

## Part I

### Section 61.--Gross Income Defined

26 CFR 1.61-6: Gains derived from dealings in property.  
(Also §§ 82, 1001; 1.82-1, 1.6045-4)

Rev. Rul. 2005-74

#### ISSUE

Whether the transactions in the following situations are, for federal tax purposes, a sale of a home by an employee to an employer through the employer's agent, a relocation management company, followed by a separate sale of that home by the employer to a third party buyer, or one sale of the home from the employee to the third party buyer facilitated by the employer through the relocation management company.

#### FACTS

##### Situation 1

Company X enters into a contract with Y, a relocation management company, to provide relocation assistance, including a home purchase program, to employees of X whom X is relocating to new job sites. Under the contract, Y agrees to act as X's agent in purchasing at fair market value the homes of employees who are being relocated and then selling the homes to third party buyers. X is liable for all costs incurred by Y in purchasing and selling the homes. X also is liable for any losses incurred by Y on the

sale of any home, and is entitled to proceeds from the sale of a home in excess of the costs of purchasing the home. In no event will X, or Y as X's agent, pay an employee any amount representing gain on the subsequent sale of the employee's home to a third party buyer. X agrees to pay Y a fee for performing these services on X's behalf.

A is an employee of X that X is relocating to another job site. Pursuant to the contract with X, Y offers its services under the home purchase program to A. A chooses to use Y's services and selects two appraisers from a list maintained by Y. Each appraiser prepares an appraisal of A's home, and the appraisals are averaged to determine the fair market value price at which Y will offer to purchase the home.

The purchase price for A's home determined under the appraisal process is \$500x. Under a proposed contract of sale, Y offers to purchase A's home for \$500x. This offer remains open for 90 days. If A accepts Y's offer by signing the contract of sale, the contract of sale requires A to vacate the home and deliver possession to Y within a specified period of time. If the amount of Y's offer is less than the outstanding balance on A's mortgage, the contract of sale requires A to pay the difference to Y at or before the closing of the sale. The contract of sale is not contingent or dependent in any way upon Y's entering into a sales agreement with a subsequent third party buyer, or any other event associated with Y's subsequent sale of the home, such as the buyer's qualification for financing or the settlement date. Under the contract of sale, Y is unconditionally obligated to pay the \$500x purchase price and may assume, take subject to, or otherwise become responsible for any outstanding mortgages, liens, and encumbrances. The contract provides that Y becomes unconditionally obligated for all maintenance, taxes, insurance, expenses, risks, losses, and costs associated with the

home as of the “settlement date,” that is, the later of the date of the contract of sale or the date A vacates the home and turns possession over to Y. If A fails to perform its obligations under the contract, Y may obtain damages or specific performance as a remedy. After the settlement date, Y holds itself out as the owner of the home to the general public. Y deals with mortgage holders, insurance companies, home maintenance companies, taxing jurisdictions, utility companies, real estate brokers, and other third parties in its own name.

At closing, Y pays A the value of the equity in the home (\$500~~x~~ purchase price minus any mortgages, liens, or encumbrances assumed), plus any property tax proration and other customary allocations (such as homeowner association dues). Y pays the settlement costs that are typically imposed on the buyer under local law. A, as grantor, transfers the home to Y by executing a deed to the property on which the name of the grantee is left blank (a “blank deed”). Y has the option of inserting its own name as grantee and recording the deed, or inserting the name of a third party buyer of the home from Y at the time Y closes the sale of the home to the third party buyer.

Y does not insert its name as grantee and does not record the deed. Y manages and maintains the property while listing the home for sale through a real estate broker that locates B, a third party buyer. Y sells the home to B for \$490~~x~~. Y inserts B's name in the deed and conveys legal title to the home to B. Pursuant to the contract between X and Y, X pays Y's fee and reimburses Y for any costs incurred and the \$10~~x~~ loss on the sale of the home to B.

## Situation 2

The facts are the same as in Situation 1 except that the home purchase program provided for in X's contract with Y also affords an "amended value option" to employees that are being relocated. In addition to receiving the appraised value offer from Y, an employee who exercises the amended value option may list the home with a real estate broker to market the home to other potential buyers. If the employee exercises the amended value option, the employee must select the broker from a list of qualified brokers maintained by Y. Any listing agreement entered into by the employee must include an "exclusion clause" that provides that no commission is earned by or due to the broker unless a sale of the home to a third party buyer closes, and that a sale of the home to Y terminates the listing agreement without any commission being earned or due.

If a potential third party buyer makes an offer, the real estate broker refers the offer to Y. If Y determines that the offer is bona fide and exceeds Y's earlier offer based on the appraisals, Y amends the contract of sale to match the third party buyer's offer. If the employee accepts the amended offer by signing the contract of sale, Y then enters into a new listing agreement with a real estate broker, customarily the broker previously selected by the employee, to market the home to a third party buyer, who may or may not be the same potential buyer who made the previous offer. The employee does not sign any contract, binder or other document with a third party buyer, nor does the employee accept any down payment, deposit, or earnest money from a third party buyer.

Y remits to X any proceeds received on the sale of the home to a third party buyer in excess of the purchase price paid to the employee for the home. In no event does Y or X transfer any part of the excess amount to the employee.

If the sale of the home by Y to the third party buyer does not close, the employee is not obligated under the contract of sale to refund any portion of the purchase price to Y. Nothing related to Y's sale of the home to a third party buyer affects the employee's sale of the home to Y.

C is an employee of X whom X is relocating to another job site. In addition to receiving an appraised value offer from Y of \$500x, C exercises the amended value option and lists the home with a qualified real estate broker. As a result of this listing, C obtains an offer for \$520x from a third party buyer, D, and forwards the offer to Y. Y determines that the \$520x offer is bona fide and amends its proposed contract of sale to match D's offer. C accepts Y's offer by signing the contract of sale at the amended price of \$520x.

Y subsequently pays to C the value of the equity in the home based on the purchase price of \$520x. Pursuant to the exclusion clause, C's listing agreement with the real estate broker is terminated without any commission being earned or due. Y takes possession of the home and, pursuant to the contract of sale, becomes unconditionally obligated for all maintenance, taxes, insurance, expenses, risks, losses, and costs associated with the home. C, as grantor, transfers the home to Y by executing a blank deed to the property. Y leaves the name of the grantee blank and does not record this deed.

Y enters into a new listing agreement with the real estate broker and thereafter Y enters into a separate sales agreement with D for \$520x. The sales agreement is made in Y's name. C does not sign any contract, binder or other document with D. Y's sale of the home to D closes. At closing, D pays \$520x to Y, Y inserts D's name on the deed as grantee, and the deed is recorded in D's name.

### Situation 3

The facts are the same as in Situation 2, except that X instead enters into a contract with Z, a relocation management company, to provide relocation assistance to employees whom X is relocating to new job sites. Under the home purchase program provided for in X's contract with Z, employees may select an "amended value option" that has different terms and conditions than the amended value option offered by Y as described in Situation 2. Specifically, Z, acting as X's agent, is not required to offer a higher, amended value for an employee's home, based on an offer from a prospective third party buyer located by the employee, unless and until Z enters into a sales contract with that third party buyer. In addition, the employee retains the right to approve or reject any offer or counter-offer made in the course of negotiations between Z and the third party buyer. Finally, the proceeds representing the higher amended value are distributed to the employee, and not to X or Z, only if and when the sale to the third party buyer closes.

E, an employee of X, receives an appraised value offer from Z of \$500x for E's home. E exercises Z's amended value option and locates a prospective purchaser, F, who offers \$510x for E's home. E informs Z of F's offer of \$510x. Z, with E's approval, agrees that Z will accept F's offer and sell the home to F for \$510x once Z purchases

the home from E. Z subsequently enters into a contract to purchase the home from E for \$510x. Z closes on the purchase of the home from E for \$510x and receives a blank deed signed by E, as grantor. At the closing of the sale of the home to E, Z inserts E's name on the deed as grantee, and the deed is recorded in E's name. Z pays to E the value of the equity in the home based on the \$510x sales price.

## LAW

Section 61(a) of the Internal Revenue Code provides that except as otherwise provided in Subtitle A, gross income means all income from whatever source derived, including (but not limited to) compensation for services, including fees, commissions, fringe benefits, and similar items, and gains derived from dealings in property. See generally §§ 1.61-1, 1.61-2, and 1.61-6 of the Income Tax Regulations.

Section 82 provides that except as provided in § 132(a)(6), gross income includes (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence that is attributable to employment or self-employment. See generally § 1.82-1.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

The examples in § 1.6045-4(r) illustrate the information reporting rules in § 1.6045-4 for real estate transactions. Example (2) in § 1.6045-4(r) describes a transaction in which an employee, C, who is being transferred by his employer, accepts

an offer to purchase C's home from Y, a corporation acting on behalf of the employer to facilitate the relocation of transferred employees. C transfers the home to Y for \$250,000 by executing a deed to the property in blank and giving Y a power of attorney to dispose of the home. C also immediately vacates the home, whereupon Y duly pays all costs associated with the home and is entitled to all income from the home, including sales proceeds. Shortly thereafter, Y sells the residence to D and inserts D's name in the deed previously executed by C. Thus, neither Y nor the employer ever becomes a record owner of the residence. C's transfer of the residence to Y is a sale of reportable real estate as defined in § 1.6045-4(b)(2) and is subject to information reporting under § 1.6045-4. However, information reporting of the subsequent sale to D is not required because Y, as a corporation, is a transferor that is exempt from information reporting under § 1.6045-4(d)(1).

The issue is whether the transactions described in Situation 1, Situation 2, and Situation 3 involve two separate sales of the home, a first sale from the employee to the employer and a second sale from the employer to a third party buyer, or only one sale from the employee to the third party buyer. A sale occurs for federal tax purposes upon the transfer of the benefits and burdens of ownership. Whether the benefits and burdens of ownership have been transferred is a question of fact that must be ascertained from the intention of the parties as evidenced by their written agreements read in the light of attending facts and circumstances. See Grodt & McKay Realty, Inc. v. Commissioner, 77 T.C. 1221, 1237 (1981); see also Major Realty v. Commissioner, 749 F.2d 1483, 1486 (11th Cir. 1985).

Courts consider the following factors in determining whether the benefits and burdens of ownership are transferred: (1) whether legal title passes; (2) how the parties treat the transaction; (3) whether an equity was acquired in the property; (4) whether the contract creates a present obligation on the seller to execute and deliver a deed and a present obligation on the purchaser to make payments; (5) whether the right of possession is vested in the purchaser; (6) which party pays the property taxes; (7) which party bears the risk of loss or damage to the property; and (8) which party receives the profits from the operation and sale of the property. Grodt and McKay, 77 T.C. at 1237-1238.

Although the passage of legal title is a significant factor, it is not determinative. Yelencsics v. Commissioner, 74 T.C. 1513, 1527 (1980); Deyoe v. Commissioner, 66 T.C. 904, 910 (1976). Thus, for federal tax purposes a sale occurs upon the transfer of the benefits and burdens of ownership rather than upon the satisfaction of the technical requirements for passage of legal title under state law. Derr v. Commissioner, 77 T.C. 708, 723 (1981); Yelencsics, 74 T.C. at 1527. See also Rev. Rul. 72-252, 1972-1 C.B. 193 (sale occurs when the purchaser executes an unconditional contract to purchase property, acquires possession, and assumes other burdens and privileges of ownership, even if the deed to the property is delivered later). Consequently, the execution of a contract to purchase real estate in the future generally is not a realization event. See Rev. Rul. 69-93, 1969-1 C.B. 139.

In Amdahl Corp. v. Commissioner, 108 T.C. 507 (1997), the court considered whether payments made by the taxpayer to relocation service companies to assist in the disposition of homes of relocated employees were deductible as ordinary expenses

or as capital losses. The Internal Revenue Service contended that the taxpayer acquired ownership of the employees' homes, that the homes were capital assets when resold by the taxpayer, and that the payments were deductible only as capital losses. The taxpayer argued that the payments were a form of employee benefits deductible as ordinary and necessary business expenses.

On the facts presented in Amdahl, the court agreed with the taxpayer that it did not acquire ownership of the employees' homes, and that the payments were deductible as ordinary expenses. The court found that the most significant factors of the taxpayer's relocation service programs demonstrated that the employees retained the benefits and burdens of ownership of the homes. In particular, the court emphasized that the relocating employees retained legal title to their homes through the use of blank deeds; that it was not the intent of the parties to transfer ownership of the homes, as evidenced by the fact the taxpayer did not generally hold itself out to the public as the purchaser or owner of the homes; that the contracts of sale did not create present obligations on the relocation service companies and the employees to effect a transfer of ownership of the homes; and that the employees received the profits from the subsequent sales of the homes by the taxpayer to third parties.

#### ANALYSIS

Pursuant to a benefits and burdens analysis of the transactions in Situation 1, there are two separate sales of the home. Under the contract of sale between A and Y, A is obligated to, and does, deliver a deed to the home to Y. This delivery is accomplished whether A delivers to Y at closing a deed with Y's name inserted as grantee or a blank deed. See § 1.6045-4(r), Example (2).

In Situation 1, the delivery of the deed by A to convey ownership of the home to Y is accompanied by Y's corresponding obligation to pay the purchase price of the home to A. On the settlement date, Y acquires all of A's interest and equity in the home.

A and Y treat the transaction as a sale of the home from A to Y. In this regard, the contract provides that A is selling, and Y is buying, the home. After purchasing the home, Y deals with mortgage holders, insurance companies, home maintenance companies, taxing jurisdictions, utility companies, real estate brokers, and other members of the public in its own name and as if it were the owner of the home. If any sales agreement subsequently entered into by Y with a third party buyer does not close, Y remains responsible for all costs and risks attributable to ownership.

After settlement, Y has the sole right to possession of the home. Y also agrees to pay real property and other taxes with respect to the home. Y will sustain any loss or benefit from any gain if the consideration to A (payments and any assumed liabilities) is greater or less than the amount received by Y from a sale to a third party buyer. Y has the risk of loss due to casualty and is responsible for insuring the home and making any and all necessary repairs to the home.

By virtue of the agreement between X and Y, Y is acting as X's agent. The application of the above factors establishes that the benefits and burdens of ownership of the home transfer from A to X, whether or not a blank deed is sufficient under local law to transfer legal title to the home to X. While the reason X acquires the benefits and burdens of ownership of the home is to facilitate A's relocation, this motivation is not

incompatible with concluding that X acquired the property. See Rev. Ruls. 72-339, 1972-2 C.B. 31, and 82-204, 1982-2 C.B. 192; § 1.6045-4(r), Example (2).

Thus, in Situation 1, A sells the home to X for \$500x. Any gain on the sale of the home is realized by A under § 1001 and § 61(a)(3), and none of this amount constitutes taxable compensation to A under § 61(a)(1). X, acting through Y, separately sells the home to B for \$490x.

Applying the benefits and burdens analysis to the transactions in Situation 2, the fact that C exercises the amended value option does not alter the conclusion that there are two separate sales of the home. For the reasons discussed with respect to the sale of the home from A to X in Situation 1, the benefits and burdens of ownership also transfer from C to X in the sale of the home in Situation 2. Furthermore, the sale of C's home to X is not contingent in any respect on X's sale of the home to D or any other third party buyer. X's agent, Y, is identified as the seller in the sales agreement with D, and under no circumstances is C entitled to any part of any gain realized if the consideration received by X on the sale of the home to D exceeds the consideration paid to C by X on the purchase of the home.

Thus, in Situation 2, C sells the home to X for \$520x. Any gain on the sale of the home is realized by C under § 1001 and § 61(a)(3), and none of this amount constitutes taxable compensation to C under § 61(a)(1). X separately sells the home to D for \$520x.

However, applying the benefits and burdens analysis to the transactions in Situation 3 yields a different result. In Situation 3 the amended value option offered under the contract between X and Z, the relocation company acting as X's agent, differs

significantly from the option described in Situation 2. The sale of E's home to Z, acting for X, at the higher amended price is contingent on Z entering into a contract at that price with E, the third party buyer located by E. In addition, E retains the right to approve any offer or counter-offer in any negotiations between Z and E. Therefore, although X, through its agent Z, is burdened with some costs in connection with the transaction, E effectively retains the rights to negotiate the final contract and obtain the benefit of a higher price for the property. See Amdahl, 108 T.C. at 523 (employer "did not acquire beneficial ownership of the residences of its relocating employees").

Thus, in Situation 3 the transaction is, for federal tax purposes, one sale of the home from E to E for \$510x, facilitated by X through its agent Z. Any gain on the sale of the home is realized by E under § 1001 and § 61(a)(3). Any expenses paid by X, directly or through its agent Z, with respect to the home, including maintenance costs, taxes, insurance, losses, and other costs associated with the home would be considered paid on behalf of E by virtue of E's employment with X. Consequently, any such amounts paid by X constitute taxable compensation to E under § 61(a)(1).

The conclusions in this revenue ruling with respect to Situation 1 and Situation 2 apply to circumstances involving substantially similar relocation service programs. The Service will follow the Amdahl opinion in circumstances involving relocation service programs that are substantially similar to the programs described in that opinion, and in other circumstances, such as those described in Situation 3, which indicate that the benefits and burdens of ownership of the employees' homes are not transferred to the employer. Consistent with the holdings in Situation 1 and Situation 2, the use of a blank

deed will not, by itself, cause a program to be treated as substantially similar to the programs described in Amdahl.

#### HOLDINGS

The transactions in Situation 1 and Situation 2 are, for federal tax purposes, sales of a home by an employee to an employer through the employer's agent, a relocation management company, followed by a separate sale of that home by the employer to a third party buyer. The transaction in Situation 3 is, for federal tax purposes, one sale of a home by an employee to a third party buyer facilitated by the employer through the relocation management company.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Edward C. Schwartz of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Schwartz at (202) 622-4960 (not a toll-free call).