**8586. If a taxpayer has multiple residences, which residence qualifies as the principal residence in determining whether exclusion of gain upon sale is permissible?**

Under IRC Section 121, an individual may elect to exclude up to $250,000 ($500,000 for married couples) on the sale of a principal residence (see Q 8583 and Q 8585). This exclusion is only available with respect to the taxpayer’s principal residence. If a taxpayer has multiple residences, the taxpayer may still only exclude gain from the sale of the residence that is considered to be the principal residence.

Whether or not a residence is considered the taxpayer’s principal residence for purposes of the Section 121 exclusion requires a traditional facts and circumstances analysis.[[1]](#footnote-1) Assuming that the taxpayer alternates between two or more residences, the residence the taxpayer resides at for the majority of the time generally will be considered the principal residence. Additionally, other factors considered in making the determination, including the following nonexhaustive list:

(1) the taxpayer’s place of employment;

(2) the principal place of residence of the taxpayer’s family members;

(3) the address listed by the taxpayer on his or her driver’s license, tax returns, car registration and voter registration card;

(4) the taxpayer’s mailing address for bills and correspondence;

(5) the location of the taxpayer’s bank; and

(6) the location of religious organizations and recreational clubs with which the taxpayer is affiliated.[[2]](#footnote-2)

In a case involving two different residences in different states, the Tax Court held that the taxpayer’s principal residence was the one in which the taxpayer spent a substantial amount of time, i.e., threw family parties and celebrated holidays, even though the second residence address appeared on the taxpayer’s tax returns over the years. In addition, the Tax Court rejected the IRS’ contention that the second residence in the other state was the taxpayer’s principal residence because the taxpayer (1) owned a business in that state and (2) held a liquor license that required state residency.[[3]](#footnote-3)

With respect to multiple residences, it is possible that over a five year period, a taxpayer may not spend the majority of days in any one residence for the two required years. Thus, he or she would not be able to take advantage of the exclusion due to the failure to meet the two-year use requirement (see Q 8583).

*Example:* In the past five years, Jim and Nancy alternated between homes in Michigan, Florida and New York. During that five-year period, they spent more time in the Florida residence than in any other home. *However*, within that period, there was only one year in which they spent the majority of days in Florida. Therefore, even though their primary residence is in Florida, they will be unable to exclude gain on its sale under Section 121 because they will be unable to satisfy the two-year use requirement.[[4]](#footnote-4)

Although not expressly addressed in the regulations, if the taxpayers were able to satisfy the two-year use requirement for more than one residence during the relevant five year period, they should be able to exclude gain from the sale of *either* residence.

*Example:* During the previous five year period, Jim and Nancy spend the majority of their days in Florida during years one and two. In years three and five, they spend the majority of their days in Michigan. If they choose to sell the Florida or Michigan residence, they will have satisfied the two-year use requirement for both residences and, assuming the other requirements are met, they should be able to exclude the gain on the sale of *either* residence as their principal residence.

1. . Treas. Reg. §1.121-1(b)(1). [↑](#footnote-ref-1)
2. . Treas. Reg. §1.121-1(b)(2). [↑](#footnote-ref-2)
3. . *Wickersham v. Commissioner*, TC Memo 2011-178. [↑](#footnote-ref-3)
4. . See *Guinan v. U.S.*, 2003-1 USTC 50,475 (2003). [↑](#footnote-ref-4)