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Ken Berry • Nov. 28, 2022

Has your home substantially increased in value since you bought it years ago? It's a common occurrence. Fortunately, you may be sitting on a veritable tax goldmine. Reason: Under Section 121 of the Internal Revenue Code, you may be able to exclude most, if not all, of your gain from tax when you finally sell the home. This one of the best tax breaks around.

However, you must meet certain requirements spelled out in the tax law. This could

The maximum exclusion for joint filers is cut in half to $250,000 when marrieds file separate returns.

Typically, there's little tax drama involved if you're a single filer and this is the only home you own. However, if you file a joint return, you may claim the maximum exclusion if (1) either spouse meets the two-year ownership rule, (2) each spouse meets the two-year use rule and (3) neither spouse has elected the exclusion within the last two years. This is particularly important to remember for those who have divorced or remarried or will do so soon.

Example: Suppose your fiancé sold a home in 2021 and claimed the exclusion as a single taxpayer. If you get married and sell your home in 2022, you can't claim the exclusion for your home on a joint return. This could result in a huge capital gain. Even if you've owned the home for more than a year, the gain is taxed at a maximum tax rate of 20%. (A portion of the gain may be eligible for a maximum 15% tax rate.)

On the other hand, you might benefit from these rules if you sell a home where you've been living on your own and your spouse hasn't claimed the exclusion within the last two years. Obviously, you should factor the potential tax consequences into your decisions.

These rules can be confusing, even to sophisticated taxpayers, so don't hesitate to seek professional assistance, when warranted. We would be glad to help.

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