**8583. Under what circumstances does all or part of the gain from the sale of a personal residence qualify for nonrecognition treatment?**

As a general rule, taxpayers may exclude up to $250,000 ($500,000 for married taxpayers filing jointly) of gain on the sale of a principal residence.[[1]](#footnote-1) In order to qualify for this exclusion, the taxpayer must have owned and used the residence as the taxpayer’s principal residence for two of the preceding five years.[[2]](#footnote-2)

**Planning Point:** Note that the Internal Revenue Code does not contain a definition of the term “principal residence.” IRS guidance advises that, whether or not property is used by the taxpayer as his principal residence depends on all the facts and circumstances in each case, including the good faith of the taxpayer. Determinative factors include the taxpayer’s place of employment, place of abode of family members, and the address listed on taxpayer’s tax returns.[[3]](#footnote-3)

The use does not need to be continuous in order to satisfy this requirement, and short absences are disregarded for purposes of making the calculation. Thus, for example, a taxpayer who owns his principal residence for two years and takes a two-month vacation each summer will qualify for the Section 121 exclusion despite the fact that he was not physically present in his principal residence for a full 24 months.[[4]](#footnote-4)

The taxpayer may only take advantage of this exclusion once within each two-year period.[[5]](#footnote-5)

*Example*: Shannon and Mike sell their home in January 2013, excluding $50,000 of gain under IRC Section 121. In the same month, they purchase a new primary residence. Less than two years later, in August 2014, they sell that primary residence. Any gain on the 2014 sale cannot be excluded because they have already excluded gain from the sale of one principal residence under IRC Section 121 within a two-year period. The fact that their 2013 exclusion was only $50,000 of a possible $500,000 total exclusion is irrelevant.

However, in some cases, taxpayers may qualify for a reduced exclusion (i.e., a proportionate amount of the potential exclusion) if they sell multiple principal residences during a two-year period because of (a) a change in place of employment; (b) health problems or (c) certain unforeseen circumstances (see Q 8584 for a discussion of these exceptions).[[6]](#footnote-6)

1. . IRC Sec. 121(b). [↑](#footnote-ref-1)
2. . IRC Sec. 121(a). [↑](#footnote-ref-2)
3. . Treas. Reg. §1.121-1(b)(2); IRS Chief Counsel Memo No. 200947036 (11-20-2009). [↑](#footnote-ref-3)
4. . See IRS Pub. 523. [↑](#footnote-ref-4)
5. . IRC Sec. 121(b)(3). [↑](#footnote-ref-5)
6. . See IRS Pub. 523, above. [↑](#footnote-ref-6)