

**Legal Assistance Practice Points: Part 1: Overview of the Tax Consequences of the
Sale of a Home
September 29, 2009
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Most people view the sale of a home as the end of a chapter, whether relocating to another community, moving to a larger home or simplifying their lives by shedding themselves of the costs and repair responsibilities. The reality is, the sale of a home could reap a financial windfall or unleash a significant tax analysis headache, depending on how the home was used while it was owned.

According to the Internal Revenue Service (IRS)¹, individuals can exclude the Gain on a main home if they meet certain requirements. If you qualify, you may exclude part or all of the Gain on the sale of your main home, meaning, you won't have to pay tax on the Gain. You may exclude up to \$250,000 if single or \$500,000 if married and filing a joint return of the Gain on the sale of your main home if: 1) you meet the Ownership Test (owned the home for at least 2 of the 5 years ending on the date of the sale); 2) you meet the Use Test (lived in the home as your main home for at least 2 years); and 3) during the 2 year period ending on the date of the sale, you did not exclude Gain from the sale of another home. "Main home" is defined as the home you live in most of the time and it can be a house, houseboat, mobile home, cooperative apartment or condominium. The 2 years of Ownership and Use during the 5 year period ending on the date of the sale do not have to be continuous nor do they have to occur at the same time: so as long as you can prove you lived in the property as your main home for either 24 full months or 730 days during the 5 year period ending on the date of the sale, you are able to claim the taxable Gain exclusion. To claim the maximum \$500,000 exclusion of the Gain: 1) you must be married and file a joint return, 2) either you or your spouse must meet the Ownership Test, 3) both you and your spouse meet the Use Test, and 4) during the 2 year period ending on the date of the sale, neither you nor your spouse excluded Gain from the sale of another home. In separation and divorce situations, you are considered to have used the property as your main home during any period when: 1) you owned it, and 2) your spouse or former spouse is allowed to live in it under a divorce or separation instrument and uses it as his or her main home.

There are certain exceptions that will extend the 5 year time frame, most notably, service-members can choose to have the 5 year Test periods for Ownership and Use suspended during any period you or your spouse serve on "qualified official extended duty" as a member of the uniformed services. This means you may be able to meet the 2 year Test even if you did not actually live in your home for at least the required 2 years during the 5 year period ending on the date of the sale. Basically, this means as long as you meet the 2 year Use and Ownership Tests within any 5 year period, you can disregard the time spent away from the home due to military service. So if you lived in the house for 2.5 years, then lived for 6 years away from the home due to military service and subsequently sold the home, you can still exclude the Gain because you lived in the home for at least 2 of 5 years, ignoring the 6 years that you were away from the home as a result of military service. The suspension period cannot last more than 10 years and together, the 10 year suspension period and the 5 year Test period cannot exceed 15 years.

Stay Tuned for how to calculate the Gain and how to handle the sale if the Home was used as a rental property in upcoming issues.

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¹ Internal Revenue Service Publication 17 (2008) was heavily consulted in the preparation of this article.