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## Tax Break for Foreign Service, Military, Intelligence Community and Peace Corps

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Since 1997 tax law has permitted homeowners to exclude most gain on the sale of their principal residence if they have owned and lived in the property an aggregate of two years over the last five years. Initially, there was no exception for Foreign Service or military personnel.

Over the years there have been some exceptions and additions made to Internal Revenue Code (IRC) Section 121, which, along with the Section 121 regulations, provide the necessary IRS guidance. After a hard effort, the law was changed in 2003 to suspend, for a maximum of ten years, the running of the five-year period while the taxpayer or their spouse is "serving on qualified official extended duty as a member of the uniformed services or the Foreign Service." The law has been expanded to also include an employee of the intelligence community and Peace Corps members serving overseas. See IRC Section 121(d)(9)(C)(iv) for the intelligence agencies involved.

The term "qualified official extended duty" means "any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters." The term "extended duty" means any period of active duty for a period in excess of 90 days or for an indefinite period.

All personal who qualify for the exclusion of gain on their sale do so if they have owned and lived in the property for a period of two years over the last five years plus the period suspended while on "qualified extended official duty." The property may currently be a rental.

Example: A Foreign Service officer, military couple or employee of the intelligence community purchases a home in June 2009. They live there until September 2011. They then transfer to a new duty station where they are still serving. The house has been rented. They plan to sell the house in December 2015. Will they qualify for the exclusion of gain?

Yes. They used the house as their principal residence for two years, and since they were "serving on qualified official extended duty," the years between September 2011 and December 2015 would be suspended. Up to a total of ten years can be suspended.

If the owner qualifies, then gain from the sale of the house of up to \$250,000 if single, or \$500,000 if married and filing a joint return, will be excluded from income. The "period of non-qualified use"

required by the law does not apply during the suspension or any time after the property was used as a principal residence.

For Peace Corps homeowners the running of the five-year period shall be suspended during the period that such individual or spouse is serving outside the United States on qualified official duty as an employee of the Peace Corps or as an enrolled volunteer.

If the owner of a rental property does not qualify for the exclusion, they can still do a tax-deferred 1031 exchange. This permits them to defer all of the capital gain (profit and depreciation) to a new property to be held for investment, business or rental. There are specific reinvestment requirements and time limits involved for the 1031 exchange for the gain to be deferred. Call us at 1-800-795-0769 for more 1031 exchange information.

*This publication is designed to provide accurate information on tax-deferred exchanges. The publisher is not engaged in rendering legal or accounting services. If legal or tax advice is required, the services of a competent professional should be sought.*