell and replace their residences because of an increase in the sizes of their families or because of a change in the place of the taxpayers' employment. S. Rep. No. 781, 82d Cong., 1st Sess. 34 (1951), 1951-2 C.B. 458, 482. Although Congress was primarily concerned with providing relief for this forced type of sale, Congress recognized that it would be too burdensome administratively to confine the provision's application, and extended relief to all residential sales that meet the requirements.

In Rev. Rul. 54-156, 1954-1 C.B. 112, the taxpayer sold the land subjacent to the taxpayer's principal residence and moved the house and place of residence to a newly purchased lot. The ruling holds that the nonrecognition provision of section 112(n) of the 1939 Code is applicable and that the gain realized from the sale is recognized only to the extent that the selling price of the land exceeds the cost of the new lot and the expenses associated with moving the house.

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In *Bogley v. Commissioner,* 263 F. 2d 746 (4th Cir. 1959), *rev'g* 30 T.C. 452 (1958), the taxpayers sold three acres and their house on one date and within a year sold the remaining acreage adjacent to the house. There, the Circuit Court held that the adjacent land sold after the sale of the house qualified as part of the old residence for purposes of not recognizing gain from the sales, under section 112(n) of the 1939 Code. However, the Tax Court stated in *O'Barr v. Commissioner,* 44 T.C. 501 (1965), that the sale of land adjacent to a residence, without the sale of the house, did not qualify as a residence for nonrecognition of gain under section 1034 of the 1954 Code. Likewise, in *Snyder v. United States,* 321 F. Supp. 661 (D.C. Colo. 1970), *aff'd per curiam,* 445 F. 2d 319 (10th Cir. 1971), the District Court stated that the sale of a part of the land embracing the taxpayer's residence did not qualify as the sale of her residence within the meaning of section 121, so that the taxpayer could not exclude the proceeds of the sale from her gross income. In *Hughes v. Commissioner,* 54 T.C. 1049 (1970), *aff'd per curiam,* 450 F. 2d 980 (4th Cir. 1971), the Tax Court held that the sale of land subjacent to the taxpayers' house, without the sale of the house, did not qualify for nonrecognition of gain under section 1034(a), which is an extension of the court's prior position in *O'Barr.* In Rev. Rul. 76-541, 1976-2 C.B. 246, the Service adopted the rule in *Bogley* that the nonrecognition provisions of section 1034 apply to the gain realized from the sale of 3 acres of land including the taxpayer's house, and also to the gain realized from the separate sale of an adjacent 2 acres of land. It distinguished Rev. Rul. 56-420, 1956-2 C.B. 519, where the sale of a portion of a city lot on which a taxpayer's house was located did not qualify for nonrecognition of gain under section 1034(a) because the property sold did not include the taxpayer's dwelling.

The situation in this case is not the type to which Congress sought to grant tax relief as reflected in the legislative history described above. In this case, because the taxpayer did not dispose of the house, there was not a sale or exchange of the taxpayer's principal residence for purposes of sections 1034 or 121 of the Code. See also Rev. Rul. 56-420. The sale of a portion of the taxpayer's residential property without the sale of the house, unless the sale is one in a series of transactions that includes the sale of the taxpayer's house, such as in *Bogley* and Rev. Rul. 76-541, will not qualify as a sale or exchange of the taxpayer's principal residence.

HOLDING

By selling the land on which the principal residence was located, but by not selling the principal residence itself, the taxpayer may not exclude from gross income the gain realized from the sale of the land under section 121 of the Code. This holding is also applicable to situations to which section 1034 applies.

EFFECT ON OTHER REVENUE RULINGS

In light of Congressional history behind section 112 of the 1939 Code, section 1034 of the 1954 Code, and the requirements of section 121 of the Code, as well as the related case law discussed above, the Service has reconsidered the position taken in Rev. Rul. 54-156, 1954-1 C.B. 112, which allowed nonrecognition of gain on the sale of land subjacent to the taxpayer's principal residence, which was not sold. Rev. Rul. 54-156 is modified and revoked.

PROSPECTIVE APPLICATION

Because this revenue ruling limits the situations in which gain may not be recognized on the sale of land, it is appropriate to provide relief from retroactive applications under section 7805(b) of the Code. This revenue ruling will notapply to sales and exchanges occurring before March 28, 1983, the date this revenue ruling is published in the Internal Revenue Bulletin.

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