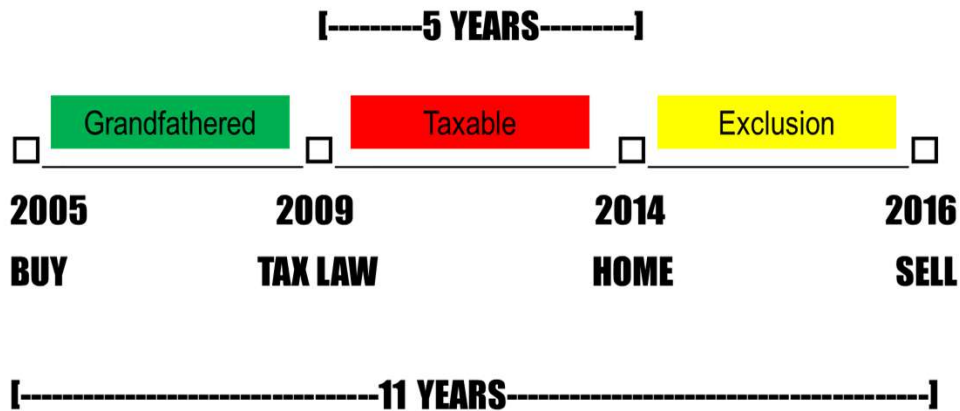




Divorce Lending Association

The Housing Assistance Tax Act of 2008



The Housing Assistance Tax Act of 2008 provides four important tax law changes that impact individuals and small businesses. These tax laws are part of the larger Housing and Economic Recovery Act of 2008 (HR 3221, Public Law 110-289) which provides a number of laws relating to housing and mortgages.

One of the highlighted tax law changes is related to prorated capital gains exclusion for real estate for periods of non-primary use. This may be a concern for divorcing clients when one spouse retains a current investment property to be used as their new primary residence.

As of January 1, 2009, the IRS wants capital gains for the period the property was in use as an investment property. In looking at the timeline above:

- The home was purchased in 2005 as an investment property.
- In 2014, you move into the property as your primary residence as a result of a divorce
- You live there for 2 years and then sell the property in 2016, thus meeting your 2 year 'use period' requirement for a Capital Gains Exclusion.

Under the Housing Assistance Tax Act of 2008, the IRS now wants their share of the capital gains tax during the period from January 1, 2009, up until the property became your primary residence in 2014. The period from Jan 1, 2009, through December 2014 is 5 years out of the 11 years the property was owned. So 5/11 of the capital gains is due to the IRS.

The period prior to January 1, 2009, is grandfathered into the previous law and is subject to any available Capital Gains Exclusions. Any exclusions for capital gains on the remaining 6/11 may be applied if available considering that any depreciation taken in previous tax years is recaptured.

This may be a widely overlooked tax consequence as many divorcing couples who own investment properties often move into a rental home as their new primary residence. Please let me know if I can refer you to a tax advisor on my team who may assist your divorcing clients.



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