

INTERNAL REVENUE SERVICE

Number: **INFO 2001-0230**

Release Date: 9/28/2001

COR-137935-01

August 23, 2001

UILC: 121.01-02

The Honorable Dennis R. Rehberg
Member, U. S. House of
Representatives
950 North Montana Avenue
Helena, MT 59601

Attention: Mr. Jeff Garrard

Dear Congressman Rehberg:

This letter is in response to your inquiry dated June 21, 2001, on behalf of your constituents, [REDACTED] and [REDACTED]. The [REDACTED] asked about the taxes they will owe if they sell their residence in [REDACTED]. They lived in the residence until 1994, when [REDACTED] was commissioned as an officer in the United States Air Force. Thereafter, they resided at two overseas locations. The [REDACTED] presently reside in Montana, where [REDACTED] is on active duty.

Two tax consultants have told Mrs. [REDACTED] that capital gains tax must be paid if the [REDACTED] now sell their [REDACTED] house and invest the proceeds in a home in Montana. She wrote you asking for relief. Your office forwarded Mrs. [REDACTED]'s inquiry to the Air Force Legislative Liaison Office, which in turn asked our office to advise you on this matter.

Under § 121 of the Internal Revenue Code a taxpayer may exclude up to \$250,000 (\$500,000 for certain joint returns) of gain on the sale or exchange of property if the taxpayer owned and used it as a principal residence for at least 2 years during the 5-year period ending on the date of the sale or exchange. Although § 121 includes several special rules relaxing the use requirement in circumstances involving divorcing spouses, involuntary conversions, and stays in nursing homes, no special provision covers military personnel assigned overseas.

Section 1034, which provided for a rollover of the gain on the sale of a personal residence, did contain some special rules for extensions of time for military personnel. However, the Congress repealed § 1034 in 1997.

A bill, H.R. 356, has been introduced in the 107th Congress to allow an individual to be treated as using a principal residence during any period the individual serves on qualified official extended duty as a member of a uniformed service. Other bills (H.R. 1596 and S. 818) would suspend the running of the 5-year period during the time an individual serves on qualified official extended duty as a member of the uniformed services. Whether any amendment to § 121 would benefit the [REDACTED] would depend on the specific language of the amendment and its effective date.

I hope this information is helpful. Please call Ms. Marilyn E. Brookens, Identification Number 50-00819, at (202) 622-4920, if you have any questions.

Sincerely,

Associate Chief Counsel
(Income Tax & Accounting)

By: _____
Robert A. Berkovsky
Chief, Branch 4