

(NOTE: References to “married” and “spouse” are also references to “in a civil union” and “civil union partner,” respectively.)

General Instructions

Note: Act 69, Session Laws of Hawaii 2019, adopts the federal provision that provides a temporary deferral of inclusion in gross income for capital gains invested in Qualified Opportunity Funds, and permanent exclusion of capital gains from the sale or exchange of an investment in the Qualified Opportunity Fund if the investment is held for at least 10 years.

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.

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 from the Department of Taxation’s website at tax.hawaii.gov.

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

Does Your Home Sale Qualify for the Exclusion of Gain?

To qualify for the maximum exclusion of gain (\$250,000 or \$500,000 if married filing jointly) when you sell your main home, you must meet the *Eligibility Test*, explained later. To qualify for a partial exclusion of gain, meaning an exclusion of gain less than the full amount, you must meet one of the situations listed in *Does Your Home Qualify for a Partial Exclusion of Gain?*, later.

Note: 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. Form N-15 filers should 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).

Transfer of your home to a spouse or an ex-spouse. Generally, if you transferred your home (or share of a jointly owned home) to a spouse or ex-spouse as part of a divorce settlement, you are considered to have no gain or loss.

Sale of your main home. You may take the exclusion, whether maximum or partial, only on the sale of a home that is your principal residence, meaning your main home. An individual has only one main home at a time. If you own and live in just one home, then that property is your main home. If you own or live in more than one home, then you must apply a “facts and circumstances” test to de-

termine which property is your main home. While the most important factor is where you spend the most time, other factors are relevant as well. They are listed below. The more of these factors that are true of a home, the more likely that it is your main home.

- The address listed on your:
 1. U.S. Postal Service address,
 2. Voter Registration Card,
 3. Federal and state tax returns, and
 4. Driver’s license or car registration.
- The home is near:
 1. Where you work,
 2. Where you bank,
 3. The residence of one or more family members, and
 4. Recreational clubs or religious organizations of which you are a member.

Finally, the exclusion can apply to many different types of housing facilities. A single-family home, a condominium, a cooperative apartment, a mobile home, and a houseboat each may be a main home and therefore qualify for the exclusion.

Eligibility Test

The Eligibility Test determines whether you are eligible for the maximum exclusion of gain (\$250,000 or \$500,000 if married filing jointly).

Eligibility Step 1—Automatic Disqualification

Determine whether the automatic disqualification applies. Your home sale is not eligible for the exclusion if you acquired the property through a like-kind exchange (1031 exchange), during the past 5 years. See federal Publication 544, Sales and Other Dispositions of Assets. If this is true, the exclusion doesn’t apply. Skip to the Line-by-Line Instructions.

Eligibility Step 2—Ownership

Determine whether you meet the ownership requirement. If you owned the home for at least 24 months (2 years) out of the last 5 years leading up to the date of sale (date of the closing), you meet the ownership requirement. For a married couple filing jointly, only one spouse has to meet the ownership requirement.

Eligibility Step 3—Residence

Determine whether you meet the residence requirement. If you owned the home and used it as your residence for at least 24 months of the previous 5 years, you meet the residence requirement. The 24 months of residence can fall anywhere within the 5-year period. It doesn’t have to be a single block of time. All that is required is a total of 24 months (730 days) of residence during the 5-year period. Unlike the ownership requirement, each spouse must meet the residence requirement individually for a married couple filing jointly to get the full exclusion.

If you were ever away from home, you need to determine whether that time counts towards

your residence requirement. A vacation or other short absence counts as time you lived at home (even if you rented out your home while you were gone).

If you become physically or mentally unable to care for yourself, you need to show that your home was your residence for only 12 months out of the 5 years leading up to the date of sale. In addition, any time you spent living in a care facility (such as a nursing home) counts toward your residence requirement, so long as the facility has a license from a state or other political entity to care for people with your condition.

Eligibility Step 4—Look-Back

Determine whether you meet the look-back requirement. If you didn’t sell another home during the 2-year period before the date of sale (or, if you did sell another home during this period, but you didn’t take an exclusion of the gain earned from it), you meet the look-back requirement. You may take the exclusion only once during a 2-year period.

Eligibility Step 5—Exceptions to the Eligibility Test

There are some exceptions to the Eligibility Test. If any of the following situations apply to you, read on to see if they may affect your qualification. If none of these situations apply, skip to Step 6.

- A separation or divorce occurred during the ownership of the home. See *Separated or divorced taxpayers*.
- The death of a spouse occurred during the ownership of the home. See *Widowed taxpayers*.
- The sale involved vacant land. See *Vacant land next to home*.
- You owned a remainder interest, meaning the right to own a home in the future, and you sold that right. See *Remainder interest*.
- Your previous home was destroyed or condemned. See *Home destroyed or condemned—considerations for benefits*.
- You were a service member during the ownership of the home. See *Service, Intelligence, and Peace Corps personnel*.
- You acquired or are relinquishing the home in a like-kind exchange. See *Like-Kind/1031 exchange*.

Separated or divorced taxpayers. If you were separated or divorced prior to the sale of the home, you can treat the home as your residence if:

- You are a sole or joint owner, and
- Your spouse or former spouse is allowed to live in the home under a divorce or separation agreement and uses the home as his or her main home.

If your home was transferred to you by a spouse or ex-spouse (whether in connection with a divorce or not), you can count any time when your spouse owned the home as time when you owned it. However, you must meet the residence requirement on your own.

Widowed taxpayers. If you are a widowed taxpayer who doesn't meet the 2-year ownership and residence requirements on your own, consider the following rule. If you sell your home within 2 years of the death of your spouse and you haven't remarried at the time of the sale, then you may include any time when your late spouse owned and lived in the home, even if without you, to meet the ownership and residence requirements.

Also, you may be able to increase your exclusion amount from \$250,000 to \$500,000. You may take the higher exclusion if you meet all of the following conditions.

1. You sell your home within 2 years of the death of your spouse;
2. You haven't remarried at the time of the sale;
3. Neither you nor your late spouse took the exclusion on another home sold less than 2 years before the date of the current home sale; and
4. You meet the 2-year ownership and residence requirements (including your late spouse's times of ownership and residence if need be).

Service, Intelligence, and Peace Corps personnel.

If you or your spouse are a member of the Uniformed Services or the Foreign Service, or an employee of the intelligence community in the United States, you may choose to suspend the 5-year test period for ownership and residence when you are on qualified official extended duty. This means you may be able to meet the 2-year residence test even if, because of your service, you did not actually live in your home for at least the 2 years during the 5-year period ending on the date of sale.

Qualified extended duty. You are on qualified extended duty if:

- You are called or ordered to active duty for an indefinite period, or for a definite period of more than 90 days.
- You are serving at a duty station at least 50 miles from your main home, or you are living in government quarters under government orders.
- You are one of the following:
 1. A member of the armed forces (Army, Navy, Air Force, Marine Corps, Coast Guard);
 2. A member of the commissioned corps of the National Oceanic and Atmospheric Administration (NOAA) or the Public Health Service;
 3. A Foreign Service chief of mission, ambassador-at-large, or officer;
 4. A member of the Senior Foreign Service or the Foreign Service personnel;
 5. An employee, enrolled volunteer, or enrolled volunteer leader of the Peace Corps serving outside the United States; or
 6. An employee of the intelligence community, meaning:
 - a. 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, or the National Reconnaissance Office;

- b. Any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;
- c. 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;
- d. The Bureau of Intelligence and Research of the Department of State; or
- e. Any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.

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.

Example 1. Mary bought a home on May 1, 2003. She used it as her main home until August 27, 2006. On August 28, 2006, she went on qualified official extended duty with the Navy. She did not live in the house again before selling it on August 1, 2019. Mary chooses to use the entire 10-year suspension period. Therefore, the suspension period would extend back from August 1, 2019, to August 2, 2009, and the 5-year test period would extend back to August 2, 2004. During that period, Mary owned the house all 5 years and lived in it as her main home from August 2, 2004, until August 28, 2006, a period of more than 24 months. She meets the ownership and use tests because she owned and lived in the home for at least 2 years during this test period.

Example 2. John bought and moved into a home in 2010. He lived in it as his main home for 3-1/2 years. For the next 6 years, he did not live in it because he was on qualified official extended duty with the Army. He then sold the home at a gain in 2019. To meet the use test, John chooses to suspend the 5-year test period for the 6 years he was on qualified official extended duty. This means he can disregard those 6 years. Therefore, John's 5-year test period consists of the 5 years before he went on qualified official extended duty. He meets the ownership and use tests because he owned and lived in the home for 3-1/2 years during this test period.

Vacant land next to home. You can include the sale of vacant land adjacent to the land on which your home sits as part of a sale of your home if ALL of the following are true.

- You owned and used the vacant land as part of your home.
- The sale of the vacant land and the sale of your home occurred within 2 years of each other.
- Both sales either meet the Eligibility Test or qualify for partial tax benefits, as described earlier.

Also, if your sale of vacant land meets all these requirements, you must treat that sale and the

sale of your home as a single transaction for tax purposes, meaning that you may apply the exclusion only once.

However, if you move your home from the land on which it stood (meaning you relocate the actual physical structure), then that land no longer counts as part of your home. For example, if you move a mobile home to a new lot and sell the old lot, you cannot treat the sale of the old lot as the sale of your home.

Home destroyed or condemned—considerations for benefits. If an earlier home of yours was destroyed or condemned, you may be able to count your time there towards the ownership and residence test.

If your home was destroyed, see federal Publication 547, Casualties, Disasters, or Thefts. If your home was condemned, see federal Publication 544.

Remainder interest. The sale of a remainder interest in your home is eligible for the exclusion only if both of the following conditions are met.

- The buyer isn't a "related party." A related party can be a related person or a related corporation, trust, partnership, or other entity which you control or in which you have an interest.
- You haven't previously sold an interest in the home for which you took the exclusion.

Like-Kind/1031 exchange. If you sold a home that you acquired in a like-kind exchange, then the following test applies.

You can't claim the exclusion if:

1. Either a. or b. applies:
 - a. You acquired your home in a like-kind exchange (also known as a section 1031 exchange), or
 - b. Your basis in your home is determined by reference to a previous owner's basis, and that previous owner acquired the property in a like-kind exchange (for example, the owner acquired the home and then gave it to you); and
2. You sold the home within 5 years of the date your home was acquired in the like-kind exchange.

For more information about like-kind exchanges, see federal Publication 544.

If you relinquished your home in a like-kind exchange, then you should determine if you qualify to exclude gain as you would if you sold the home. 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. For more information, see Revenue Procedure 2005-14, 2005-7 I.R.B. 528.

Eligibility Step 6— Final Determination of Eligibility

If you meet the ownership, residence, and look-back requirements, taking the exceptions into account, then you meet the Eligibility Test. Your home sale qualifies for the maximum exclusion. Skip to the Line-by-Line Instructions.

If you didn't meet the Eligibility Test, then your home isn't eligible for the maximum exclusion, but you should continue to *Does Your Home Qualify for a Partial Exclusion of Gain?*

Does Your Home Qualify for a Partial Exclusion of Gain?

If you don't meet the Eligibility Test, you may still qualify for a partial exclusion of gain. You can meet the requirements for a partial exclusion if the main reason for your home sale was a change in work-place location, a health issue, or an unforeseeable event.

Work-Related Move

You meet the requirements for a partial exclusion if any of the following events occurred during your time of ownership and residence in the home.

- You took or were transferred to a new job in a work location at least 50 miles farther from home than your old work location.
- You had no previous work location and you began a new job at least 50 miles from the home.
- Either of the above is true of your spouse, a co-owner of the home, or anyone else for whom the home was his or her residence.

Health-Related Move

You meet the requirements for a partial exclusion if any of the following health-related events occurred during your time of ownership and residence in the home.

- You moved to obtain, provide, or facilitate diagnosis, cure, mitigation, or treatment of disease, illness, or injury for yourself or a family member.
- You moved to obtain or provide medical or personal care for a family member suffering from a disease, illness, or injury. Family includes your:
 1. Parent, grandparent, stepmother, stepfather;
 2. Child (including adopted child, eligible foster child, and stepchild), grandchild;
 3. Brother, sister, stepbrother, stepsister, half-brother, half-sister;
 4. Mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law;
 5. Uncle, aunt, nephew, or niece.
- A doctor recommended a change in residence for you because you were experiencing a health problem.
- The above is true of your spouse, a co-owner of the home, or anyone else for whom the home was his or her residence.

Unforeseeable Events

You meet the standard requirements if any of the following events occurred during the time you owned and lived in the home you sold:

- Your home was destroyed or condemned.
- Your home suffered a casualty loss because of a natural or man-made disaster or an act of terrorism. (It does not matter whether the loss is deductible on your tax return.)
- You, your spouse, a co-owner of the home, or anyone else for whom the home was his or her residence:

1. Died;
2. Became divorced or legally separated;
3. Gave birth to two or more children from the same pregnancy;
4. Became eligible for unemployment compensation;
5. Became unable, because of a change in employment status, to pay basic living expenses for the household (including expenses for food, clothing, housing, medication, transportation, taxes, court-ordered payments, and expenses reasonably necessary for making an income).

An event is determined to be an unforeseeable event in IRS published guidance.

Other Facts and Circumstances

Even if your situation doesn't match any of the standard requirements described above, you still may qualify for an exception. You may qualify if you can demonstrate the primary reason for sale, based on facts and circumstances, is work-related, health-related, or unforeseeable. Important factors are:

- The situation causing the sale arose during the time you owned and used your property as your residence.
- You sold your home not long after the situation arose.
- You could not have reasonably anticipated the situation when you bought the home.
- You began to experience significant financial difficulty maintaining the home.
- The home became significantly less suitable as a main home for you and your family for a specific reason.

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 of sale 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—Sale Price of Home.—Enter the sale price of your home. This includes money, the value of any notes, mortgages, or other debts that the buyer agreed to assume as part of the sale, and the fair market value of any other property or services you received.

If you received federal Form 1099-S, box 2 (gross proceeds) should show the total amount you received for your home. However, box 2 does not include the fair market value of other property or services you received or will receive. Instead, box 4 will be checked to indicate your receipt or expected receipt of these items.

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, rugs, a washer and dryer, 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, residence, and look-

back requirements, taking the exceptions into account.

If you qualify to claim a partial exclusion, use the Find Your Exclusion Limit 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. Form N-15 filers should 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).

Note: *If you elect to defer tax on your eligible gain by investing in a Qualified Opportunity Fund, report the eligible gain on federal Form 8949, Sales and Other Dispositions of Capital Assets. For more information, see the Instructions for federal Form 8949.*