

Travel Expenses for a Visiting Professor—An Addendum

James R. Hasselback

IN a recent issue of *THE ACCOUNTING REVIEW*, Allen Ford [1975, pp. 338–344] discussed the ramifications of tax deductibility of a visiting professor's travel expenses. This article dealt extensively with the tax implications during the professor's stay; however, an addendum is needed for the professor who decides to remain permanently in the position, especially in light of the number of professors so inclined.

The two tax questions facing the professor in a decision to stay or even to move to a new position are the taxability of any gain on the sale of the residence at the former location and the availability of a moving expense deduction.

Under section 1034, gain from the sale of a taxpayer's *principal* residence is not recognized (in effect deferred) provided certain conditions are met. Will this gain qualify under the nonrecognition provisions of the Code? Or was the residence converted into income-producing property while being rented during the absence?

Regulation 1.1034-1(c)(3)(i) states that the mere fact that property is, or has been, rented out is not determinative that such property is not used by the taxpayer as his principal residence. In the case where a taxpayer uses more than one property as a residence, the determination of whether property is used by the taxpayer as his principal residence depends upon all the

facts and circumstances in each case.

The Congressional intent is expressed in a House Report (No. 586, 357 at 436) which states in part that the mere fact that taxpayer temporarily rents out either the old or new residence may not, in light of all the facts and circumstances in the case, prevent the gain from being not recognized.

The Service, in Revenue Ruling 59-72, p. 203, acquiesced to a court decision and stated that where all the facts and circumstances indicate that property sold by a taxpayer was used as the principal residence, the taxpayer will be entitled to relief provided for by section 1034, notwithstanding the fact that he temporarily rented out the residence prior to its sale.

In that case [Trisko, 1957], the Tax Court found that the petitioner built a home for his family residence and lived there for many years, but he and his family left it when he received a temporary assignment overseas. At all times he intended to return to the United States and reoccupy the home, even though he leased the property with the view of obtaining responsible persons to maintain and care for it. The lease initially extended for a period of one year and subsequently on a

James R. Hasselback is an Assistant Professor of Accounting at the University of Florida.

month-to-month basis, but when he returned he found it impossible to regain immediate possession of the home because of rent control regulations. Consequently, the court said, he was compelled to purchase another home while the tenants occupied his former residence, and he sold it subject to the lease. The court held that the property was the taxpayer's principal residence within the Code and that the sale qualified for nonrecognition of gain purposes notwithstanding the rental circumstances.

In this case and others the courts have stated that the facts and circumstances must be exceptional and unusual to permit the conclusion that a principal residence is being used by the taxpayer at the time of sale if he is not in possession thereof and occupying the residence at that time [Houlette, 1967].

As to the contention of whether the residence was converted into income-producing property during the absence, the Tax Court [Barry, TC Memo 1971-179] stated that the fact that the petitioner rented the house and claimed deductions for depreciation and maintenance is not determinative of a conversion to "property held for the production of income." In this case, Barry was away temporarily from the residence for over 6 years while in the military, with the residence being rented out most of the time. Barry always considered the home to be his principal residence at all times and intended to occupy this home. The sale of the home was a result of an unexpected change of plans.

It should be noted that Congress has recognized expressly that depreciation may be taken on a principal residence by providing that any depreciation taken on a personal residence is not subject to "recapture" in a transaction to which section

1034 applies (section 1250(d)(7)).

The moving expense deduction presents little problem. A trip back from the visiting location may be deducted under the travel expense provisions; the trip and/or expenses of moving then may be deducted under the moving expense provisions provided all the normal requirements are met.

For example, Bob Jones, a permanent faculty member at the University of Florida, takes a visiting position at Texas Tech for the academic year with the full intention of returning to his regular position. During the absence he rents a house in Lubbock, Texas and also rents his house in Gainesville, Florida to another professor. Later he decides to remain permanently at Texas Tech and sells the residence in Florida at a substantial gain; the proceeds from the sale are reinvested in a new home in Lubbock. Provided Professor Jones meets the other nonrecognition requirements, his gain on the sale would be deferred and no income taxes need be paid presently on the gain. The rental of the Gainesville residence does not disqualify him from nonrecognition of the gain. In order to deduct the visiting expenses, it is required that the position be temporary with the intent to return to the former location. Thus, the rented residence in Lubbock would not be considered the principal residence during the visitation period, and he will have met the exceptional and unusual circumstances necessary while being absent from the home at the time of sale.

The living expenses incurred while the position was temporary would be deductible as travel expenses, including a trip back to Gainesville. The expenses of moving then would be deductible under the moving expense provisions.

REFERENCES

Journal Articles

Ford, Allen, "Travel Expenses for a Visiting Professor," *THE ACCOUNTING REVIEW* (April 1975), pp. 338-344.

Hasselback, James R., "Tax Implications of a Visiting Professorship," *Taxes—The Tax Magazine* (August 1974), pp. 499-505.

Tax Cases

Arthur R. Barry, TC Memo 1971-179.

Richard T. Houlette, 48 T.C. 350 (1967).

Ralph L. Trisko, 29 T.C. 515 (1957).

Revenue Rulings and Other Sources

Revenue Ruling 59-72, 1959-1 CB 203.

Internal Revenue Code (1954).

Joint Committee Staff Summary of Provisions of the Rev. Act of 1951, CB 1951-2, p. 287.

Copyright of Accounting Review is the property of American Accounting Association and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.