



# e-Report

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## New Legislation Imposes a 5-Year Holding Requirement for Principal Residences Formerly Held as Investment Property

*As many investors are* aware, property acquired in an IRC §1031 exchange may be converted from investment property to the taxpayer's principal residence. In short, a taxpayer could buy property in an exchange—having deferred gain from the sale of other investment property—and later convert that property to a principal residence. The previously deferred taxes may never be owed when the property is subsequently sold because the taxpayer is entitled to a principal residence exclusion under IRC §121.

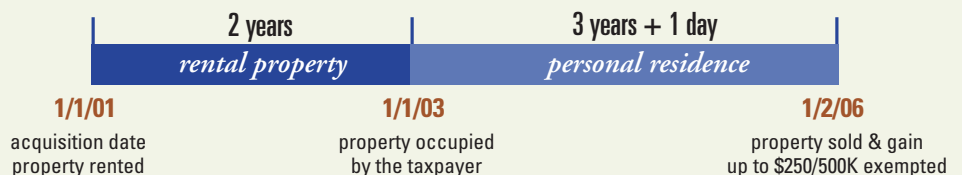
IRC §121 provides a taxpayer with an exemption from taxes on the gain from the sale of the taxpayer's principal residence if the taxpayer used the property as a principal residence for periods aggregating 2 years or more within the previous 5 years. The gain excluded from the payment of tax is \$250,000 for individuals or \$500,000 for married couples.

*The new legislation—H.R. 4520—provides, in pertinent part, as follows:*

*If a taxpayer acquired property in an exchange to which a §1031 applied, §121(a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.*

Now, pursuant to this new legislation, a taxpayer intending to take advantage of the §121 exclusion with regard to property originally acquired in a §1031 exchange, will not be entitled to the §121 exclusion, unless the property has been held by the taxpayer for more than 5 years and used as the taxpayer's principal residence for at least 2 of the 5 years.

### *Example of New Rule: 5 years and 1 day*



### *Example of Old Rule: 4 years*

