

sale or exchange of residence) and the regulations thereunder (see paragraph (c) (3) of §1.1034-1).

(b) *Sale or exchange.* A “sale or exchange” of a residence includes the destruction, theft, seizure, requisition, or condemnation of such residence.

(c) *Gain realized.* The term “gain realized” has the same meaning as in paragraph (b)(5) of §1.1034-1 (determined without regard to section 121(d) (7) and paragraph (g) of §1.121-5).

[T.D. 7614, 44 FR 24840, Apr. 27, 1979]

#### § 1.121-4 Election.

(a) *General rule.* A taxpayer may make an election under section 121(a) in respect of a particular sale (or may revoke any such election) at any time before the expiration of the period for making a claim for credit or refund of Federal income tax for the taxable year in which the sale or exchange occurred. A taxpayer who is married at the time of the sale or exchange—

(1) May not make an election under section 121(a) unless his spouse (at the time of the sale or exchange) joins him in such election, and

(2) May not revoke an election previously made by him unless his spouse (at the time of the sale or exchange) joins him in the revocation.

If the taxpayer’s spouse dies after the sale or exchange but before the expiration of the time for making an election under this section (and an election was not made by the husband and wife), the deceased spouse’s personal representative (administrator or executor, etc.) must join with the taxpayer in making an election. For purposes of making an election under section 121(a), if no personal representative of the deceased spouse has been appointed at or before the time of making the election, then the surviving spouse shall be considered the personal representative of such deceased spouse. Any election previously made by the taxpayer may be revoked only if the personal representative of the taxpayer’s deceased spouse joins in such revocation.

(b) *Manner of making election.* The election under section 121(a) shall be made in a statement signed by the taxpayer and (where required) by his spouse and attached to the taxpayer’s

income tax return, when filed, for the taxable year during which the sale or exchange of his residence occurs. (See Form 2119 and the accompanying instructions). The statement shall indicate that the taxpayer elects to exclude from his gross income for such year so much of the gain realized on such sale or exchange as may be excluded under section 121. The statement shall also show—

(1) The adjusted basis of the residence as of the date of disposition;

(2) The date of its acquisition;

(3) The date of its disposition;

(4) The names and social security numbers of the owners of the residence as of the date of sale, the form of such ownership, and the age and marital status (as determined under paragraph (f) of §1.121-5) of such owner or owners at the time of the sale;

(5) The duration of any absences (other than vacation or other seasonal absence) by such owner or owners during the 5 years (8 years under the transitional rule) preceding the sale; and

(6) Whether any such owner or owners have previously made an election under section 121(a), the date of such election, the taxable year with respect to which such election was made, the district director with whom such election was filed, and, if such election has been revoked, the date of such revocation.

(c) *Manner of revoking election.* The revocation of an election under section 121(a) shall be made by the taxpayer by filing a signed statement showing his name and social security number and indicating that the taxpayer revokes the election he made under section 121(a). The statement shall also show the taxable year of the taxpayer for which such election was made. The statement shall be signed by the taxpayer and (where required) by his spouse or their personal representatives and filed with either the Internal Revenue Service Center with which the election was filed, the Internal Revenue Service Center nearest the taxpayer at the time the statement is filed, or the taxpayer’s local Internal Revenue office. In addition, if, at the time the statement is filed, the statutory period for assessment of a deficiency for the taxable year for which

## § 1.121-5

## 26 CFR Ch. I (4-1-02 Edition)

the election was made will expire within one year, then, the revocation is not effective unless the taxpayer also consents, in writing, that the statutory period for assessment of any deficiency (to the extent that such deficiency is attributable to the revocation of the election) shall not expire before the expiration of one year after the date the statement was filed with the district director. Such consent must be filed prior to the date of the expiration of the statutory period for assessment for the taxable year for which the election was made.

(Secs. 194 (94 Stat. 1989; 26 U.S.C. 194) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954))

[T.D. 7614, 44 FR 24840, Apr. 27, 1979, as amended by T.D. 7927, 48 FR 55849, Dec. 16, 1983]

### § 1.121-5 Special rules.

(a) *Property held jointly by husband and wife.* (1) If—

(i) On the date of the sale or exchange of a residence, such residence is held by a husband and wife as joint tenants, tenants by the entirety, or community property,

(ii) A joint return under section 6013 is made by such husband and wife for the taxable year in which the residence is sold or exchanged, and

(iii) One spouse satisfies the age, ownership, and use requirements of section 121(a),

then both the husband and wife are treated as satisfying the age, ownership, and use requirements of section 121(a). Thus, if the above conditions exist and one spouse meets all the requirements of section 121(a), the other spouse will be treated as meeting all such requirements.

(2) The provisions of this paragraph are illustrated by the following example:

*Example.* On January 1, 1979, A and B were married, sell their jointly owned residence which they have owned and used as their principal residence continuously since 1968. At the time of the sale, A is age 56 and B is age 54. If A and B file a joint return for the year of the sale, B will be considered to have satisfied the age, ownership and use requirements of section 121(a) since A has satisfied such requirements.

(b) *Property of deceased spouse.* (1) A taxpayer is treated as satisfying the ownership and use requirements of section 121(a)(2) with respect to property if—

(i) His spouse is deceased on the date of the sale or exchange of such property, and

(ii) Such deceased spouse, had, during the 5-year period ending on the date of the sale or exchange of the property, satisfied such ownership and use requirements with respect to such property.

This rule, however, has no application if the surviving spouse is married at the time of the sale or exchange of such property, or if an election made by the deceased spouse under section 121(a) is in effect with respect to any other sale or exchange.

(2) The provisions of this paragraph are illustrated by the following example:

*Example.* H and W become husband and wife on January 1, 1979. On and after such date they use as their principal residence property which H has owned and used as his principal residence since January 1, 1967. H dies on January 1, 1981, and W inherits the property and continues to use the property as her principal residence. W sells the property on August 31, 1981, at which time she is over 55 and not married. H, during the 5-year period ending on the date of the sale (September 1, 1976, through August 31, 1981), satisfied the 3-year use and ownership requirements of section 121(a)(2) with respect to such property. Accordingly, W may make an election under section 121(a).

(c) *Tenant-stockholder in cooperative housing corporation.* An individual who holds stock as a “tenant-stockholder” in a “cooperative housing corporation”, as those terms are defined in section 216(b), may be eligible to make an election under section 121(a) in respect of the sale or exchange of such stock. In determining whether the taxpayer meets the requirements of section 121(a), the ownership requirements of such section are applied to the holding of such stock and the use requirements of such section are applied to the house or apartment which the individual was entitled to occupy because of such stock ownership.

(d) *Tacking of holding periods in the case of involuntary conversion.* If the basis of the property sold or exchanged