



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

2005-0055
INFO

MAR 30 2004

The Honorable John Warner
United States Senator
4900 World Trade Center
Norfolk, VA 23510

UIL: 121.00-00
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Dear Senator Warner:

This letter is in response to your inquiry dated February 18, 2004, on behalf of your constituent, Mr. . Mr. , who is divorced, asked whether he is subject to capital gains tax on the sale of his former home in . Mr. has lived in since January 1, 2000, and his former wife resides in the home. The house in will be sold this year, and he is entitled to a portion of any profits.

Under §121(a) of the Internal Revenue Code gross income does 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, the taxpayer owned and used the property as the taxpayer's principal residence for periods totaling 2 years or more. The amount of gain excluded from the gross income of a taxpayer filing a separate return can't exceed \$250,000.

Special rules contained in §121(d)(3)(B) and in §1.121-4(b)(2) of the Income Tax Regulations treat a taxpayer as using property as the taxpayer's principal residence for any period that the taxpayer has an ownership interest in the property. In addition, the taxpayer's spouse or former spouse must be granted use of the property under a divorce or separation instrument, and the spouse or former spouse must use the property as his or her principal residence.

I am enclosing relevant pages of Publication 523, *Selling Your Home*, which contains further information on excluding the gain from the sale of a principal residence.

I hope this information is helpful. If you have any further questions, please call [REDACTED] Identification Number [REDACTED] at [REDACTED]

Sincerely,

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

Enclosure