

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.602: Tax forms and instructions.
(Also Part I, Section 6045; 1.6045-4; section 121.)

Rev. Proc. 98-20

SECTION 1. PURPOSE

This revenue procedure sets forth the acceptable form of the written assurances (certification) that a real estate reporting person must obtain from the seller of a principal residence to except such sale or exchange from the information reporting requirements for real estate transactions under § 6045(e)(5) of the Internal Revenue Code.

SECTION 2. BACKGROUND

.01 Section 6045(e) and § 1.6045-4 of the Income Tax Regulations generally require a real estate reporting person (as defined in § 6045(e)(2) and § 1.6045-4) to file an information return regarding a real estate transaction and to furnish a payee statement to the seller regarding that transaction. The information return and statement must include the name, address, and taxpayer identification number (TIN) of the seller, and the gross proceeds of the real estate transaction. This information is reported on Form 1099-S, Proceeds From Real Estate Transactions.

.02 Section 312 of the Taxpayer Relief Act of 1997 (the Act), Pub. L. No. 105-34, 111 Stat. 788 (August 5, 1997),

effective for sales or exchanges after May 6, 1997, amended § 6045(e) by adding a new paragraph (5), which excepts a sale or exchange of a residence from the § 6045(e) information reporting requirements if the seller provides the real estate reporting person with a certification setting forth certain written assurances, including an assurance that the residence is the seller's principal residence (within the meaning of § 121) and an assurance that the full amount of the gain on the sale or exchange of the principal residence is excludable from gross income under § 121.

.03 Section 312 of the Act also amended § 121 to provide new rules for the exclusion of gain on certain sales or exchanges of a principal residence. Section 121, as amended, provides that a taxpayer may exclude from gross income up to \$250,000 of gain on the sale or exchange of a principal residence if certain conditions are met. In certain circumstances, a married individual filing a joint return for the taxable year of the sale or exchange may exclude from gross income up to \$500,000 of gain. This exclusion also applies to the sale or exchange of stock held by a tenant-stockholder in a cooperative housing corporation (as defined in § 216) and may apply to the sale or exchange of a remainder interest in a principal residence if the taxpayer so elects.

SECTION 3. SCOPE

This revenue procedure applies to the information reporting requirements under § 6045(e) for a sale or exchange of a principal residence.

SECTION 4. SELLER CERTIFICATION

.01 To be excepted from the information reporting requirements in § 6045(e) on the sale or exchange of a residence (including stock in a cooperative housing corporation), the real estate reporting person must obtain from the seller a written certification, signed by the seller under penalties of perjury, that assurances (1) through (4) set forth in section 4.02 of this revenue procedure are true. For purposes of this certification, the term "seller" includes each owner of the residence that is sold or exchanged. Thus, if a residence has more than one owner, a real estate reporting person must either obtain a certification from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification.

.02 The assurances are:

(1) The seller owned and used the residence as the seller's principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence.

(2) The seller has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence (not taking into account any sale or exchange before May 7, 1997).

(3) No portion of the residence has been used for business or rental purposes by the seller (or the seller's spouse if the seller is married) after May 6, 1997.

(4) At least one of the following three statements

applies:

The sale or exchange is of the entire residence for \$250,000 or less.

OR

The seller is married, the sale or exchange is of the entire residence for \$500,000 or less, and the gain on the sale or exchange of the entire residence is \$250,000 or less.

OR

The seller is married, the sale or exchange is of the entire residence for \$500,000 or less, and (a) the seller intends to file a joint return for the year of the sale or exchange, (b) the seller's spouse also used the residence as his or her principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and (c) the seller's spouse also has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence (not taking into account any sale or exchange before May 7, 1997).

SECTION 5. FORMAT FOR MAKING SELLER CERTIFICATION

A sample certification form that may be used by a real estate reporting person to obtain the applicable assurances from the seller is provided in the Appendix of this revenue procedure. However, use of this sample certification form is not required. The requirements of the certification under § 6045(e)(5) will be

met if the content and wording of a written certification provide the same information as required by section 4.02 of this revenue procedure.

SECTION 6. OBTAINING AND RETAINING SELLER CERTIFICATION

.01 General rule. Except as provided in section 6.02 of this revenue procedure, the real estate reporting person may obtain a certification at any time on or before January 31 of the year following the year of the sale or exchange of the residence. The certification must be retained by the real estate reporting person for 4 years after the year of the sale or exchange of the residence to which the certification applies.

.02 Transition rule. For a sale or exchange of a residence occurring after May 6, 1997 and on or before December 31, 1997, the real estate reporting person may obtain a certification at any time on or before February 28, 1998.

SECTION 7. PENALTIES

A real estate reporting person who relies on a certification made in compliance with this revenue procedure will not be liable for the penalties under § 6721 for failure to file an information return, or under § 6722 for failure to furnish a payee statement to the seller, unless the real estate reporting person has actual knowledge that any assurance is incorrect.

SECTION 8. COMMENTS INVITED

The Service requests comments on any additional guidance that may be needed under §§ 6045(e)(5) and 121. Comments should be submitted by April 30, 1998, to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, Attn:

CC:DOM:CORP:R (IT&A Branch 2), Room 5226. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, Attn: CC:DOM:CORP:R (IT&A Branch 2), Room 5226. Alternatively, taxpayers may submit comments electronically at

http://www.irs.ustreas.gov/prod/tax_regs/comments.html

(the Service's internet site). All comments submitted will be available for public inspection and copying.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for sales or exchanges of a residence occurring after May 6, 1997.

SECTION 10. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1592.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in sections 4 and 5 of this revenue procedure. This information is required to exempt a real estate reporting person from the requirement to file an information return and furnish a payee statement reporting the sale or exchange of a principal residence. The likely respondents are individual taxpayers who sell or exchange a principal residence and real estate

businesses.

The estimated total annual reporting burden for respondents is 383,000 hours.

The estimated burden per respondent is 10 minutes. The estimated number of respondents is 2,300,000. The frequency of responses is on occasion.

The estimated total annual burden for recordkeepers is 37,500 hours.

The estimated annual burden per recordkeeper is 25 minutes. The estimated number of recordkeepers is 90,000.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Sharon Hester of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Hester at (202) 622-4920 (not a toll-free call).

APPENDIX

CERTIFICATION FOR NO INFORMATION REPORTING
ON THE SALE OR EXCHANGE OF A PRINCIPAL RESIDENCE

This form may be completed by the seller of a principal residence. This information is necessary to determine whether the sale or exchange should be reported to the seller, and to the Internal Revenue Service on Form 1099-S, Proceeds From Real Estate Transactions. If the seller properly completes Parts I and III, and makes a "yes" response to assurances (1) through (4) in Part II, no information reporting to the seller or to the Service will be required for that seller. The term "seller" includes each owner of the residence that is sold or exchanged. Thus, if a residence has more than one owner, a real estate reporting person must either obtain a certification from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification.

Part I. Seller Information

1. Name _____
2. Address or legal description (including city, state, and ZIP code) of residence being sold or exchanged

3. Taxpayer Identification Number (TIN) _____

Part II. Seller Assurances

Check "yes" or "no" for assurances (1) through (4).

Yes No

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | (1) I owned and used the residence as my principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence. |
| <input type="checkbox"/> | <input type="checkbox"/> | (2) I have not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence (not taking into account any sale or exchange before May 7, 1997). |
| <input type="checkbox"/> | <input type="checkbox"/> | (3) No portion of the residence has been used for business or rental purposes by me (or my spouse if I am married) after May 6, 1997. |

- (4) At least one of the following three statements applies:

The sale or exchange is of the entire residence for \$250,000 or less.

OR

I am married, the sale or exchange is of the entire residence for \$500,000 or less, and the gain on the sale or exchange of the entire residence is \$250,000 or less.

OR

I am married, the sale or exchange is of the entire residence for \$500,000 or less, and (a) I intend to file a joint return for the year of the sale or exchange, (b) my spouse also used the residence as his or her principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and (c) my spouse also has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence (not taking into account any sale or exchange before May 7, 1997).

Part III. Seller Certification

Under penalties of perjury, I certify that all the above information is true as of the end of the day of the sale or exchange.

Signature of Seller

Date