



April 4, 2007
Pennsylvania Personal Income Tax
No. PIT-07-002
Sale of Principal Residence

ISSUE:

Is gain from the sale of the Taxpayers' Pennsylvania residence exempt from Pennsylvania Personal Income Tax?

CONCLUSION:

No. Taxpayers did not own and use the residence as their principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of its sale.

FACTS:

Taxpayers, husband and wife, resided and owned a home in Iowa from October 2004 until March 2006. Wife bought a residence in and moved to Pennsylvania in August 2005, due to her father's death and her mother's need for assistance.

Husband worked in Missouri while he resided in Iowa. In March 2006, he bought a residence in Missouri. He came to Pennsylvania to seek employment but was not able to find suitable employment.

Wife sold her Pennsylvania residence and moved to Missouri in June 2006.

Taxpayers feel that they meet an exception for unforeseen change in employment, family death, and health conditions.

DISCUSSION:

The Tax Reform Code of 1971, as amended, provides that every resident individual, estate or trust shall be taxed on each dollar of income from all sources, and every nonresident individual, estate, or trust shall pay tax on each dollar of income from sources within Pennsylvania. 72 P.S. § 7302.

One of the classes of Pennsylvania taxable income is "net gains or income from disposition of property." 72 P.S. § 7303(a)(3). However, gain realized from the sale, exchange or other disposition of a taxpayer's principal residence occurring on or after January 1, 1998 is generally exempt from Pennsylvania tax. 72 P.S. § 7303(a)(3)(vii).

Department of Revenue regulations provide:

(1) Eligible individuals. An individual may exclude from tax gain realized on the sale or other disposition of the taxpayer's principal residence if **all** of the following conditions are met:

(i) The date of disposition of the residence is after December 31, 1997.

(ii) The taxpayer used the residence as his principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of its disposition.

(iii) The taxpayer owned the residence for periods aggregating 2 years or more during the 5-year period ending on the date of its disposition.

(iv) One of the following applies:

(A) During the 2-year period ending on the date of disposition of the taxpayer's principal residence, there was no prior disposition by the taxpayer of a principal residence.

(B) The disposition of the taxpayer's principal residence is by reason of an unforeseen change in employment or health or severe financial hardship to the taxpayer resulting from a sudden and unexpected accident, loss of property due to casualty or other similar extraordinary and unforeseeable circumstance arising as a result of events beyond the control of the taxpayer.

61 Pa. Code § 103.13(h) (emphasis added).

Taxpayers have not met conditions (ii) and (iii), above. As such, gain from the sale of Taxpayers' Pennsylvania residence is not excludible and is Pennsylvania taxable income.^[1]

Additionally, the "unforeseen circumstances" exception Taxpayers allude to is not applicable to the determination as to whether Taxpayers owned and used the residence as their "principal residence." Rather, it is an exception to the rule that prohibits a taxpayer from claiming the exemption if, during the 2-year period ending on the date of sale of a taxpayer's principal residence, there was a prior sale by the taxpayer of a principal residence.

[1] In addition, if husband or wife was a Pennsylvania resident at the time of the sale of their Iowa residence, gain from its sale would be subject to Pennsylvania Personal Income Tax, as Taxpayers failed to meet the conditions (ii) and (iii) for their Iowa residence as well. The brochure "Determining Residency for Pennsylvania Personal Income Tax Purposes (Rev-611)" will provide guidance regarding Taxpayers' residency and is available on the Department's website.