## Divorcing couples may qualify for a tax break on home sales gain

In many divorces, couples end up selling the family home -- before, during or shortly after the divorce -- in an effort to practically adjust to post-divorce lifestyles and expenses. In order to avoid paying federal income tax on the gain on a home sale, divorcing couples should explore their options -- preferably before the divorce is final -- to use the federal income tax exclusion.

Depending on very specific criteria and the unique situation of each divorcing couple, this option could potentially offer a significant financial advantage -- if the timing works in their favor and they agree to some advanced planning to accommodate the qualifications.

The sales gain exclusion rules apply strictly to the sale of a couple's primary residence, as opposed to the sale of a vacation home or other real estate. The exclusion (no federal income tax is owed) for an individual, applies to the gain on a home sale up to $250,000. A married couple, filing jointly, can exclude up to $500,000 of gain on a home sale. However, to qualify for the exclusion, a seller must have owned and occupied the property as a principal residence for at least two years during the same five-year period. To claim the $500,00 exclusion for a couple, at least one spouse must pass the ownership test, and both spouses must pass the use test. Here are two examples:

### Home sale occurs before divorce:

If a soon-to-be divorced couple meets the qualification rules above, sells their primary residence, and are still legally married at the end of the year of sale (because their divorce is still not yet final), they can claim the $500,000 exclusion. They can claim the full amount, if they file a joint return, or if they file separate returns, using married filing separate status, each spouse can exclude up to $250,000 of his or her share of the gain. Again, to qualify here, each spouse must have owned his or her share of the home for at least two years during the five-year period prior to the sale date, and used the home as a principal residence for at least two years during that period.

### Home sale occurs in year divorce is final or shortly thereafter:

When a couple is divorced in the same year their home is sold, they are divorced for that entire year according to the IRS. Therefore, they cannot file income tax returns jointly. However, if both spouses meet the required ownership and residency requirements as stated above, each spouse can exclude $250,000 of their respective shares of the home sales gain when they file separately.

If one spouse ends up with sole ownership of the home after divorce, then sells it, he or she can only exclude $250,000 of the sales gain as an individual. However, if the single spouse remarries, and lives in the home with a new spouse for at least two years before selling it, the couple may qualify for the $500,000 sales gain exclusion, if they file their income taxes jointly.

If your situation falls outside of the above examples, I recommend consulting a Certified Divorce Financial Analyst for a closer examination of the potential for making this exclusion work for you.