§ 121. Exclusion of gain from sale of principal residence

(a) Exclusion

Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer’s principal residence for periods aggregating 2 years or more.

(b) Limitations

(1) In general

The amount of gain excluded from gross income under subsection (a) with respect to any sale or exchange shall not exceed $250,000.

(2) Special rules for joint returns

In the case of a husband and wife who make a joint return for the taxable year of the sale or exchange of the property—

(A) $500,000 Limitation for certain joint returns

Paragraph (1) shall be applied by substituting “$500,000” for “$250,000” if—

(i) either spouse meets the ownership requirements of subsection (a) with respect to such property;

(ii) both spouses meet the use requirements of subsection (a) with respect to such property; and

(iii) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

(B) Other joint returns

If such spouses do not meet the requirements of subparagraph (A), the limitation under paragraph (1) shall be the sum of the limitations under paragraph (1) to which each spouse would be entitled if such spouses had not been married. For purposes of the preceding sentence, each spouse shall be treated as owning the property during the period that either spouse owned the property.

(3) Application to only 1 sale or exchange every 2 years

(A) In general

Subsection (a) shall not apply to any sale or exchange by the taxpayer if, during the 2-year period ending on the date of such sale or exchange, there was any other sale or exchange by the taxpayer to which subsection (a) applied.

(B) Pre-May 7, 1997, sales not taken into account

Subparagraph (A) shall be applied without regard to any sale or exchange before May 7, 1997.

(4) Special rule for certain sales by surviving spouses

In the case of a sale or exchange of property by an unmarried individual whose spouse is deceased on the date of such sale, paragraph (1) shall be applied by substituting “$500,000” for “$250,000” if such sale occurs not later than 2 years after the date of death of such spouse and the requirements of paragraph (2)(A) were met immediately before such date of death.

(4) 1 Exclusion of gain allocated to nonqualified use

(A) In general

Subsection (a) shall not apply to so much of the gain from the sale or exchange of property as is allocated to periods of nonqualified use.

(B) Gain allocated to periods of nonqualified use

For purposes of subparagraph (A), gain shall be allocated to periods of nonqualified use based on the ratio which—

(i) the aggregate periods of nonqualified use during the period such property was owned by the taxpayer, bears to

(ii) the period such property was owned by the taxpayer.

(C) Period of nonqualified use

For purposes of this paragraph—

(i) In general

The term “period of nonqualified use” means any period (other than the portion of any period preceding January 1, 2009) during which the property is not used as the principal residence of the taxpayer or the taxpayer’s spouse or former spouse.

(ii) Exceptions

The term “period of nonqualified use” does not include—

(I) any portion of the 5-year period described in subsection (a) which is after the last date that such property is used as the principal residence of the taxpayer or the taxpayer’s spouse, (II) any period (not to exceed an aggregate period of 10 years) during which the taxpayer or the taxpayer’s spouse is serving on qualified official extended duty (as defined in subsection (d)(9)(C)) described in clause (i), (ii), or (iii) of subsection (d)(9)(A), and

(III) any other period of temporary absence (not to exceed an aggregate period of 2 years) due to change of employment, health conditions, or such other unforeseen circumstances as may be specified by the Secretary.

(D) Coordination with recognition of gain attributable to depreciation

For purposes of this paragraph—

(i) subparagraph (A) shall be applied after the application of subsection (d)(6), and

(ii) subparagraph (B) shall be applied without regard to any gain to which subsection (d)(6) applies.

(c) Exclusion for taxpayers failing to meet certain requirements

(1) In general

In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a), and subsection (b)(3), shall not apply; but the dollar limita-

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1 So in original. Two pars. (4) have been enacted.
§ 121

(2) Property of deceased spouse

such property.

either spouse meets the ownership and use re-

quirements of subsection (a) with respect to

property, subsections (a) and (c) shall apply if

the taxable year of the sale or exchange of the

(2) Sales and exchanges to which subsection

applies

This subsection shall apply to any sale or ex-

change if—

(A) subsection (a) would not (but for this

subsection) apply to such sale or exchange

by reason of—

(i) a failure to meet the ownership and use re-

quirements of subsection (a), or

(ii) subsection (b)(3), and

(B) such sale or exchange is by reason of a

change in place of employment, health, or,

to the extent provided in regulations, un-

foreseen circumstances.

(d) Special rules

(1) Joint returns

If a husband and wife make a joint return for

the taxable year of the sale or exchange of the

property, subsections (a) and (c) shall apply if

either spouse meets the ownership and use re-

quirements of subsection (a) with respect to

such property.

(2) Property of deceased spouse

For purposes of this section, in the case of

an unmarried individual whose spouse is de-

cased on the date of the sale or exchange of

property, the period such unmarried individ-

ual owned and used such property shall in-

clude the period such deceased spouse owned

and used such property before death.

(3) Property owned by spouse or former spouse

For purposes of this section—

(A) Property transferred to individual from

spouse or former spouse

In the case of an individual holding prop-

erty transferred to such individual in a

transaction described in section 1041(a), the

period such individual owns such property

shall include the period the transferor owned

the property.

(B) Property used by former spouse pursuant
to divorce decree, etc.

Solely for purposes of this section, an indi-

vidual shall be treated as using property as

such individual’s principal residence during

any period of ownership while such individ-

ual’s spouse or former spouse is granted use

of the property under a divorce or separa-

tion instrument (as defined in section 71(b)(2)).

(4) Tenant-stockholder in cooperative housing
corporation

For purposes of this section, if the taxpayer

holds stock as a tenant-stockholder (as de-

fined in section 216) in a cooperative housing

corporation (as defined in such section), then—

(A) the holding requirements of subsection

(a) shall be applied to the holding of such

stock, and

(B) the use requirements of subsection (a)

shall be applied to the house or apartment

which the taxpayer was entitled to occupy

as such stockholder.

(5) Involuntary conversions

(A) In general

For purposes of this section, the destruc-

tion, theft, seizure, requisition, or con-

demnation of property shall be treated as

the sale of such property.

(B) Application of section 1033

In applying section 1033 (relating to invol-

untary conversions), the amount realized

from the sale or exchange of property shall

be treated as being the amount determined

without regard to this section, reduced by

the amount of gain not included in gross in-

come pursuant to this section.

(C) Property acquired after involuntary con-

version

If the basis of the property sold or ex-

changed is determined (in whole or in part)

under section 1033(b) (relating to basis of

property acquired through involuntary con-

version), then the holding and use by the

taxpayer of the converted property shall be

treated as holding and use by the taxpayer

of the property sold or exchanged.

(6) Recognition of gain attributable to depre-

ciation

Subsection (a) shall not apply to so much of

the gain from the sale of any property as does

not exceed the portion of the depreciation ad-

justments (as defined in section 1250(b)(3)) at-

tributable to periods after May 6, 1997, in re-

spect of such property.

(7) Determination of use during periods of out-

of-residence care

In the case of a taxpayer who—

(A) becomes physically or mentally in-

capable of self-care, and

(B) owns property and uses such property

as the taxpayer’s principal residence during

the 5-year period described in subsection (a)

for periods aggregating at least 1 year,

then the taxpayer shall be treated as using

such property as the taxpayer’s principal resi-

dence during any time during such 5-year pe-

riod in which the taxpayer owns the property

and resides in any facility (including a nursing

home) licensed by a State or political subdivi-

sion to care for an individual in the taxpayer’s

condition.

(8) Sales of remainder interests

For purposes of this section—

(A) In general

At the election of the taxpayer, this sec-

tion shall not fail to apply to the sale or ex-
change of an interest in a principal residence by reason of such interest being a remainder interest in such residence, but this section shall not apply to any other interest in such residence which is sold or exchanged separately.

(B) Exception for sales to related parties
Subparagraph (A) shall not apply to any sale to, or exchange with, any person who bears a relationship to the taxpayer which is specified in section 267(b) or 707(b).

(9) Uniformed services, Foreign Service, and intelligence community

(A) In general
At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual’s spouse is serving on qualified official extended duty—

(i) as a member of the uniformed services,
(ii) as a member of the Foreign Service of the United States, or
(iii) as an employee of the intelligence community.

(B) Maximum period of suspension
The 5-year period described in subsection (a) shall not be extended more than 10 years by reason of subparagraph (A).

(C) Qualified official extended duty
For purposes of this paragraph—

(i) In general
The term “qualified official extended duty” means any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters.

(ii) Uniformed services
The term “uniformed services” has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

(iii) Foreign Service of the United States
The term “Foreign Service of the United States” has the meaning given the term “member of the Service” by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980, as in effect on the date of the enactment of this paragraph.

(iv) Employee of intelligence community
The term “employee of the intelligence community” means an employee (as defined in section 2105 of title 5, United States Code) of—

(I) the Office of the Director of National Intelligence,
(II) the Central Intelligence Agency,
(III) the National Security Agency,
(IV) the Defense Intelligence Agency,
(V) the National Geospatial-Intelligence Agency,
(VI) the National Reconnaissance Office,
(VII) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs,
(VIII) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, and the Coast Guard.
(IX) the Bureau of Intelligence and Research of the Department of State, or
(X) any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.

(v) Extended duty
The term “extended duty” means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

(D) Special rules relating to election

(i) Election limited to 1 property at a time
An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

(ii) Revocation of election
An election under subparagraph (A) may be revoked at any time.

(10) Property acquired in like-kind exchange
If a taxpayer acquires property in an exchange with respect to which gain is not recognized (in whole or in part) to the taxpayer under subsection (a) or (b) of section 1031, subsection (a) shall not apply to the sale or exchange of such property by such taxpayer (or by any person whose basis in such property is determined, in whole or in part, by reference to the basis in the hands of such taxpayer) during the 5-year period beginning with the date of such acquisition.


(12) Peace Corps

(A) In general
At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual’s spouse is serving outside the United States—

(i) on qualified official extended duty (as defined in paragraph (9)(C)) as an employee of the Peace Corps, or
(ii) as an enrolled volunteer or volunteer leader under section 5 or 6 (as the case may be) of the Peace Corps Act (22 U.S.C. 2594, 2595).
For purposes of subparagraph (A), rules similar to the rules of subparagraphs (B) and (D) shall apply.

(e) Denial of exclusion for expatriates

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

(f) Election to have section not apply

This section shall not apply to any sale or exchange with respect to which the taxpayer elects not to have this section apply.

(g) Residences acquired in rollovers under section 1034

For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under section 1034 (as in effect on the day before the date of the enactment of this section) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used such property as the taxpayer’s principal residence, there shall be included the aggregate periods for which such other residence (and each prior residence taken into account under section 1223(6) in determining the holding period of such property) had been so owned and used.


ANNUAL AMENDMENTS

Section 103 of the Foreign Service Act of 1980, referred to in subsec. (d)(9)(C)(iii), is classified to section 3903 of Title 22, Foreign Relations and Intercourse.

Section 1034 (as in effect on the day before the date of the enactment of this section), referred to in subsec. (g), probably means section 1034 of this title as in effect on the day before the date of enactment of Pub. L. 103–34 which amended this section generally a section 1034 which was approved Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105–34, title III, §312(b), Aug. 5, 1997, 111 Stat. 839.

CODIFICATION

Pub. L. 109–135, title IV, §403(ee)(1), (nm), Dec. 21, 2005, 119 Stat. 2631, 2632, which directed that subsec. (d) of this section be amended by redesignating the paragraph (10) relating to property acquired from a decedent as paragraph (11), effective as if included in the provisions to which such amendment relates of the American Jobs Creation Act of 2004, Pub. L. 108–357, was executed as the probable intent of Congress by redesignating as paragraph (11) the paragraph (10) directed to be added to subsec. (d) of this section by Pub. L. 107–16, §542(c), (f)(1), applicable to estates of decedents dying after Dec. 31, 2009. See Codification note, 2001, 2003, and 2005 Amendment notes, and Effective Date of 2005 Amendment note below.

Pub. L. 108–121, title I, §101(a), (b)(1), Nov. 11, 2003, 117 Stat. 1386, which directed that subsec. (d) of this section be amended by redesignating paragraph (9) as (10) and adding a new paragraph (9), effective as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997, Pub. L. 105–34, could not literally be executed insofar as it directed the redesignation because subsec. (d), as amended by Pub. L. 105–34, did not contain a paragraph (9). However, to reflect the probable intent of Congress, the amendment was executed by redesignating as paragraph (10) the paragraph (9) directed to be added to subsec. (d) of this section by Pub. L. 107–16, §542(c), (f)(1), applicable to estates of decedents dying after Dec. 31, 2009. See Codification note above and 2001, 2003, and 2005 Amendment notes and Effective Date of 2003 Amendment note below.

Prior Provisions

Prior section 121 was renumbered section 140 of this title.

Amendments

2010—Subsec. (d)(11). Pub. L. 111–312, §§301(a), 304, temporarily amended subsec. (d) to read as if amendment by Pub. L. 107–16, §542(c), (f)(1), which originally added par. (9), had never been enacted. See Codification notes above and 2001 Amendment note and Effective and Termination Dates of 2010 Amendment note below. Prior to amendment by Pub. L. 107–16, §542(c), (f)(1) read as follows: “Property acquired from a decedent.—The exclusion under this section shall apply to property sold by—

(A) the estate of a decedent,

(B) any individual who acquired such property from the decedent (within the meaning of section 1022), and

(C) a trust which, immediately before the death of the decedent, was a qualified revocable trust (as defined in section 654(b)(1)) established by the decedent, determined by taking into account the ownership and use by the decedent.”


Subsec. (d)(9)(C)(vi). Pub. L. 110–245, §113(b), struck out heading and text of cl. (vi). Text read as follows: “An employee of the intelligence community shall not be treated as serving on qualified extended duty unless such duty is at a duty station located outside the United States.”

Subsec. (d)(9)(E). Pub. L. 110–245, §113(a), struck out heading and text of subpar. (E). Text read as follows: “Clause (ii) of subparagraph (A) shall not apply with respect to any sale or exchange after December 31, 2010.”

References in Text

The date of the enactment of this paragraph, referred to in subsec. (d)(9)(C)(ii), (iii), is the date of enactment of Pub. L. 108–121, which was approved Nov. 11, 2003.

So in original.

See References in Text note below.
“(1) as a member of the uniformed services,”
“(ii) as a member of the Foreign Service of the United States,” or
“(iii) as an employee of the intelligence community.”
for “duty as a member of the uniformed services or of the Foreign Service of the United States.”
2005—Subsec. (d)(10). Pub. L. 109–135, § 403(ee)(2), amended heading and text of par. (10) relating to property acquired in like-kind exchange generally. Prior to amendment, text read as follows: “If a taxpayer acquires property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.”
1998—Subsec. (b)(2). Pub. L. 105–206, § 6005(e)(1), substituted “Special rules for joint returns” for “$500,000 limitation for joint returns” in heading of amended text generally. Prior to amendment, text read as follows: “Paragraph (1) shall be applied by substituting ‘$500,000’ for ‘$250,000’ if—
(1) a husband and wife make a joint return for the taxable year of the sale or exchange of the property,
(2) either spouse meets the ownership requirements of subsection (a) with respect to such property, and
(3) both spouses meet the use requirements of subsection (a) with respect to such property by reason of paragraph (3).”
Prior to amendment, text read as follows: “In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a) shall not apply and subsection (b)(3) shall not apply; but the amount of gain excluded from gross income under subsection (a) with respect to such sale or exchange shall not exceed—
(A) the amount which bears the same ratio to the amount which would be so excluded under this section if such requirements had been met, as
(B) the shorter of—
(i) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer’s principal residence, or
(ii) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange, bears to 2 years.”
1997—Pub. L. 105–34 amended section catchline and text generally. Prior to amendment, section related to one-time exclusion of gain from sale of principal residence by individual who had attained age 55.
1991—Subsec. (b)(1). Pub. L. 97–31 substituted “$250,000 ($62,500) for $100,000 ($50,000)”.
1978—Pub. L. 95–460, § 404(a), substituted “One-time exclusion of gain from sale of principal residence by individual who has attained age 55” for “Gain from sale or exchange of residence of individual who has attained age 65” in section catchline.
Subsec. (a). Pub. L. 95–600, § 404(a), substituted “55” for “65”, “5-year” for “8-year”, and “3 years” for “5 years”.
Subsec. (b). Pub. L. 95–600, § 404(a), in par. (1) substituted provisions respecting dollar limitations for amount of gain for provisions setting forth applicable limitations where the adjusted sales price exceeds $35,000 and added par. (3).
Subsec. (d)(2). Pub. L. 95–600, § 404(c)(1), substituted “5-year period” for “8-year period”.
Subsec. (d)(5). Pub. L. 95–600, § 404(c)(2), substituted “5-year period” for “8-year period” and “3 years” for “5 years”.
Subsec. (d)(8). Pub. L. 95–600, § 404(b), added par. (8).
Subsecs. (c), (d)(5). Pub. L. 94–455, § 1306(b)(13)(A), struck out “or his delegate” after “Secretary”.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT
Pub. L. 111–312, title III, § 301(e), Dec. 17, 2010, 124 Stat. 3301, provided that: “Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 2505, 4947, 6018, 6019, 6075, and 7701 of this title and repealing sections 1022, 2210, 2694, and 6716 of this title] shall apply to estates of decedents dying, and transfers made, after December 31, 2009.”

EFFECTIVE DATE OF 2008 AMENDMENT
Pub. L. 110–245, title I, § 118(c), June 17, 2008, 122 Stat. 1635, provided that: “The amendments made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [June 17, 2008].”

EFFECTIVE DATE OF 2007 AMENDMENT

EFFECTIVE DATE OF 2006 AMENDMENT
§11(a)(11)(B), Dec. 29, 2007, 121 Stat. 2385, provided that: ‘‘The amendments made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Dec. 20, 2006].’’

Effective Date of 2005 Amendment

Amendment by section 403(ee) of Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(m) of Pub. L. 109-135, set out as a note under section 26 of this title.

Effective Date of 2004 Amendment
Pub. L. 108-357, title VIII, §840(b), Oct. 22, 2004, 118 Stat. 1597, provided that: ‘‘The amendment made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Oct. 22, 2004].’’

Effective Date of 2003 Amendment
Pub. L. 108-121, title I, §101(b), Nov. 11, 2003, 117 Stat. 1336, provided that:

‘‘(1) EFFECTIVE DATE.—The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997 [Pub. L. 105-34].’’

‘‘(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section [amending this section] is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Nov. 11, 2003] by reason of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.’’

Effective and Termination Dates of 2001 Amendment
Pub. L. 107-16, title V, §542(f), June 7, 2001, 115 Stat. 86, provided that:

‘‘(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting sections 1022 and 6716 of this title and amending this section and sections 170, 215, 280A, 464, 512, 1016, 1033, 1034, 1038, 1039, 1223, 1250, 1274, 6012, 6045, 6221, 6334, 6504, and 7872 of this title and repealing section 1034 of this title] shall apply to sales and exchanges after May 6, 1997.

‘‘(2) SALES ON OR BEFORE DATE OF ENACTMENT.—At the election of the taxpayer, the amendments made by this section shall not apply to any sale or exchange on or before the date of the enactment of this Act [Aug. 5, 1997].’’

‘‘(3) CERTAIN SALES WITHIN 2 YEARS AFTER DATE OF ENACTMENT.—Section 121 of the Internal Revenue Code of 1986 (as amended by this section) shall be applied without regard to subsection (c)(2)(B) thereof in the case of any sale or exchange of property during the 2-year period beginning on the date of the enactment of this Act if the taxpayer held such property on the date of the enactment of this Act and fails to meet the ownership and use requirements of subsection (a) thereof with respect to such property.

‘‘(4) BINDING CONTRACTS.—At the election of the taxpayer, the amendments made by this section shall not apply to a sale or exchange after the date of the enactment of this Act, if—

“A such sale or exchange is pursuant to a contract which was binding on such date, or

“B without regard to such amendments, gain would not be recognized under section 1034 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) on such sale or exchange by reason of a new residence acquired on or before such date or with respect to the acquisition of which by the taxpayer a binding contract was in effect on such date.

This paragraph shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) of the Internal Revenue Code of 1986 applies to such individual.’’

Effective Date of 1988 Amendment
Section 6011(b) of Pub. L. 100-647 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to transactions sold or exchanged after September 30, 1988, in taxable years ending after such date.’’

Effective Date of 1981 Amendment
Section 123(b) of Pub. L. 97-34 provided that: ‘‘The amendment made by this section [amending this section] shall apply to residences sold or exchanged after July 20, 1981.’’

Effective Date of 1978 Amendment
Section 404(d)(1) of Pub. L. 95-600 provided that: ‘‘The amendments made by this section [amending this section and sections 1033, 1034, 1250, and 6012 of this title] shall apply to sales or exchanges after July 26, 1978, in taxable years ending after such date.’’

Effective Date of 1976 Amendment
Section 1404(b) of Pub. L. 94-455 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976.’’

Effective Date
Section 206(c) of Pub. L. 88-272 provided that: ‘‘The amendments made by this section [enacting this section, redesignating former section 121 as 122, and amending sections 1033, 1034, and 6012 of this title] shall apply to dispositions after September 30, 1975, in taxable years ending after such date.’’

Sense of Congress Concerning Tax Treatment of Principal Residence of Members of Armed Forces While Away From Home on Active Duty
that a member of the Armed Forces should be treated for purposes of section 121 of the Internal Revenue Code of 1986 as using property as a principal residence during any continuous period that the member is serving on active duty for 180 days or more with the Armed Forces, but only if the member used the property as a principal residence for any period during or immediately before that period of active duty.

**Transitional Rule in Case of Sale or Exchange of Residence Before July 26, 1981**

Section 404(d)(2) of Pub. L. 95–690, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2905, provided that: "In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to have section 121 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applied by substituting '8-year period' for '5-year period' and '5 years' for '3 years' in subsections (a), (d)(2), and (d)(3) of section 121.

§ 122. Certain reduced uniformed services retirement pay

(a) General rule

In the case of a member or former member of the uniformed services of the United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code.

(b) Special rule

(1) Amount excluded from gross income

In the case of any individual referred to in subsection (a), all amounts received after December 31, 1965, as retired or retainer pay shall be excluded from gross income until there has been so excluded an amount equal to the consideration for the contract. The preceding sentence shall apply only to the extent that the amounts received would, but for such sentence, be includible in gross income.

(2) Consideration for the contract

For purposes of paragraph (1) and section 72(n), the term "consideration for the contract" means, in respect of any individual, the sum of—

(A) the total amount of the reductions before January 1, 1966, in his retired or retainer pay by reason of an election under chapter 73 of title 10 of the United States Code, and

(B) any amounts deposited at any time by him pursuant to section 1438 or 1452(d) of such title 10.


**Effective Date**


Section 2005(c)(10) of Pub. L. 93–406 provided that: "The amendments made by this section [amending this section and section 72 of this title] shall apply with respect to taxable years ending on or after September 21, 1972. The amendments made by paragraphs (3) and (4) of subsection (b) [amending sections 101 and 102 of this title] apply with respect to individuals making an election under chapter 73 of title 10 of the United States Code who die after December 31, 1965."

§ 123. Amounts received under insurance contracts for certain living expenses

(a) General rule

In the case of an individual whose principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or threat of occurrence of such a casualty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household resulting from the loss of use or occupancy of such residence.

(b) Limitation

Subsection (a) shall apply to amounts received by the taxpayer for living expenses incurred during any period only to the extent the amounts received do not exceed the amount by which—

(1) the actual living expenses incurred during such period for himself and members of his household resulting from the loss of use or occupancy of their residence, exceed

(2) the normal living expenses which would have been incurred for himself and members of his household during such period.


**Effective Date**

Section 901(c) of Pub. L. 91–172 provided that: "The amendments made by this section [enacting this section] shall apply with respect to amounts received on or after January 1, 1969."