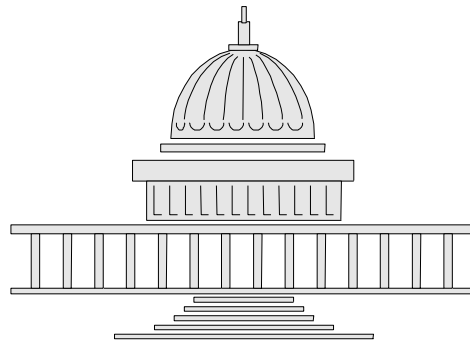


INCOME TAXATION OF REAL ESTATE SALES



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DEDICATION

"With respect to the words general welfare, I have always regarded them as qualified by the detail of powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character which there is a host of proofs was not contemplated by its creator."

"If Congress can employ money indefinitely to the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may appoint teachers in every State, county and parish and pay them out of their public treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the Union; they may assume the provision of the poor; they may undertake the regulation of all roads other than post-roads; in short, every thing, from the highest object of state legislation down to the most minute object of police, would be thrown under the power of Congress.... Were the power of Congress to be established in the latitude contended for, it would subvert the very foundations, and transmute the very nature of the limited Government established by the people of America."

"If Congress can do whatever in their discretion can be done by money, and will promote the general welfare, the government is no longer a limited one possessing enumerated powers, but an indefinite one subject to particular exceptions."
[James Madison. House of Representatives, February 7, 1792, On the Cod Fishery Bill, granting Bounties]

"Most people do not want true liberty. They want kinder masters and a more comfortable cage."
[SEDM]

"Liberty means responsibility. That's why most men dread it."
[George Bernard Shaw]

"Either be totally free or be the most expensive slave in the history of the world."
[SEDM]

"A person dependent on somebody else for everything from potatoes to opinions may declare that he is a free [SOVEREIGN] man, and his government may issue a certificate granting him his freedom, but he will not be free. ... How can he be free if he can do nothing for himself? ... Men are free precisely to the extent that they are equal to their own needs. The most able [and the most contented with the lowest needs per 1 Tim. 6:6] are the most free."
[Wendell Berry, "Discipline and Hope" in A Continuous Harmony (1972), p. 124]

"The hand of the diligent will rule [be SOVEREIGN], but the lazy [or irresponsible or DEPENDENT] man will be put to forced labor."
[Prov. 12:24, Bible, NKJV]

"We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellee's burdens under the program outweigh his benefits. It is hardly lack of due process for the Government to regulate that which it subsidizes."
[Wickard v. Filburn, 317 U.S. 111, 63 S.Ct. 82 (1942)]

"Cujus est commodum ejus debet esse incommodum.
He who receives the benefit should also bear the disadvantage."

"Que sentit commodum, sentire debet et onus.
He who derives a benefit from a thing, ought to feel the disadvantages attending it. 2 Bouv. Inst. n. 1433."

Commodum ex injuri su non habere debet.
No man ought to derive any benefit of his own wrong. Jenk. Cent. 161.

Invito beneficium non datur.
No one is obliged to accept a benefit against his consent. Dig. 50, 17, 69. But if he does not dissent he will be considered as assenting. Vide Assent.

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1 Introduction

Those who engage in buying and selling real property are often asked by real estate agents and escrow companies to fill out tax withholding and reporting paperwork relating to their transactions. Those who are non-taxpayers often have a difficult time deciding how to complete this paperwork in a way that accurately describes and protects their status. This memorandum of law will describe:

1. The state and federal laws applicable to income tax withholding and reporting of real estate sales.
2. The forms used for state and federal tax withholding and reporting of real estate sales.
3. Tactics for filling out real estate withholding and reporting forms useful to those who are “nontaxpayers” not subject to the Internal Revenue Code Subtitle A.
4. Tools and techniques for educating title companies, escrow companies, and buyers so that they will cooperate with you in lawfully avoiding income tax withholding and reporting of real estate sales.

2 I.R.C. 121 Exclusion of Proceeds from Sale of Principal Residence

I.R.C. 121 allows for an exclusion from gross income of the sale of a principal residence if the taxpayer has used the residence as his principal residence for 2 of the last five years. The amount of gain excluded is up to \$250,000 for a single individual and \$500,000 for a married couple. This exclusion, like every other “benefit” of the I.R.C., only applies to “taxpayers”. Many of the real estate withholding forms you will encounter during the sale of a property will mention this exclusion. The provision of law permitting this is as follows:

[TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter B > PART III > § 121](#)
[§ 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