

SEC. 3092. GAIN FROM SALE OF PRINCIPAL RESIDENCE ALLOCATED TO NONQUALIFIED USE NOT EXCLUDED FROM INCOME.

(a) **IN GENERAL.**—Subsection (b) of section 121 of the Internal Revenue Code of 1986 (relating to limitations) is amended by adding at the end the following new paragraph:

“(4) **EXCLUSION OF GAIN ALLOCATED TO NONQUALIFIED USE.**—

“(A) **IN GENERAL.**—Subsection (a) shall not apply to so much of the gain from the sale or exchange of property as is allocated to periods of nonqualified use.

“(B) **GAIN ALLOCATED TO PERIODS OF NONQUALIFIED USE.**—For purposes of subparagraph (A), gain shall be allocated to periods of nonqualified use based on the ratio which—

“(i) the aggregate periods of nonqualified use during the period such property was owned by the taxpayer, bears to

“(ii) the period such property was owned by the taxpayer.

“(C) **PERIOD OF NONQUALIFIED USE.**—For purposes of this paragraph—

“(i) **IN GENERAL.**—The term ‘period of nonqualified use’ means any period (other than the portion of any period preceding January 1, 2009) during which the property is not used as the principal residence of the taxpayer or the taxpayer’s spouse or former spouse.

“(ii) **EXCEPTIONS.**—The term ‘period of nonqualified use’ does not include—

“(I) any portion of the 5-year period described in subsection (a) which is after the last date that such property is used as the principal residence of the taxpayer or the taxpayer’s spouse,

“(II) any period (not to exceed an aggregate period of 10 years) during which the taxpayer or the taxpayer’s spouse is serving on qualified official extended duty (as defined in subsection (d)(9)(C)) described in clause (i), (ii), or (iii) of subsection (d)(9)(A), and

“(III) any other period of temporary absence (not to exceed an aggregate period of 2 years) due to change of employment, health conditions, or such other unforeseen circumstances as may be specified by the Secretary.

“(D) **COORDINATION WITH RECOGNITION OF GAIN ATTRIBUTABLE TO DEPRECIATION.**—For purposes of this paragraph—

“(i) subparagraph (A) shall be applied after the application of subsection (d)(6), and

“(ii) subparagraph (B) shall be applied without regard to any gain to which subsection (d)(6) applies.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to sales and exchanges after December 31, 2008.

Applicability.

26 USC 121
note.