

(NOTE: References to “married”, “unmarried”, and “spouse” also means “in a civil union”, “not in a civil union”, and “civil union partner”, respectively.)

General Instructions

Who Must File.—Use Form N-103 to report the sale of your main home, whether or not you had a gain from the sale. A loss is not deductible. Attach Form N-103 to Form N-11 or N-15 for the year of sale.

If you are not required to file an income tax return for the year of sale, file Form N-103 by itself. Send Form N-103 to:

Hawaii Department of Taxation
P. O. Box 3559
Honolulu, Hawaii 96811-3559

If Form N-103 is being filed by itself, enter your name and address and sign and date the form.

Main Home.—You file Form N-103 only for the sale of your main home. It can be a house, houseboat, mobile home, cooperative apartment, condominium, etc. If you have more than one home, your main home is ordinarily the one you live in most of the time.

In addition to your living in your home most of the time, other factors are relevant in determining if that home is your main home. Those factors include the following:

1. Your place of employment.
2. The location of your family members' main home.
3. Your mailing address for bills and correspondence.
4. The address listed on your:
 - a. Federal and state tax returns,
 - b. Driver's license,
 - c. Car registration, and
 - d. Voter registration card.
5. The location of the banks you use.
6. The location of recreational clubs and religious organizations you are a member of.

How To Obtain Tax Forms.—To request tax forms by mail, you may call 808-587-4242 or toll-free at 1-800-222-3229.

Tax forms are also available on the Internet. The Department of Taxation's site on the Internet is: tax.hawaii.gov

Excluding the Gain

You may qualify to exclude from your income all or part of any gain from the sale of your main home. This means that, if you qualify, you will not have to pay tax on the gain up to the limit described under *Maximum Exclusion*. To qualify, you must meet the ownership and use tests described later.

You can choose not to take the exclusion by including the gain from the sale in your gross income on your tax return for the year of the sale. To do so, complete all the lines in Part I, and lines 8 through 12 in Part II. Enter the gain on the Capital Gain/Loss Worksheet in the Instructions for Form N-15. Form N-11 filers should include the gain on Form N-11, line 10 (if not already included on Form N-11, line 7).

Gain (or Loss), Exclusion, and Taxable Gain (Part II)

Maximum Exclusion

You can exclude up to \$250,000 of the gain (other than gain allocated to periods of nonqualified use) on the sale of your main home if all of the following are true:

1. You meet the ownership test.
2. You meet the use test.
3. During the 2-year period ending on the date of the sale, you did not exclude gain from the sale of another home.

For details on gain allocated to periods of nonqualified use, see *Nonqualified Use*, later.

If you and another person owned the home jointly but file separate returns, each of you can exclude up to \$250,000 of gain from the sale of your interest in the home if each of you meets the three conditions just listed.

You may be able to exclude up to \$500,000 of the gain (other than gain allocated to periods of nonqualified use) on the sale of your main home if you are married and file a joint return and meet the requirements listed in the discussion of the special rules for joint returns, later, under *Married Persons*.

Ownership and Use Tests

To claim the exclusion, you must meet the ownership and use tests. This means that during the **5-year period** ending on the date of the sale, you must have:

1. **Owned** the home for at least **2 years** (the ownership test), **and**
2. **Lived in** the home as your main home for at least **2 years** (the use test).

Exception. If you owned and lived in the property as your main home for less than 2 years, you can still claim an exclusion in some cases. The maximum amount you may be able to exclude will be reduced. See *Reduced Maximum Exclusion*, later.

Period of Ownership and Use

The required 2 years of ownership and use during the 5-year period ending on the date of the sale do not have to be continuous nor do they have to occur at the same time.

You meet the tests if you can show that you owned and lived in the property as your main home for either 24 full months or 730 days (365 x 2) during the 5-year period ending on the date of sale.

Temporary absence. Short temporary absences for vacations or other seasonal absences, even if you rent out the property during the absences, are counted as periods of use.

Ownership and use tests met at different times. You can meet the ownership and use tests during different 2-year periods. However, you must meet both tests during the 5-year period ending on the date of the sale.

Cooperative apartment. If you sold stock as a tenant-shareholder in a cooperative housing cor-

poration, the ownership and use tests are met if, during the 5-year period ending on the date of sale, you:

1. Owned the stock for at least 2 years, and
2. Lived in the house or apartment that the stock entitles you to occupy as your main home for at least 2 years.

Exceptions to Ownership and Use Tests

The following sections contain exceptions to the ownership and use tests for certain taxpayers.

Exception for individuals with a disability. There is an exception to the use test if:

1. You become physically or mentally unable to care for yourself, and
2. You owned and lived in your home as your main home for a total of at least 1 year during the 5-year period before the sale of your home.

Under this exception, you are considered to live in your home during any time within the 5-year period that you own the home and live in a facility (including a nursing home) that is licensed by a state or political subdivision to care for persons in your condition.

If you meet this exception to the use test, you still have to meet the 2-out-of-5-year ownership test to claim the exclusion.

Previous home destroyed or condemned. For the ownership and use tests, you add the time you owned and lived in a previous home that was destroyed or condemned to the time you owned and lived in the replacement home on whose sale you wish to exclude gain. This rule applies if any part of the basis of the home you sold depended on the basis of the destroyed or condemned home. Otherwise, you must have owned and lived in the same home for 2 of the 5 years before the sale to qualify for the exclusion.

Members of the uniformed services or Foreign Service, employees of the intelligence community, or employees or volunteers of the Peace Corps. You can choose to have the 5-year test period for ownership and use suspended during any period you or your spouse serve on **qualified official extended duty** as a member of the uniformed services or Foreign Service of the United States, or as an employee of the intelligence community. You can choose to have the 5-year test period for ownership and use suspended during any period you or your spouse serve outside the United States either as an employee of the Peace Corps on qualified official extended duty or as an enrolled volunteer or volunteer leader of the Peace Corps. This means that you may be able to meet the 2-year use test even if, because of your service, you did not actually live in your home for at least the required 2 years during the 5-year period ending on the date of sale.

If this helps you qualify to exclude gain, you can choose to have the 5-year test period suspended by filing a return for the year of sale that does not include the gain.

Period of suspension. The period of suspension cannot last more than 10 years. Together, the 10-

year suspension period and the 5-year test period can be as long as, but no more than, 15 years. You cannot suspend the 5-year period for more than one property at a time. You can revoke your choice to suspend the 5-year period at any time.

Uniformed services. The uniformed services are:

- The Armed Forces (the Army, Navy, Air Force, Marine Corps, and Coast Guard),
- The commissioned corps of the National Oceanic and Atmospheric Administration, and
- The commissioned corps of the Public Health Service.

Foreign Service member. For purposes of the choice to suspend the 5-year test period for ownership and use, you are a member of the Foreign Service if you are any of the following:

- A Chief of mission.
- An Ambassador at large.
- A member of the Senior Foreign Service.
- A Foreign Service officer.
- Part of the Foreign Service personnel.

Employee of the intelligence community. For purposes of the choice to suspend the 5-year test period for ownership and use, you are an employee of the intelligence community if you are an employee of any of the following:

- The Office of the Director of National Intelligence.
- The Central Intelligence Agency.
- The National Security Agency.
- The Defense Intelligence Agency.
- The National Geospatial-Intelligence Agency.
- The National Reconnaissance Office and any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.
- Any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, and the Coast Guard.
- The Bureau of Intelligence and Research of the Department of State.
- Any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.

Qualified official extended duty. You are on qualified official extended duty while:

- Serving at a duty station that is at least 50 miles from your main home, or
- Living in Government quarters under Government orders.

You are on extended duty when you are called or ordered to active duty for a period of more than 90 days or for an indefinite period.

Married Persons

If you and your spouse file a joint return for the year of sale and one spouse meets the ownership and use tests, you can exclude up to \$250,000 of the gain. (But see *Special rules for joint returns*, next.)

Special rules for joint returns. You can exclude up to \$500,000 of the gain on the sale of your main home if all of the following are true:

1. You are married and file a joint return for the year.
2. Either you or your spouse meets the ownership test.
3. Both you and your spouse meet the use test.
4. During the 2-year period ending on the date of the sale, neither you nor your spouse excluded gain from the sale of another home.

If either spouse does not satisfy all these requirements, the maximum exclusion that can be claimed by the couple is the total of the maximum exclusions that each spouse would qualify for if not married and the amounts were figured separately. For this purpose, each spouse is treated as owning the property during the period that either spouse owned the property.

Sale of main home by surviving spouse. If your spouse died and you did not remarry before the date of sale, you are considered to have owned and lived in the property as your main home during any period of time when your spouse owned and lived in it as a main home.

If you meet all of the following requirements, you may qualify to exclude up to \$500,000 of any gain from the sale or exchange of your main home.

- The sale or exchange took place after 2008.
- The sale or exchange took place no more than 2 years after the date of death of your spouse.
- You have not remarried.
- You and your spouse met the use test at the time of your spouse's death.
- You and your spouse met the ownership test at the time of your spouse's death.
- Neither you nor your spouse excluded gain from the sale of another home during the last 2 years before the date of death.

The ownership and use tests were described earlier.

Home transferred from spouse. If your home was transferred to you by your spouse (or former spouse if the transfer was incident to divorce), you are considered to have owned it during any period of time when your spouse owned it.

Use of home after divorce. You are considered to have used property as your main home during any period when:

- You owned it, and
- Your spouse or former spouse is allowed to live in it under a divorce or separation instrument and uses it as his or her main home.

Reduced Maximum Exclusion

If you fail to meet the requirements to qualify for the \$250,000 or \$500,000 exclusion, you may still qualify for a reduced exclusion. This applies to those who:

- Fail to meet the ownership and use tests, or
- Have used the exclusion within 2 years of selling their current home.

In both cases, to qualify for a reduced exclusion, the sale of your main home must be due to one of the following reasons.

- A change in place of employment.
- Health.
- Unforeseen circumstances.

Qualified individual. For purposes of the reduced maximum exclusion, a qualified individual is any of the following.

- You.
- Your spouse.
- A co-owner of the home.
- A person whose main home is the same as yours.

Primary reason for sale. One of the three reasons above will be considered to be the primary reason you sold your home if either (1) or (2) is true.

1. You qualify under a "safe harbor." This is a specific set of facts and circumstances that, if applicable, qualifies you to claim a reduced maximum exclusion. Safe harbors corresponding to the reasons listed above are described later.
2. A safe harbor does not apply, but you can establish, based on facts and circumstances, that the primary reason for the sale is a change in place of employment, health, or unforeseen circumstances.

Factors that may be relevant in determining your primary reason for sale include whether:

- a. Your sale and the circumstances causing it were close in time,
- b. The circumstances causing your sale occurred during the time you owned and used the property as your main home,
- c. The circumstances causing your sale were not reasonably foreseeable when you began using the property as your main home,
- d. Your financial ability to maintain your home became materially impaired,
- e. The suitability of your property as a home materially changed, and
- f. During the time you owned the property, you used it as your home.

Change in Place of Employment

You may qualify for a reduced exclusion if the primary reason for the sale of your main home is a change in the location of employment of a qualified individual.

Employment. For this purpose, employment includes the start of work with a new employer or continuation of work with the same employer. It also includes the start or continuation of self-employment.

Distance safe harbor. A change in place of employment is considered to be the reason you sold your home if:

1. The change occurred during the period you owned and used the property as your main home, and
2. The new place of employment is at least 50 miles farther from the home you sold than the former place of employment (or, if there was no former place of employment, the distance be-

tween your new place of employment and the home sold is at least 50 miles).

Health

The sale of your main home is because of health if your primary reason for the sale is:

- To obtain, provide, or facilitate the diagnosis, cure, mitigation, or treatment of disease, illness, or injury of a qualified individual, or
- To obtain or provide medical or personal care for a qualified individual suffering from a disease, illness, or injury.

The sale of your home is not because of health if the sale merely benefits a qualified individual's general health or well-being.

For purposes of this reason, a qualified individual includes, in addition to the individuals listed earlier under *Qualified Individual*, any of the following family members of these individuals:

- Parent, grandparent, stepmother, stepfather.
- Child, grandchild, stepchild, adopted child, eligible foster child.
- Brother, sister, stepbrother, stepsister, half-brother, half-sister.
- Mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.
- Uncle, aunt, nephew, niece, or cousin.

Doctor's recommendation safe harbor. Health is considered to be the reason you sold your home if, for one or more of the reasons listed at the beginning of this discussion, a doctor recommends a change of residence.

Unforeseen Circumstances

The sale of your main home is because of an unforeseen circumstance if your primary reason for the sale is the occurrence of an event that you could not reasonably have anticipated before buying and occupying that home. You are not considered to have an unforeseen circumstance if the primary reason you sold your home was that you preferred to get a different home or because your finances improved.

Specific event safe harbors. Unforeseen circumstances are considered to be the reason for selling your home if any of the following events occurred while you owned and used the property as your main home.

1. An involuntary conversion of your home, such as when your home is destroyed or condemned.
2. Natural or man-made disasters or acts of war or terrorism resulting in a casualty to your home, whether or not your loss is deductible.
3. In the case of qualified individuals (listed earlier under *Qualified Individual*):
 - a. Death,
 - b. Unemployment (if the individual is eligible for unemployment compensation),
 - c. A change in employment or self-employment status that results in the individual's inability to pay reasonable basic living expenses (listed under *Reasonable basic living expenses*, below) for his or her household,

- d. Divorce or legal separation under a decree of divorce or separate maintenance, or
 - e. Multiple births resulting from the same pregnancy.
4. An event the IRS determined to be an unforeseen circumstance in published guidance of general applicability. For example, the IRS determined the September 11, 2001, terrorist attacks to be an unforeseen circumstance.

Reasonable basic living expenses. Reasonable basic living expenses for your household include the following expenses.

- Amounts spent for food.
- Amounts spent for clothing.
- Housing and related expenses.
- Medical expenses.
- Transportation expenses.
- Tax payments.
- Court-ordered payments.
- Expenses reasonably necessary to produce income.

Any of these amounts that are spent to maintain an affluent or luxurious standard of living are not reasonable basic living expenses.

Nonqualified Use

Gain from the sale or exchange of the main home is not excludable from income if it is allocable to periods of nonqualified use. Generally, nonqualified use means any period in 2009 or later where neither you nor your spouse (or your former spouse) used the property as a main home with certain exceptions (see below).

Exceptions. A period of nonqualified use does not include:

1. Any portion of the 5-year period ending on the date of the sale or exchange that is after the last date you (or your spouse) use the property as a main home;
2. Any period (not to exceed an aggregate period of 10 years) during which you (or your spouse) is serving on qualified official extended duty:
 - a. As a member of the Uniformed Services;
 - b. As a member of the Foreign Service of the United States, or
 - c. As an employee of the intelligence community; and
3. 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 IRS.

Special Situations

The situations that follow may affect your exclusion.

Sale of home acquired in like-kind exchange. You cannot claim the exclusion if:

- You acquired your home in a like-kind exchange (also known as a section 1031 exchange); or your basis in your home is determined by reference to the basis of the home in the hands of the person who acquired the property in a like-kind exchange (for example, you received the home from that person as a gift), and

- You sold the home during the 5-year period beginning with the date your home was acquired in the like-kind exchange.

Gain from a like-kind exchange is not taxable at the time of the exchange. This means that gain will not be taxed until you sell or otherwise dispose of the property you receive. To defer gain from a like-kind exchange, you must have exchanged business or investment property for business or investment property of a like kind. For more information about like-kind exchanges, see federal Publication 544.

Home relinquished in a like-kind exchange. The same tests that apply to determine if you qualify to exclude gain from the sale of your main home (discussed earlier) also apply to determine if you qualify to exclude gain from the exchange of your main home for another property. Under certain circumstances, you may meet the requirements for both the exclusion of gain from the exchange of a main home and the nonrecognition of gain from a like-kind exchange (discussed above under *Sale of home acquired in a like-kind exchange*). This can occur if you used your property as your main home for a period before the exchange that meets the use test, but at the time of the exchange, you used your home for business or rental purposes. This can also occur if you used your main home partly for business or rental purposes and then exchanged the home. In these situations, you would first exclude the gain from the sale of your main home to the extent allowable, and then apply the nonrecognition of gain provisions of Internal Revenue Code section 1031 for like-kind exchanges to defer any remaining gain. For more information, see Revenue Procedure 2005-14, which is on page 528 of Internal Revenue Bulletin 2005-7.

Home destroyed or condemned. If your home was destroyed or condemned, any gain (for example, because of insurance proceeds you received) qualifies for the exclusion.

Any part of the gain that cannot be excluded (because it is more than the maximum exclusion) can be postponed under the rules explained in:

- Federal Publication 547, in the case of a home that was destroyed, or
- Federal Publication 544, chapter 1, in the case of a home that was condemned.

Sale of remainder interest. Subject to the other rules in federal Publication 523, you can choose to exclude gain from the sale of a remainder interest in your home. If you make this choice, you cannot choose to exclude gain from your sale of any other interest in the home that you sell separately.

Exception for sales to related persons. You cannot exclude gain from the sale of a remainder interest in your home to a related person. Related persons include your brothers and sisters, half-brothers and half-sisters, spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.). Related persons also include certain corporations, partnerships, trusts, and exempt organizations.

Line-by-Line Instructions

Line 1—Enter the date of sale. If you received a federal Form 1099-S, Proceeds From Real Estate Transactions, the date should be shown in box 1. If you did not receive a federal Form 1099-S, the date of sale is the earlier of (a) the date the title transferred, or (b) the date the economic burdens and benefits of ownership shifted to the buyer.

Line 2—If part of your main home was rented out or used for business and in the year of sale you were not entitled to deduct expenses for the part that was rented or used for business, report the entire sale on Form N-103.

If you were entitled to deduct expenses in the year of sale for the part that was rented or used for business, treat the sale as two separate sales. Report on Hawaii Schedule D-1 the part of the sale that applies to the rental or business use. Report on Form N-103 only the part of the sale that represents your main home. You must allocate between Form N-103 and Hawaii Schedule D-1 the sales price, expenses of sale, and the adjusted basis of the property sold. Attach a statement showing the total selling price of the property and the method used to allocate the amounts between the two forms.

Line 5—Section 235-5.5(f), HRS, requires that the amount received as a distribution from an IHA which was used to purchase a residential property in Hawaii be included in the gross income of the individual.

Individuals who purchased residential property **before January 1, 1990**, with a distribution from an IHA must include in gross income in the year the property is sold, conveyed, or transferred an amount equal to the amount of the distribution, unless an election was made to include one-tenth of the distribution in gross income each year for ten years.

Individuals who purchase residential property **after December 31, 1989** shall include in gross income one-tenth of the distribution each year for ten years. If such individual sells the property purchased with an IHA distribution before the end of the ten-year period, the remaining amount of the distribution not previously reported shall be included in gross income in the year of sale.

Individuals who purchase residential property **after December 31, 1996**, with a distribution from an IHA established prior to January 1, 1990, and

who have made the election to do so, shall include in gross income in the year the property is sold, conveyed, or transferred an amount equal to the amount of the distribution.

Enter on line 5 the total amount of the IHA distribution.

Line 6—Enter on this line the amount of the IHA distribution not previously reported. Also include this amount on Form N-11, line 10, or Form N-15, line 19. Identify this amount as "IHA distribution reported on sale of property."

Line 7—Section 235-5.5(f), HRS, also requires that 10% (.10) of the IHA distribution used to purchase residential property be added to the individual's gross income or tax liability upon the sale, conveyance, or transfer of the property if the total IHA distribution was not previously reported. On line 7, enter 10% (.10) of line 5.

The following individuals shall add 10% of the IHA distribution to their **gross income**:

1. Individuals who purchased residential property before January 1, 1990, and who have not made the election to report the distribution as gross income over a ten-year period, and
2. Individuals who purchased residential property after December 31, 1996, with a distribution from an IHA established prior to January 1, 1990, and who made the election to report the distribution as gross income at the time the property is sold.

Include this amount on Form N-11, line 10, or Form N-15, line 19. Identify this amount as "10% penalty on IHA distribution."

The following individuals shall add 10% of the IHA distribution to their **tax liability**:

1. Individuals who purchased residential property after December 31, 1989, except for individuals who purchased residential property after December 31, 1996, with a distribution from an IHA established prior to January 1, 1990, and who made the election to report the distribution as gross income at the time the property is sold.

Include this amount on Form N-11, line 27, or Form N-15, line 44 and fill in the oval indicating that you are including the separate tax from Form N-103.

Line 8—Selling Price of Home.—Enter the selling price of your home. Generally, this includes the amount of money you received, plus all notes, mortgages, or other debts that are part of the sale. If you received a federal Form 1099-S, the total of these items should be shown in box 2. The sell-

ing price also includes the fair market value of any other property or services you received as part of the sale. If you received any other property or services as part of the sale, the value of these items is not shown on federal Form 1099-S. However, box 4 of that form should be checked.

Do not include amounts you received for personal property sold with your home. Personal property is property that is not a permanent part of the home. Examples are furniture, draperies, and lawn equipment.

Line 9—Selling Expenses.—Enter the total expenses you paid to sell your home. These expenses include commissions, advertising, attorney and legal fees, appraisal fees, title insurance, transfer and stamp taxes, and recording fees. Loan charges, such as points charged to the seller, are also selling expenses. Do not include fixing-up expenses on this line.

Line 11—Adjusted Basis of Home Sold.—See federal Publication 523 to figure the adjusted basis of the home you sold.

If you were a nonresident of Hawaii when you purchased your old Hawaii home, do not reduce the basis of the old home by any gain on the sale of a prior home which was located outside of Hawaii.

Line 20—Maximum Exclusion.—Enter \$250,000 (\$500,000 if married filing a joint return) if during the 5-year period ending on the date of the sale, you have met the ownership and use tests.

If you qualify to claim a reduced exclusion, use the Reduced Maximum Exclusion Worksheet in federal Publication 523 to figure the amount to enter on line 20.

Line 22—Taxable Gain.—If you are reporting the sale on the installment method, see federal Publication 523. All others, enter this amount on the Capital Gain/Loss Worksheet in the Instructions for Form N-15. Form N-11 filers should include the gain on Form N-11, line 10 (if not already included on Form N-11, line 7).