



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

OFFICE OF
CHIEF COUNSEL

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UIL No. 121.00-00

The Honorable Lincoln Davis
Member, U.S. House of Representatives
477 North Chancery, Suite # A1
McMinnville, TN 37110

Attention:

Dear Congressman Davis:

I am responding to your inquiry dated February 28, 2009, on behalf of your constituent, . asked if he must pay federal income taxes on the proceeds of the sale of his home to the .

In , a retention pond at the steam plant collapsed spilling an estimated 3.1 million cubic feet of fly ash and water over hundreds of acres in , to depths of four to six feet. The has offered to purchase the homes of affected homeowners to forestall litigation. is willing to accept the settlement and sell his home to the if he does not have to pay federal income taxes on the sales proceeds.

I hope that the following information is helpful in responding to .

Taxpayers must include in gross income all income from whatever source derived, including gains derived from dealings in property, unless excluded by law (section 61 of the Internal Revenue Code (Code)). However, a taxpayer generally may exclude from gross income up to \$250,000 of gain from the sale of a principal residence if the taxpayer owned and used the property as his principal residence for periods aggregating at least 2 years during the 5-year period ending on the date the taxpayer sold the residence (section 121(a) and (b)(1) of the Code). The exclusion generally does not apply if, during the 2-year period ending on the date of the sale, the taxpayer

sold other property and excluded the gain under section 121 (section 121(b)(3) of the Code).

Taxpayers who file a joint return may exclude up to \$500,000 in gain on the sale of a principal residence if—

- Either spouse meets the 2-year ownership requirement
- Both spouses meet the 2-year use requirement
- Neither spouse sold another home during the 2-year period ending on the date of sale of the principal residence and excluded the gain from the sale of the other home under section 121 (section 121(b)(2) of the Code).

If you have any questions concerning this matter, please call me or _____ ,
Identification Number _____ , at _____ .

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax and Accounting)