

paragraph (d) of this AD prior to the accumulation of the number of flight cycles specified in the "Subsequent Inspection Interval" column of the Threshold Table included in Paragraph 1.E. ("Compliance") of the service bulletin until the repair specified in paragraph (h) of this AD is installed.

Optional Terminating Action

(f) Installation of the repair in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757-54-0031, Revision 2, dated December 19, 1996, or Revision 4, dated November 11, 1999, constitutes terminating action for the requirements in paragraphs (a) and (d) of this AD.

New Requirements of This AD

Revised Service Information

(g) Except as provided by paragraphs (c) and (l)(3) of this AD: As of the effective date of this new AD, Boeing Service Bulletin 757-54-0031, Revision 4, dated November 11, 1999, must be used for accomplishment of the actions required by this AD.

Second Bolt Hole Inspection

(h) Within 6,000 flight cycles after accomplishment of paragraph (d) of this AD, or within 60 days after the effective date of this AD, whichever occurs later: Perform a second eddy current inspection (bolt hole inspection) to detect cracking of the two fastener holes in the lower spar chord, in accordance with Part IV of the Accomplishment Instructions of Boeing Service Bulletin 757-54-0031, Revision 4, dated November 11, 1999. If no cracking is found during the inspection required by this paragraph, no further action is required by this paragraph.

Third Bolt Hole Inspection

(i) After accomplishment of the inspection required by paragraph (h) of this AD, when the airplane has reached the flight cycle threshold as defined by the flight cycle threshold formula on page 9, Paragraph 1.E. ("Compliance") of Boeing Service Bulletin 757-54-0031, Revision 4, dated November 11, 1999: Perform a third eddy current inspection (bolt hole inspection) to detect cracking of the two fastener holes in the lower spar chord, in accordance with Part II of the Accomplishment Instructions of the service bulletin.

Fourth Bolt Hole Inspection

(j) If, after accomplishment of the inspection required by paragraph (i) of this AD, paragraph (m) of this AD has not yet been accomplished: When the airplane has reached the flight cycle threshold as defined by the flight cycle threshold formula on page 9, Paragraph 1.E. ("Compliance") of Boeing Service Bulletin 757-54-0031, Revision 4, dated November 11, 1999; perform a fourth eddy current inspection (bolt hole inspection) to detect cracking of the two fastener holes in the lower spar chord, in accordance with Part II of the Accomplishment Instructions of the service bulletin.

Follow-On Actions

(k) If no cracking is found during any inspection required by paragraph (d), (i), or (j) of this AD, prior to further flight, increase the diameter of the holes by the dimensions specified in the Accomplishment Instructions of Boeing Service Bulletin 757-54-0031, Revision 2, dated December 19, 1996, or Revision 4, dated November 11, 1999, and install new fasteners in accordance with the service bulletin.

(l) If any cracking is found during any inspection required by paragraph (d), (h), (i), or (j) of this AD, prior to further flight, accomplish paragraph (l)(1), (l)(2), or (l)(3) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757-54-0031, Revision 2, dated December 19, 1996, or Revision 4, dated November 11, 1999.

(1) If the cracking can be removed by increasing the diameter of the hole in accordance with the service bulletin: Increase the diameter of the hole by the dimensions specified in the Accomplishment Instructions of the service bulletin, and install new fasteners in accordance with the service bulletin.

(2) If the cracking cannot be removed by increasing the diameter of the hole in accordance with the Accomplishment Instructions of the service bulletin, but the cracking is within the limits specified in the service bulletin: Install the repair in accordance with the service bulletin. No further action is required by paragraph (d) of this AD.

(3) If the cracking is outside the limits specified in the service bulletin: Replace the lower spar chord with a new or serviceable chord in accordance with a method approved by the Manager, Seattle ACO.

Optional Terminating Modification

(m) Accomplishment of the modification of the nacelle strut and wing structure as required by AD 99-24-07, amendment 39-11431, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(n) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(o) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 3, 2000.

Donald L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00-25969 Filed 10-6-00; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 51

[Public Notice 3428]

Passport Procedures—Amendment to Requirements for Executing a Passport Application on Behalf of a Minor

AGENCY: Bureau of Consular Affairs, State.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends regulations on Passports. The amendments bring passport regulations into conformity with current practice and implement the requirements of Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act. That Section requires that both parents execute a passport application on behalf of a minor under age 14 or, if only one parent executes the application, such parent must establish his or her custodial status or the other parent's consent. It also provides for exceptions in exigent circumstances, such as those involving the health or welfare of the child, or when the Secretary of State determines that issuance of a passport is warranted by special family circumstances.

DATES: Written comments must be received no later than November 6, 2000.

ADDRESSES: Written comments should be addressed to: John Hotchner, Office of Passport Policy, Planning and Advisory Services, 2401 E. Street, N.W., Room 917, Washington, D.C. 20522-0907.

FOR FURTHER INFORMATION CONTACT: John Hotchner, Office of Passport Policy and Advisory Services, Bureau of Consular Affairs, Department of State, (202) 663-2427.

SUPPLEMENTARY INFORMATION: As a measure to prevent the use of the United States passport in international child abduction, Congress enacted Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Pub.L. 106-113. The

Section affects the passport application process for minors under the age of 14 by requiring that both parents execute the passport application on behalf of the minor; if only one parent executes the application, that parent must establish sole authority to execute the application or the other parent's consent to the application. This law will directly affect the passport applications of about one million families each year. Although Section 236 places an additional burden on the parents of minor children under the age of 14, the statute clearly reflects a judgment that its value in reducing child abduction will be seen to outweigh the burden of establishing both parents' consent to passport applications for children.

Present Passport Regulations To Assist in the Prevention of International Parental Child Abduction

International parental child abduction is an ever more frequent phenomenon, reflecting in part the increasing number of international marriages and the ease with which persons can travel across international boundaries. In recent years, the Department of State, the Department of Justice, and the Congress of the United States have given cases of international parental child abduction greater attention and have sought new and more effective mechanisms for dealing with them. At present, both criminal and civil remedies can be invoked to deal with parental abductions after they occur. Such cases remain extremely difficult to resolve, however, and it is clear that preventing an abduction in the first instance is preferable.

Under the Department's existing regulation, 22 CFR 51.27, a parent may request that his or her minor child's name be placed in the Department's passport namecheck clearance system so that, if an application is received for the child, the objecting parent will be notified before issuance. The passport may be denied if the Department has on file an order from a court of competent jurisdiction granting the objecting parent sole or joint custody or prohibiting the child's travel outside the court's jurisdiction without the express permission of the court or of the other parent. The Department recommends that parents who have a specific concern about international child abduction make use of the existing program in addition to relying on Section 236. The public should note that the provisions of the existing regulation extend to all minor children under age 18. This program for children under age 18 will remain in place when

the new regulations relating to children under 14 go into effect.

The Department recognizes that denying passport issuance may not prevent an abduction. Many U.S. citizen children acquire a second nationality at birth through a non-U.S. citizen parent or by birth outside the United States to a U.S. citizen parent. The inability to obtain a U.S. passport, therefore, does not prevent a child from obtaining and traveling on a foreign passport. Even an exit-control system, which the United States does not have, could not fully prevent all cases of dual-national children being wrongfully removed from the United States by an abducting parent. Nevertheless, limiting access to passports for minors may have some preventative effect. Consistent with this possibility, the Congress decided that the Department's long-standing passport-denial-to-minors program should be supplemented by a requirement that both parents sign a passport application for a minor child under age 14 except in situations specified by statute or regulation. This regulation implements the new statutory requirement in a way that the Department believes meets the requirements of the statute and appropriately provides for exceptions.

Notice or Denial of a Passport at the Request of a Parent

The proposed regulation amends subsection 51.27(d)(1)(i) to extend it to instances when court-ordered limitations on a child's travel are brought to the Department's attention in the course of a passport application rather than by an objecting parent. This change, for example, will preclude a parent with sole custody, ordinarily entitled to apply for a child's passport under the Act, from obtaining a passport if the custody order contains a limitation on the minor's ability to travel.

General Requirement for Both Parents To Consent to a Passport for a Minor Child

Under current passport regulations, either parent or the legal guardian, regardless of citizenship, may execute a passport application on behalf of a minor under 13 years of age; minors 13 years of age and over are expected to execute their own passport applications. To implement the statutory requirement that both parents must execute the passport application on behalf of a child under the age of 14, the proposed rule raises the age at which a minor should execute his or her own application to 14. The proposed rule adds the requirement that both parents execute a

passport application on behalf of a minor under the age of 14.

When only one parent is available to execute the application, that parent must provide, under penalty of perjury, documentary evidence demonstrating that he or she has sole legal custody of the child or has the written consent of the other parent to the issuance of the passport. Documents supporting sole custody or the authority to obtain a passport include, but are not limited to: a birth certificate or other official birth registration which names only the applying parent; an adoption decree naming only the adopting parent; a court order granting sole custody to the applying parent if the order does not limit the minor's ability to travel; a court order specifically authorizing passport issuance, regardless of custodial arrangements; a declaration of incompetence of the non-applying parent by a court of competent jurisdiction; the non-applying parent's death certificate.

A written statement of a parent not executing the passport application giving consent to the issuance of the passport will also be accepted at the discretion of the adjudicating officer who will take into account the totality of the circumstances in deciding whether to issue the passport.

Individuals Applying In Loco Parentis

The Department has long recognized that there are instances when it is impossible for a parent to execute a passport application on behalf of a minor. Many children are in the physical custody of relatives or foster parents, as well as adoption agencies or child welfare agencies. In accepting applications executed on behalf of minors by individuals in loco parentis, it has been the Department's policy to require that those individuals provide a notarized statement or affidavit from a parent authorizing the applying person to execute the application.

The new regulation will require that the individual executing the passport application on behalf of a minor under age 14 in loco parentis present a notarized statement from both parents or from the parent exercising parental authority. In instances when only one parent grants in loco parentis, the same documentary evidence required when only one parent executes a passport application on behalf of a minor under age 14 to demonstrate that person's sole authority should accompany the application.

Exceptions to the Two Parent Signature Requirement

The statute provides for two exceptions to the general requirement: (1) exigent circumstances involving the health and welfare of the child; or, (2) when the Secretary of State determines that issuance of a passport is warranted by special family circumstances.

Exigent circumstances are defined as time-sensitive circumstances when the inability of the minor to obtain a passport would jeopardize the health or welfare of the minor. The requirement of establishing the second parent's consent to issuance of the passport or formal documentation of the reason for the absence of the second parent may be waived in such circumstances.

Examples of exigent circumstances include, but are not limited to: instances when the minor must travel to receive emergency medical treatment; when a minor's passport is lost or stolen while traveling accompanied by only one parent or traveling unaccompanied with a school, church or other group; when the minor needs to travel because of the serious illness of a person in the minor's immediate family, or, when failure to issue would prevent the child from returning to the U.S. and there is insufficient time before travel is necessary to obtain the normally required documentation.

Special family circumstances are defined as circumstances when the minor's family situation prevents one or both of the parents from executing the passport application. As with the exigent circumstance exception, the requirement of establishing the second parent's consent or formal documentation of the reason for the absence of the second parent is waived. Examples of special family circumstances include, but are not limited to, instances when the second parent is unable to apply for the passport in person or to provide a statement authorizing the application and issuance of the passport because he or she has abandoned the family or is unavailable due to serious health problems. Individuals claiming a special family circumstance will be required to provide a statement, under penalty of perjury, explaining the special family circumstance.

Decisions to apply this exception will be made by the Deputy Assistant Secretary for Passport Services or a senior passport adjudicator within the United States, or by the Deputy Assistant Secretary for Overseas Citizens Services or a consular officer if abroad.

Special Considerations for Passport Applications Executed Overseas

While the great majority of passports are issued within the United States, a significant number are issued annually to U.S. citizens living and traveling overseas. We anticipate that parents overseas generally will comply fully with the requirements of the law in much the same manner as parents applying within the United States. Nonetheless, in proposing these regulations, the Department has sought to take into account, and provide for, certain differing circumstances that pertain in much greater measure to the issuance of U.S. passports overseas. For example, exigent circumstances would include instances when a delay in departure would pose a grave danger for the minor abroad. Civil unrest, natural disaster, war, or invasion may make imperative the urgent travel or evacuation of U.S. citizens, particularly minors, from such regions. In less dramatic fashion, exigent circumstances could encompass a situation when, for example, a child traveling with a school group loses his or her passport and would need a replacement to remain with the group in its ongoing travel. Despite the lack of time to procure documents or statements relating to parental consent, it is essential that a passport be issued quickly in both cases, and as the exigent circumstances exception in subsection (b) permits, to protect the health and welfare of the minor.

Circumstances overseas can differ in another respect. Specifically, the U.S. consular officer may have access to post registration records that relate to family situations. Particularly in smaller countries, an officer may have personal knowledge of a family situation, e.g., that the child is in the care of an individual in loco parentis or the fact that a parent is widowed, which would be relevant in a situation when documentary evidence was not available or could not be obtained in a timely fashion. Accordingly, the proposed rule will give the Department flexibility to utilize such information in this and other instances, consistent with the consular officer's exercise of good judgment, as allowed by the statute's reference to special family circumstances.

Provisions To Harmonize Other Parts of the Regulations With the Two-Parent Requirement

Section 51.1 is amended to provide a definition of "passport application". Section 51.21 is amended to incorporate the two-parent signature requirement to

passport renewals by minors under the age of 14 and to provide for compliance with the two-parent signature requirement in mail-in applications abroad. Section 51.27 is amended to raise the age after which a minor should execute his or her own passport application from 13 to 14. Sections 51.40 and 51.41 are amended to bring them into conformity with current passport practice regarding individuals included in the passport and to comply with the requirements of the Act. Since 1981, U.S. passports have been issued to document only the bearer: they do not include any other person. The regulation is amended to reflect that change. Section 51.41 is also amended to require applicants under the age of 14, whether applying for their first passport or for a renewal, to present evidence of parentage in addition to evidence of nationality. This will assist in the adjudication not only of the citizenship of the minor under age 14, but in the determination of the parent(s) entitled to obtain a passport on the minor's behalf. The document should include the name, date and place of birth of the child and the name(s) of the parent(s).

Regulatory Flexibility Act; Paperwork Reduction Act; Federalism Assessment; E.O. 12988

These proposed changes to the regulations are not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). They impose certain information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35. These rules have no federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12988. These rules are exempt from review under E.O. 12988 but have been reviewed and found consistent with its objectives.

List of Subjects in 22 CFR Part 51

Administrative practice and procedure, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 22 CFR Part 51 is amended as follows:

PART 51—PASSPORTS

1. The authority citation for part 51 is revised to read as follows:

Authority: 22 U.S.C. 211a; 22 U.S.C. 2651a, 2671(d)(3), 2714 and 3926; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp., p 570;

sec. 236, Pub. L. 106-113, 113 Stat. 1937-422; 18 U.S.C 1621(a)(2).

In § 51.1, redesignate paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and add a new paragraph (g) to read as follows:

* * * * *

§ 51.1 Definitions.

* * * * *

(g) Passport Application means the passport application form for a United States passport, filled in, subscribed and executed as prescribed by the Secretary pursuant to 22 U.S.C. 213, and all documents, photos and statements submitted with the form or thereafter in support of the application. The information provided in the passport application and supporting submissions, whether provided contemporaneously with the application form or at any time thereafter, is subject to the penalties of perjury under all applicable criminal statutes.

* * * * *

3. Revise § 51.21(d)(4)(ii) to read as follows:

§ 51.21 Execution of passport application.

* * * * *

(d) * * *

(4) * * *

(ii) Mail applications abroad on behalf of minors under the age of 14 comply must with the requirements of § 51.27.

* * * * *

4. In § 51.27, revise paragraph (b) and paragraph (d)(1)(i) introductory text to read as follows:

§ 51.27 Minors.

* * * * *

(b) *Execution of the application for minors.*

(1) *Minors 14 years of age and above.* A minor aged 14 and above is required to execute an application on his or her own behalf unless in the judgment of the person before whom the application is executed it is not desirable for the minor to execute his or her own application. In such a case, it must be executed on behalf of the minor aged 14 and above by a parent or guardian of the minor or by a person in loco parentis.

(2) *Minors under the age of 14.*

(i) Both parents or each of the child's legal guardians, if any, must execute the application on behalf of a minor under age 14, under penalty of perjury, and provide documentary evidence demonstrating that they are the parents or guardian, except as specifically provided in this section.

(ii) A passport application may be executed on behalf of the minor under age 14 by just one parent or legal

guardian if such person provides, under penalty of perjury—

(A) Documentary evidence that such person has sole custody of the child; or

(B) A written statement of consent from the non-applying parent or guardian, if applicable, to the issuance of the passport.

(iii) An individual may apply *in loco parentis* on behalf of a minor under age 14 by submitting a notarized written statement or an affidavit from both parents specifically authorizing the application. If only one parent provides the written statement or affidavit, documentary evidence that such parent has sole custody of the child must be presented.

(iv) Documentary evidence in support of an application executed on behalf of a minor under age 14 by one parent or person *in loco parentis* under paragraphs (b)(2)(ii) and (iii) of this section may include, but is not limited to, the following:

(A) A birth certificate providing the minor's name, date and place of birth and the name of the sole parent;

(B) A Consular Report of Birth Abroad of a Citizen of the United

States of America (FS-240) or a Certification of Report of Birth of a United States Citizen (DS-1350) providing the minor's name, date and place of birth and the name of the sole parent;

(C) An adoption decree showing only one adopting parent;

(D) An order of a court of competent jurisdiction granting sole custody to the applying parent or legal guardian and containing no travel restrictions inconsistent with issuance of the passport;

(E) A judicial declaration of incompetence of the non-applying parent;

(F) An order of a court of competent jurisdiction specifically permitting the applying parent's or guardian's travel with the child; or

(G) A death certificate for the non-applying parent,

(v) In instances when a parent submits a custody decree invoking the provisions of paragraph (d)(1) of this section, the judicial limitations on the minor's ability to travel contained in the custody decree will be given effect.

(vi) The requirements of paragraphs (b)(2)(i), (ii) and (iii) of this section may be waived in cases of exigent or special family circumstances, as determined by a Department official designated under paragraph (b)(2)(vi)(D) of this section.

(A) Exigent circumstances are defined as time sensitive circumstances when the inability of the minor to obtain a passport would jeopardize the health

and safety, or welfare of the minor or would result in the child being separated from the traveling unit.

(B) Special family circumstances are circumstances when the minor's family situation makes it impossible for one or both of the parents to execute the passport application.

(C) Any person applying for a passport for a child under age 14 under this paragraph must submit with the application a written statement subscribed under penalty of perjury describing the exigent or special family circumstances to be taken into consideration in applying an exception.

(D) Determinations under this paragraph may be made by a senior passport adjudicator or the Deputy Assistant Secretary for Passport Services for an application filed within the United States. A consular officer or the Deputy Assistant Secretary for Overseas Citizens Services may make the determination for applications filed abroad.

(vii) Nothing contained in this section shall prohibit any Department official adjudicating a passport application on behalf of a minor from requiring an applicant to submit other documentary evidence deemed necessary to establish the applying adult's entitlement to obtain a passport on behalf of a minor under the age of 14 in accordance with the provisions of this section.

* * * * *

(d) * * *

(1)(i) When there is a dispute concerning the custody of a minor under age 18, a passport may be denied if the Department has on file, or is provided in the course of a passport application executed on behalf of a minor, a copy of a court order granted by a court of competent jurisdiction in the United States or abroad which:

* * * * *

5. Revise § 51.40 to read as follows:

§ 51.40 Burden of proof.

The applicant has the burden of proving that he or she is a national of the United States.

6. Revise § 51.41 to read as follows:

§ 51.41 Documentary evidence.

(a) Every application shall be accompanied by evidence of the U.S. nationality of the applicant.

(b) Minors under the age of 14, whether applying for a passport for the first time or for a renewal, must provide documentary evidence of U.S. nationality showing the minor's name, date and place of birth, and the names of the parent or parents.

Dated: September 27, 2000.

George C. Lannon,

*Acting Assistant Secretary for Consular
Affairs, U.S. Department of State.*

[FR Doc. 00-25782 Filed 10-6-00; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-105235-99]

RIN 1545-AX28

Exclusion of Gain From Sale or Exchange of a Principal Residence

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Notice of proposed rulemaking
and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the exclusion of gain from the sale or exchange of a taxpayer's principal residence. These proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997, as amended by the Internal Revenue Service Restructuring and Reform Act of 1998. These proposed regulations generally affect taxpayers who sell or exchange their principal residences.

DATES: Written or electronically generated comments must be received by January 8, 2001. Requests to speak (with outlines of oral comments) to be discussed at the public hearing scheduled for January 23, 2001 at 10 a.m., must be submitted by January 3, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG-105235-99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG-105235-99), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.gov/tax_regs/regslst.html. The public hearing will be held in the IRS Auditorium, Seventh Floor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:
Concerning the regulations, Sara P.

Shepherd, (202) 622-4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, contact Treena Garrett, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

1. Section 121 Exclusion

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 121 of the Internal Revenue Code relating to the exclusion of gain from the sale or exchange of a taxpayer's principal residence. These proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788 (TRA 1997)), as amended by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 805 (RRA 1998)).

Prior to the repeal by TRA 1997, section 1034 provided that gain from the sale or exchange of a principal residence (old residence) was recognized only to the extent that the taxpayer's adjusted sales price of the old residence exceeded the taxpayer's cost of purchasing a new residence within the replacement period (generally 2 years before or after the date of sale).

Prior to amendment by TRA 1997, former section 121 provided that a taxpayer could make a one-time election to exclude up to \$125,000 of gain from the sale or exchange of property. To qualify for the exclusion, the taxpayer must have: (1) Been age 55 or older on the date of the sale or exchange; and (2) owned and used the property as the taxpayer's principal residence for at least 3 years during the 5-year period ending on the date of the sale or exchange.

TRA 1997 amended section 121 and repealed section 1034 for sales and exchanges of principal residences after May 6, 1997 (except, at the election of the taxpayer, to a sale or exchange: (1) Made on or before August 5, 1997; (2) made pursuant to a binding contract in effect on August 5, 1997; or (3) that would qualify under section 1034 by reason of a new residence acquired on or before August 5, 1997 or pursuant to a binding contract in effect on August 5, 1997). Under section 121 as amended, a taxpayer generally excludes up to \$250,000 (\$500,000 for certain joint returns) of gain realized on the sale or exchange of property if the property was owned and used as the taxpayer's principal residence for at least 2 years during the 5-year period ending on the date of the sale or exchange. The

exclusion applies regardless of the age of the taxpayer, and the full exclusion can be used only once every 2 years. A taxpayer who fails to meet these requirements by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances may be entitled to a reduced exclusion.

RRA 1998 amended TRA 1997 to clarify that the reduced exclusion amount under section 121(c) is a portion of the maximum limitation amount (\$250,000 or \$500,000 for certain joint returns), not a portion of the realized gain. See H.R. Rep. No. 356, 105th Cong., 1st Sess. 17 (1997); S. Rep. No. 174, 105th Cong., 2d Sess. 150 (1998). In addition, the amendments provided that for married taxpayers filing jointly but failing to meet the ownership, use, or timing requirements of section 121(b)(2)(A), the maximum limitation amount will be the sum of each spouse's limitation amount determined on a separate basis as if they had not been married. S. Rep. No. 174, 105th Cong., 2d Sess. 151 (1998); H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 337 (1998). Lastly, the amendments clarified that a taxpayer may elect to apply prior law under section 1034 or former section 121 to a sale or exchange occurring on as well as before the date of enactment, August 5, 1997. H.R. Rep. No. 356, 105th Cong., 1st Sess. 18 (1997); S. Rep. No. 174, 105th Cong., 2d Sess. 151 (1998).

2. Section 121 Exclusion in Individuals' Title 11 Cases

This document also contains proposed amendments to the Income Taxation Regulations (26 CFR part 1) under section 1398 of the Internal Revenue Code. Under the authority provided in section 1398(g)(8), the regulations add the section 121 exclusion to the list of tax attributes of the debtor that the bankruptcy estate of an individual in a chapter 7 or 11 bankruptcy case under title 11 of the United States Code succeeds to and takes into account in computing the taxable income of the estate. Although these regulations are proposed to be applicable on or after the date they are published as final regulations in the **Federal Register**, in view of the IRS's acquiescence in the case of *Internal Revenue Service v. Waldschmidt* (*In re Bradley*), AOD CC-1999-009 (August 30, 1999), and Chief Counsel Notice (35)000-162 (August 10, 1999), the IRS will not challenge the position taken prior to the effective date of these regulations that a bankruptcy estate may use the section 121 exclusion if the