

April 15, 1979, by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of this section) may, nevertheless, be made or allowed if claim therefor is filed on or before April 15, 1979.”

**[§ 120. Repealed. Pub. L. 113-295, div. A, title II, § 221(a)(19)(A), Dec. 19, 2014, 128 Stat. 4039]**

Section, added Pub. L. 94-455, title XXI, §2134(a), Oct. 4, 1976, 90 Stat. 1926; amended Pub. L. 97-34, title VIII, § 802(a), Aug. 13, 1981, 95 Stat. 349; Pub. L. 97-448, title I, § 108(a), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98-612, §1(a), (b)(3)(A), Oct. 31, 1984, 98 Stat. 3180, 3181; Pub. L. 99-514, title XI, §§1114(b)(3), 1151(c)(3), (g)(1), 1162(b), Oct. 22, 1986, 100 Stat. 2450, 2503, 2506, 2510; Pub. L. 100-647, title I, §1011B(a)(31)(B), title IV, § 4002(a), (b)(1), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101-140, title II, §203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101-239, title VII, §7102(a)(1), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101-508, title XI, §11404(a), Nov. 5, 1990, 104 Stat. 1388-473; Pub. L. 102-227, title I, §104(a)(1), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 108-311, title II, §207(10), Oct. 4, 2004, 118 Stat. 1177, related to amounts received under qualified group legal services plans.

A prior section 120, act Aug. 16, 1954, ch. 736, 68A Stat. 39, related to statutory subsistence allowance received by police, prior to repeal by Pub. L. 85-866, title I, §3(a), (c), Sept. 2, 1958, 72 Stat. 1607, effective with respect to taxable years ending after Sept. 30, 1958, but only with respect to amounts received as a statutory subsistence allowance for any day after Sept. 30, 1958.

**EFFECTIVE DATE OF REPEAL**

Repeal effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as an Effective Date of 2014 Amendment note under section 1 of this title.

**§ 121. Exclusion of gain from sale of principal residence**

**(a) Exclusion**

Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer’s principal residence for periods aggregating 2 years or more.

**(b) Limitations**

**(1) In general**

The amount of gain excluded from gross income under subsection (a) with respect to any sale or exchange shall not exceed \$250,000.

**(2) Special rules for joint returns**

In the case of a husband and wife who make a joint return for the taxable year of the sale or exchange of the property—

**(A) \$500,000 Limitation for certain joint returns**

Paragraph (1) shall be applied by substituting “\$500,000” for “\$250,000” if—

(i) either spouse meets the ownership requirements of subsection (a) with respect to such property;

(ii) both spouses meet the use requirements of subsection (a) with respect to such property; and

(iii) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

**(B) Other joint returns**

If such spouses do not meet the requirements of subparagraph (A), the limitation

under paragraph (1) shall be the sum of the limitations under paragraph (1) to which each spouse would be entitled if such spouses had not been married. For purposes of the preceding sentence, each spouse shall be treated as owning the property during the period that either spouse owned the property.

**(3) Application to only 1 sale or exchange every 2 years**

Subsection (a) shall not apply to any sale or exchange by the taxpayer if, during the 2-year period ending on the date of such sale or exchange, there was any other sale or exchange by the taxpayer to which subsection (a) applied.

**(4) Special rule for certain sales by surviving spouses**

In the case of a sale or exchange of property by an unmarried individual whose spouse is deceased on the date of such sale, paragraph (1) shall be applied by substituting “\$500,000” for “\$250,000” if such sale occurs not later than 2 years after the date of death of such spouse and the requirements of paragraph (2)(A) were met immediately before such date of death.

**(5) Exclusion of gain allocated to nonqualified use**

**(A) In general**

Subsection (a) shall not apply to so much of the gain from the sale or exchange of property as is allocated to periods of nonqualified use.

**(B) Gain allocated to periods of nonqualified use**

For purposes of subparagraph (A), gain shall be allocated to periods of nonqualified use based on the ratio which—

(i) the aggregate periods of nonqualified use during the period such property was owned by the taxpayer, bears to

(ii) the period such property was owned by the taxpayer.

**(C) Period of nonqualified use**

For purposes of this paragraph—

**(i) In general**

The term “period of nonqualified use” means any period (other than the portion of any period preceding January 1, 2009) during which the property is not used as the principal residence of the taxpayer or the taxpayer’s spouse or former spouse.

**(ii) Exceptions**

The term “period of nonqualified use” does not include—

(I) any portion of the 5-year period described in subsection (a) which is after the last date that such property is used as the principal residence of the taxpayer or the taxpayer’s spouse,

(II) any period (not to exceed an aggregate period of 10 years) during which the taxpayer or the taxpayer’s spouse is serving on qualified official extended duty (as defined in subsection (d)(9)(C)) described in clause (i), (ii), or (iii) of subsection (d)(9)(A), and

(III) any other period of temporary absence (not to exceed an aggregate period of 2 years) due to change of employment, health conditions, or such other unforeseen circumstances as may be specified by the Secretary.

**(D) Coordination with recognition of gain attributable to depreciation**

For purposes of this paragraph—

(i) subparagraph (A) shall be applied after the application of subsection (d)(6), and

(ii) subparagraph (B) shall be applied without regard to any gain to which subsection (d)(6) applies.

**(c) Exclusion for taxpayers failing to meet certain requirements**

**(1) In general**

In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a), and subsection (b)(3), shall not apply; but the dollar limitation under paragraph (1) or (2) of subsection (b), whichever is applicable, shall be equal to—

(A) the amount which bears the same ratio to such limitation (determined without regard to this paragraph) as

(B)(i) the shorter of—

(I) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence; or

(II) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange, bears to

(ii) 2 years.

**(2) Sales and exchanges to which subsection applies**

This subsection shall apply to any sale or exchange if—

(A) subsection (a) would not (but for this subsection) apply to such sale or exchange by reason of—

(i) a failure to meet the ownership and use requirements of subsection (a), or

(ii) subsection (b)(3), and

(B) such sale or exchange is by reason of a change in place of employment, health, or to the extent provided in regulations, unforeseen circumstances.

**(d) Special rules**

**(1) Joint returns**

If a husband and wife make a joint return for the taxable year of the sale or exchange of the property, subsections (a) and (c) shall apply if either spouse meets the ownership and use requirements of subsection (a) with respect to such property.

**(2) Property of deceased spouse**

For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, the period such unmarried individ-

ual owned and used such property shall include the period such deceased spouse owned and used such property before death.

**(3) Property owned by spouse or former spouse**

For purposes of this section—

**(A) Property transferred to individual from spouse or former spouse**

In the case of an individual holding property transferred to such individual in a transaction described in section 1041(a), the period such individual owns such property shall include the period the transferor owned the property.

**(B) Property used by former spouse pursuant to divorce decree, etc.**

Solely for purposes of this section, an individual shall be treated as using property as such individual's principal residence during any period of ownership while such individual's spouse or former spouse is granted use of the property under a divorce or separation instrument.

**(C) Divorce or separation instrument**

For purposes of this paragraph, the term "divorce or separation instrument" means—

(i) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

(ii) a written separation agreement, or

(iii) a decree (not described in clause (i)) requiring a spouse to make payments for the support or maintenance of the other spouse.

**(4) Tenant-stockholder in cooperative housing corporation**

For purposes of this section, if the taxpayer holds stock as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), then—

(A) the holding requirements of subsection (a) shall be applied to the holding of such stock, and

(B) the use requirements of subsection (a) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.

**(5) Involuntary conversions**

**(A) In general**

For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of such property.

**(B) Application of section 1033**

In applying section 1033 (relating to involuntary conversions), the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

**(C) Property acquired after involuntary conversion**

If the basis of the property sold or exchanged is determined (in whole or in part)

under section 1033(b) (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

**(6) Recognition of gain attributable to depreciation**

Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after May 6, 1997, in respect of such property.

**(7) Determination of use during periods of out-of-residence care**

In the case of a taxpayer who—

(A) becomes physically or mentally incapable of self-care, and

(B) owns property and uses such property as the taxpayer's principal residence during the 5-year period described in subsection (a) for periods aggregating at least 1 year,

then the taxpayer shall be treated as using such property as the taxpayer's principal residence during any time during such 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

**(8) Sales of remainder interests**

For purposes of this section—

**(A) In general**

At the election of the taxpayer, this section shall not fail to apply to the sale or exchange of an interest in a principal residence by reason of such interest being a remainder interest in such residence, but this section shall not apply to any other interest in such residence which is sold or exchanged separately.

**(B) Exception for sales to related parties**

Subparagraph (A) shall not apply to any sale to, or exchange with, any person who bears a relationship to the taxpayer which is described in section 267(b) or 707(b).

**(9) Uniformed services, Foreign Service, and intelligence community**

**(A) In general**

At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving on qualified official extended duty—

(i) as a member of the uniformed services,

(ii) as a member of the Foreign Service of the United States, or

(iii) as an employee of the intelligence community.

**(B) Maximum period of suspension**

The 5-year period described in subsection (a) shall not be extended more than 10 years by reason of subparagraph (A).

**(C) Qualified official extended duty**

For purposes of this paragraph—

**(i) In general**

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.

**(ii) Uniformed services**

The term "uniformed services" has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

**(iii) Foreign Service of the United States**

The term "member of the Foreign Service of the United States" has the meaning given the term "member of the Service" by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980, as in effect on the date of the enactment of this paragraph.

**(iv) Employee of intelligence community**

The term "employee of the intelligence community" means an employee (as defined by section 2105 of title 5, United States Code) of—

(I) the Office of the Director of National Intelligence,

(II) the Central Intelligence Agency,

(III) the National Security Agency,

(IV) the Defense Intelligence Agency,

(V) the National Geospatial-Intelligence Agency,

(VI) the National Reconnaissance Office,

(VII) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs,

(VIII) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, and the Coast Guard,

(IX) the Bureau of Intelligence and Research of the Department of State, or

(X) any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.

**(v) Extended duty**

The term "extended duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

**(D) Special rules relating to election**

**(i) Election limited to 1 property at a time**

An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

**(ii) Revocation of election**

An election under subparagraph (A) may be revoked at any time.

**(10) Property acquired in like-kind exchange**

If a taxpayer acquires property in an exchange with respect to which gain is not recognized (in whole or in part) to the taxpayer under subsection (a) or (b) of section 1031, subsection (a) shall not apply to the sale or exchange of such property by such taxpayer (or by any person whose basis in such property is determined, in whole or in part, by reference to the basis in the hands of such taxpayer) during the 5-year period beginning with the date of such acquisition.

**[(11) Repealed. Pub. L. 111-312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300]****(12) Peace Corps****(A) In general**

At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving outside the United States—

(i) on qualified official extended duty (as defined in paragraph (9)(C)) as an employee of the Peace Corps, or

(ii) as an enrolled volunteer or volunteer leader under section 5 or 6 (as the case may be) of the Peace Corps Act (22 U.S.C. 2504, 2505).

**(B) Applicable rules**

For purposes of subparagraph (A), rules similar to the rules of subparagraphs (B) and (D) of paragraph (9) shall apply.

**(e) Denial of exclusion for expatriates**

This section shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) applies to such individual.

**(f) Election to have section not apply**

This section shall not apply to any sale or exchange with respect to which the taxpayer elects not to have this section apply.

**(g) Residences acquired in rollovers under section 1034**

For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under section 1034<sup>1</sup> (as in effect on the day before the date of the enactment of this section) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used such property as the taxpayer's principal residence, there shall be included the aggregate periods for which such other residence (and each prior residence taken into account under section 1223(6))<sup>1</sup> in determining the holding period of such property) had been so owned and used.

(Added Pub. L. 88-272, title II, § 206(a), Feb. 26, 1964, 78 Stat. 38; amended Pub. L. 94-455, title XIV, § 1404(a), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1733, 1834; Pub. L. 95-600, title IV,

§ 404(a)-(c)(2), Nov. 6, 1978, 92 Stat. 2869, 2870; Pub. L. 97-34, title I, § 123(a), Aug. 13, 1981, 95 Stat. 197; Pub. L. 100-647, title VI, § 6011(a), Nov. 10, 1988, 102 Stat. 3691; Pub. L. 105-34, title III, § 312(a), Aug. 5, 1997, 111 Stat. 836; Pub. L. 105-206, title VI, § 6005(e)(1), (2), July 22, 1998, 112 Stat. 805; Pub. L. 107-16, title V, § 542(c), June 7, 2001, 115 Stat. 84; Pub. L. 108-121, title I, § 101(a), Nov. 11, 2003, 117 Stat. 1336; Pub. L. 108-357, title VIII, § 840(a), Oct. 22, 2004, 118 Stat. 1597; Pub. L. 109-135, title IV, §§ 402(a)(3), 403(ee), Dec. 21, 2005, 119 Stat. 2610, 2631; Pub. L. 109-432, div. A, title IV, § 417(a)-(d), Dec. 20, 2006, 120 Stat. 2965, 2966; Pub. L. 110-142, § 7(a), Dec. 20, 2007, 121 Stat. 1806; Pub. L. 110-172, § 11(a)(11)(A), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110-245, title I, §§ 110(a), 113(a), (b), June 17, 2008, 122 Stat. 1633, 1635; Pub. L. 110-289, div. C, title III, § 3092(a), July 30, 2008, 122 Stat. 2911; Pub. L. 111-312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300; Pub. L. 113-295, div. A, title II, §§ 212(c), 213(c)(1), 221(a)(20), Dec. 19, 2014, 128 Stat. 4033, 4040; Pub. L. 115-97, title I, § 11051(b)(3)(A), Dec. 22, 2017, 131 Stat. 2089.)

## REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (d)(9)(C)(ii), (iii), is the date of enactment of Pub. L. 108-121, which was approved Nov. 11, 2003.

Section 103 of the Foreign Service Act of 1980, referred to in subsec. (d)(9)(C)(iii), is classified to section 3903 of Title 22, Foreign Relations and Intercourse.

Section 1034 (as in effect on the day before the date of the enactment of this section), referred to in subsec. (g), probably means section 1034 of this title as in effect on the day before the date of enactment of Pub. L. 105-34 which amended this section generally and was approved Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105-34, title III, § 312(b), Aug. 5, 1997, 111 Stat. 839.

Section 1223(6), referred to in subsec. (g), was repealed by Pub. L. 113-295, div. A, title II, § 221(a)(80)(C), Dec. 19, 2014, 128 Stat. 4049.

## CODIFICATION

Pub. L. 109-135, title IV, § 403(ee)(1), (nn), Dec. 21, 2005, 119 Stat. 2631, 2632, which directed that subsec. (d) of this section be amended by redesignating the paragraph (10) relating to property acquired from a decedent as paragraph (11), effective as if included in the provisions to which such amendment relates of the American Jobs Creation Act of 2004, Pub. L. 108-357, was executed as the probable intent of Congress by redesignating as paragraph (11) the paragraph (10) directed to be added to subsec. (d) of this section by Pub. L. 107-16, § 542(c), (f)(1), applicable to estates of decedents dying after Dec. 31, 2009. See Codification note, 2001, 2003, and 2005 Amendment notes, and Effective Date of 2005 Amendment note below.

Pub. L. 108-121, title I, § 101(a), (b)(1), Nov. 11, 2003, 117 Stat. 1336, which directed that subsec. (d) of this section be amended by redesignating paragraph (9) as (10) and adding a new paragraph (9), effective as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997, Pub. L. 105-34, could not literally be executed insofar as it directed the redesignation because subsec. (d), as amended by Pub. L. 105-34, did not contain a paragraph (9). However, to reflect the probable intent of Congress, the amendment was executed by redesignating as paragraph (10) the paragraph (9) directed to be added to subsec. (d) of this section by Pub. L. 107-16, § 542(c), (f)(1), applicable to estates of decedents dying after Dec. 31, 2009. See Codification note above and 2001, 2003, and 2005 Amendment notes and Effective Date of 2003 Amendment note below.

## PRIOR PROVISIONS

A prior section 121 was renumbered section 140 of this title.

<sup>1</sup> See References in Text note below.

## AMENDMENTS

2017—Subsec. (d)(3)(B). Pub. L. 115-97, §11051(b)(3)(A)(i), struck out “(as defined in section 71(b)(2))” after “divorce or separation instrument”.

Subsec. (d)(3)(C). Pub. L. 115-97, §11051(b)(3)(A)(ii), added subpar. (C).

2014—Subsec. (b)(3). Pub. L. 113-295, §221(a)(20), struck out subpar. (A) designation and heading and subpar. (B) and realigned margins. Prior to amendment, text of subpar. (B) read as follows: “Subparagraph (A) shall be applied without regard to any sale or exchange before May 7, 1997.”

Subsec. (b)(4), (5). Pub. L. 113-295, §212(c), redesignated par. (4), relating to exclusion of gain allocated to nonqualified use, as (5).

Subsec. (d)(12)(B). Pub. L. 113-295, §213(c)(1), inserted “of paragraph (9)” after “and (D)”.

2010—Subsec. (d)(11). Pub. L. 111-312 amended subsec. (d) to read as if amendment by Pub. L. 107-16, §542(c), which originally added par. (9), had never been enacted. See Codification notes above and 2001 Amendment note and Effective Date of 2010 Amendment note below. Prior to amendment, par. (11) read as follows: “PROPERTY ACQUIRED FROM A DECEDENT.—The exclusion under this section shall apply to property sold by—

“(A) the estate of a decedent,

“(B) any individual who acquired such property from the decedent (within the meaning of section 1022), and

“(C) a trust which, immediately before the death of the decedent, was a qualified revocable trust (as defined in section 645(b)(1)) established by the decedent, determined by taking into account the ownership and use by the decedent.”

2008—Subsec. (b)(4). Pub. L. 110-289 added par. (4) relating to exclusion of gain allocated to nonqualified use.

Subsec. (d)(9)(C)(vi). Pub. L. 110-245, §113(b), struck out heading and text of cl. (vi). Text read as follows: “An employee of the intelligence community shall not be treated as serving on qualified extended duty unless such duty is at a duty station located outside the United States.”

Subsec. (d)(9)(E). Pub. L. 110-245, §113(a), struck out heading and text of subpar. (E). Text read as follows: “Clause (iii) of subparagraph (A) shall not apply with respect to any sale or exchange after December 31, 2010.”

Subsec. (d)(12). Pub. L. 110-245, §110(a), added par. (12).

2007—Subsec. (b)(4). Pub. L. 110-142 added par. (4) relating to special rule for certain sales by surviving spouses.

Subsec. (d)(9)(E). Pub. L. 110-172 added subpar. (E).

2006—Subsec. (d)(9). Pub. L. 109-432, §417(d), substituted “Uniformed services, Foreign Service, and intelligence community” for “Members of uniformed services and Foreign Service” in heading.

Subsec. (d)(9)(A). Pub. L. 109-432, §417(a), substituted “duty—

“(i) as a member of the uniformed services,

“(ii) as a member of the Foreign Service of the United States, or

“(iii) as an employee of the intelligence community.”

for “duty as a member of the uniformed services or of the Foreign Service of the United States.”

Subsec. (d)(9)(C)(iv), (v). Pub. L. 109-432, §417(b), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (d)(9)(C)(vi). Pub. L. 109-432, §417(c), added cl. (vi).

2005—Subsec. (d)(10). Pub. L. 109-135, §403(ee)(2), amended heading and text of par. (10) relating to property acquired in like-kind exchange generally. Prior to amendment, text read as follows: “If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.”

Subsec. (d)(11). Pub. L. 109-135, §403(ee)(1), redesignated par. (10), formerly par. (9), as added by Pub. L. 107-16, as (11). See Codification notes above and 2001 and 2003 Amendment notes and Effective Date of 2001 Amendment note below.

Subsec. (g). Pub. L. 109-135, §402(a)(3), substituted “section 1223(6)” for “section 1223(7)”.

2004—Subsec. (d)(10). Pub. L. 108-357 added par. (10) relating to property acquired in like-kind exchange.

2003—Subsec. (d)(9), (10). Pub. L. 108-121 added par. (9) and redesignated former par. (9), as added by Pub. L. 107-16, as (10). See Codification notes above and 2001 Amendment note and Effective Date of 2001 Amendment note below.

2001—Subsec. (d)(9). Pub. L. 107-16, §542(c), added par. (9). See Codification notes above and Effective Date of 2001 Amendment note below.

1998—Subsec. (b)(2). Pub. L. 105-206, §6005(e)(1), substituted “Special rules for joint returns” for “\$500,000 limitation for certain joint returns” in heading and amended text generally. Prior to amendment, text read as follows: “Paragraph (1) shall be applied by substituting ‘\$500,000’ for ‘\$250,000’ if—

“(A) a husband and wife make a joint return for the taxable year of the sale or exchange of the property,

“(B) either spouse meets the ownership requirements of subsection (a) with respect to such property,

“(C) both spouses meet the use requirements of subsection (a) with respect to such property, and

“(D) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).”

Subsec. (c)(1). Pub. L. 105-206, §6005(e)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a) shall not apply and subsection (b)(3) shall not apply; but the amount of gain excluded from gross income under subsection (a) with respect to such sale or exchange shall not exceed—

“(A) the amount which bears the same ratio to the amount which would be so excluded under this section if such requirements had been met, as

“(B) the shorter of—

“(i) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer’s principal residence, or

“(ii) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange,

bears to 2 years.”

1997—Pub. L. 105-34 amended section catchline and text generally. Prior to amendment, section related to one-time exclusion of gain from sale of principal residence by individual who had attained age 55.

1988—Subsec. (d)(9). Pub. L. 100-647 added par. (9).

1981—Subsec. (b)(1). Pub. L. 97-34 substituted “\$125,000 (\$62,500)” for “\$100,000 (\$50,000)”.

1978—Pub. L. 95-600, §404(a), substituted “One-time exclusion of gain from sale of principal residence by individual who has attained age 55” for “Gain from sale or exchange of residence of individual who has attained age 65” in section catchline.

Subsec. (a). Pub. L. 95-600, §404(a), substituted “55” for “65”, “5-year” for “8-year”, and “3 years” for “5 years”.

Subsec. (b). Pub. L. 95-600, §404(a), in par. (1) substituted provisions respecting dollar limitations for amount of gain for provisions setting forth applicable limitations where the adjusted sales price exceeds \$35,000 and added par. (3).

Subsec. (d)(2). Pub. L. 95-600, §404(c)(1), substituted “5-year period” for “8-year period”.

Subsec. (d)(5). Pub. L. 95-600, §404(c)(2), substituted “5-year period” for “8-year period” and “3 years” for “5 years”.

Subsec. (d)(8). Pub. L. 95-600, §404(b), added par. (8).

1976—Subsec. (b)(1). Pub. L. 94-455, §1404(a), substituted “\$35,000” for “\$20,000” in three places.

Subsecs. (c), (d)(5). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115-97 applies to such modification, see section 11051(c) of Pub. L. 115-97, set out as a note under section 61 of this title.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 212(c) of Pub. L. 113-295 effective as if included in the provisions of the Housing Assistance Tax Act of 2008, Pub. L. 110-289, div. C, to which such amendment relates, see section 212(d) of Pub. L. 113-295, set out as a note under section 42 of this title.

Pub. L. 113-295, div. A, title II, §213(d), Dec. 19, 2014, 128 Stat. 4034, provided that: “The amendments made by this section [amending this section and sections 125 and 877 of this title and provisions set out as a note under section 6511 of this title] shall take effect as if included in the provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008 [Pub. L. 110-245] to which they relate.”

Amendment by section 221(a)(20) of Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111-312, title III, §301(e), Dec. 17, 2010, 124 Stat. 3301, provided that: “Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 2505, 4947, 6018, 6019, 6075, and 7701 of this title and repealing sections 1022, 2210, 2664, and 6716 of this title] shall apply to estates of decedents dying, and transfers made, after December 31, 2009.”

Pub. L. 111-312, title III, §304, Dec. 17, 2010, 124 Stat. 3304, which provided that section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, would apply to the amendments made by title III of Pub. L. 111-312, was repealed by Pub. L. 112-240, title I, §101(a)(2), Jan. 2, 2013, 126 Stat. 2315.

[Amendment by Pub. L. 112-240 (repealing section 304 of Pub. L. 111-312, formerly set out above) applicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and estates of decedents dying, gifts made, or generation skipping transfers after Dec. 31, 2012, see section 101(a)(3) of Pub. L. 112-240, set out as a note following former section 901 of Pub. L. 107-16 which was set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.]

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-289, div. C, title III, §3092(b), July 30, 2008, 122 Stat. 2912, provided that: “The amendment made by this section [amending this section] shall apply to sales and exchanges after December 31, 2008.”

Pub. L. 110-245, title I, §110(b), June 17, 2008, 122 Stat. 1634, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2007.”

Pub. L. 110-245, title I, §113(c), June 17, 2008, 122 Stat. 1635, provided that: “The amendments made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [June 17, 2008].”

#### EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-142, §7(b), Dec. 20, 2007, 121 Stat. 1806, provided that: “The amendment made by this section

[amending this section] shall apply to sales or exchanges after December 31, 2007.”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title IV, §417(e), Dec. 20, 2006, 120 Stat. 2966, as amended by Pub. L. 110-172, §11(a)(11)(B), Dec. 29, 2007, 121 Stat. 2485, provided that: “The amendments made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Dec. 20, 2006].”

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 402(a)(3) of Pub. L. 109-135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109-135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendment by section 403(ee) of Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §840(b), Oct. 22, 2004, 118 Stat. 1597, provided that: “The amendment made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Oct. 22, 2004].”

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-121, title I, §101(b), Nov. 11, 2003, 117 Stat. 1336, provided that:

“(1) EFFECTIVE DATE.—The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997 [Pub. L. 105-34].

“(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section [amending this section] is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Nov. 11, 2003] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.”

#### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-16, title V, §542(f), June 7, 2001, 115 Stat. 86, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting sections 1022 and 6716 of this title and amending this section and sections 170, 684, 1040, 1221, 1246, 1291, 1296, 4947, 6018, 6019, 6075, and 7701 of this title] shall apply to estates of decedents dying after December 31, 2009.

“(2) TRANSFERS TO NONRESIDENTS.—The amendments made by subsection (e)(1) [amending section 684 of this title] shall apply to transfers after December 31, 2009.

“(3) SECTION 4947.—The amendment made by subsection (e)(4) [amending section 4947 of this title] shall apply to deductions for taxable years beginning after December 31, 2009.”

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title III, §312(d), Aug. 5, 1997, 111 Stat. 841, as amended by Pub. L. 105-206, title VI, §6005(e)(3), July 22, 1998, 112 Stat. 806, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 25, 32, 56, 143, 163, 215, 280A, 464, 512, 1016, 1033, 1038, 1223, 1250, 1274, 6012, 6045, 6212, 6334, 6504, and 7872 of this title and repealing section 1034 of this title] shall apply to sales and exchanges after May 6, 1997.

“(2) SALES ON OR BEFORE DATE OF ENACTMENT.—At the election of the taxpayer, the amendments made by this section shall not apply to any sale or exchange on or before the date of the enactment of this Act [Aug. 5, 1997].

“(3) CERTAIN SALES WITHIN 2 YEARS AFTER DATE OF ENACTMENT.—Section 121 of the Internal Revenue Code of 1986 (as amended by this section) shall be applied without regard to subsection (c)(2)(B) thereof in the case of any sale or exchange of property during the 2-year period beginning on the date of the enactment of this Act if the taxpayer held such property on the date of the enactment of this Act and fails to meet the ownership and use requirements of subsection (a) thereof with respect to such property.

“(4) BINDING CONTRACTS.—At the election of the taxpayer, the amendments made by this section shall not apply to a sale or exchange after the date of the enactment of this Act, if—

“(A) such sale or exchange is pursuant to a contract which was binding on such date, or

“(B) without regard to such amendments, gain would not be recognized under section 1034 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) on such sale or exchange by reason of a new residence acquired on or before such date or with respect to the acquisition of which by the taxpayer a binding contract was in effect on such date.

This paragraph shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) of the Internal Revenue Code of 1986 applies to such individual.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VI, §6011(b), Nov. 10, 1988, 102 Stat. 3691, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to any sale or exchange after September 30, 1988, in taxable years ending after such date.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title I, §123(b), Aug. 13, 1981, 95 Stat. 197, provided that: “The amendment made by this section [amending this section] shall apply to residences sold or exchanged after July 20, 1981.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title IV, §404(d)(1), Nov. 6, 1978, 92 Stat. 2870, provided that: “The amendments made by this section [amending this section and sections 1033, 1034, 1038, 1250, and 6012 of this title] shall apply to sales or exchanges after July 26, 1978, in taxable years ending after such date.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIV, §1404(b), Oct. 4, 1976, 90 Stat. 1733, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976.”

#### EFFECTIVE DATE

Pub. L. 88-272, title II, §206(c), Feb. 26, 1964, 78 Stat. 40, provided that: “The amendments made by this section [enacting this section, redesignating former section 121 as 122, and amending sections 1033, 1034, and 6012 of this title] shall apply to dispositions after Dec. 31, 1963, in taxable years ending after such date.”

SENSE OF CONGRESS CONCERNING TAX TREATMENT OF PRINCIPAL RESIDENCE OF MEMBERS OF ARMED FORCES WHILE AWAY FROM HOME ON ACTIVE DUTY

Pub. L. 105-261, div. A, title X, §1074, Oct. 17, 1998, 112 Stat. 2138, provided that: “It is the sense of Congress

that a member of the Armed Forces should be treated for purposes of section 121 of the Internal Revenue Code of 1986 as using property as a principal residence during any continuous period that the member is serving on active duty for 180 days or more with the Armed Forces, but only if the member used the property as a principal residence for any period during or immediately before that period of active duty.”

#### TRANSITIONAL RULE IN CASE OF SALE OR EXCHANGE OF RESIDENCE BEFORE JULY 26, 1981

Pub. L. 95-600, title IV, §404(d)(2), Nov. 6, 1978, 92 Stat. 2870, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to have section 121 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applied by substituting ‘8-year period’ for ‘5-year period’ and ‘5 years’ for ‘3 years’ in subsections (a), (d)(2), and (d)(5) of such section.”

### § 122. Certain reduced uniformed services retirement pay

#### (a) General rule

In the case of a member or former member of the uniformed services of the United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code.

#### (b) Special rule

##### (1) Amount excluded from gross income

In the case of any individual referred to in subsection (a), all amounts received as retired or retainer pay shall be excluded from gross income until there has been so excluded an amount equal to the consideration for the contract. The preceding sentence shall apply only to the extent that the amounts received would, but for such sentence, be includible in gross income.

##### (2) Consideration for the contract

For purposes of paragraph (1) and section 72(n), the term “consideration for the contract” means, in respect of any individual, the sum of—

(A) the total amount of the reductions before January 1, 1966, in his retired or retainer pay by reason of an election under chapter 73 of title 10 of the United States Code, and

(B) any amounts deposited at any time by him pursuant to section 1438 or 1452(d) of such title 10.

(Added Pub. L. 89-365, §1(a)(1), Mar. 8, 1966, 80 Stat. 32; amended Pub. L. 93-406, title II, §§2005(c)(10), 2007(a), (b)(1), Sept. 2, 1974, 88 Stat. 992, 994; Pub. L. 113-295, div. A, title II, §221(a)(21), Dec. 19, 2014, 128 Stat. 4040.)

#### PRIOR PROVISIONS

A prior section 122 was renumbered section 140 of this title.

#### AMENDMENTS

2014—Subsec. (b)(1). Pub. L. 113-295 struck out “after December 31, 1965,” after “all amounts received”.

1974—Subsec. (a). Pub. L. 93-406, §2007(a), substituted “United States, gross income does not include the amount of any reduction in his retired or retainer pay