

'To injure no man,
but to bless all mankind'

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ONE DOLLAR

Tax consequences vary when family members help in a home purchase

Q: My husband and I declared bankruptcy six years ago. At that time, my father obtained financing on the home where we live, on which we paid the monthly payment. My father put in writing that, at the time of the home's sale, I would receive the proceeds. Based on market trends, we stand to gain about \$60,000, which appears to be subject to the 20-30 percent capital-gains tax. Dad financed the house because at the time we could not. It has been our house for all intents and purposes, and I feel we've met the requirement of living in the home for a minimum of two years over a five-year period. But will Uncle Sam see it that way?

S.H., VIA E-MAIL

A: The Internal Revenue Code allows for a tax exclusion on gains up to \$250,000 (\$500,000 for married taxpayers filing jointly) from the sale of a primary residence. In order to qualify as a primary residence, the taxpayer(s) must have owned and lived in the home for two out of the five years prior to the sale.

The key phrase is "owned," says Andrew Malone, a CPA in the Philadelphia office of CBIZ Accounting, Tax & Advisory Services. Based on your question, it doesn't appear that legal title to the property, nor the liability for the debt, are in your or your husband's name. If this is the case, then the property is not considered owned by you, and you would not be eligible for the exclusion of the gain.

The question that you posed, though, does not present clear-cut facts to draw this conclusion.

What may be at issue here is who has beneficial ownership. You mentioned that your father indicated in writing that the proceeds were to go to you upon sale. If this occurred at the time he acquired the residence, it may be possible under state law that this would be considered a transfer from your father to you and your husband. If the beneficial ownership is considered transferred, then the property would be considered owned by you and your husband, and you would be eligible for the exclusion of the gain upon sale.

Another possibility is that you and your husband were the purchasers of the home

and that your father was merely a cosigner of the mortgage. Many times this is done by young homebuyers who do not have good credit scores but have the monthly income to afford a mortgage.

The right answer in this case can be worth a lot of money, just as the wrong answer can be. So Mr. Malone suggests that you check with an accountant and/or attorney competent in real estate matters to precisely determine your tax situation.

Q: My father recently died, and his TIAA-CREF annuity, payable to his estate, not to the inheritors, was taxed at about 25 percent or so. The amount of the estate falls below the amount exempt from federal taxes. Is this perhaps some mistake and the withheld amount should be reimbursed? How does one create a nontaxable estate?

J.B., GENEVA, N.Y.

A: Dying poor, or at least not super wealthy, is a surefire way to avoid estate taxes. Your father's estate had

no liability to pay estate taxes because its value was below the point at which estate taxes are required, says Atlanta-based certified financial planner Vince Clanton. You didn't say when he died, but if it was in 2006, that threshold was \$2 million. In 2005, it was \$1.5 million.

The annuity is another matter. One purpose of an annuity is to defer payment of income taxes on investments held in the annuity until retirement. As your father made his estate the beneficiary of the contract, income taxes were assessed on the amount paid to the estate.

If the annuity was held inside an IRA, all of the proceeds were subject to income tax. If the annuity was not in an IRA, only the gain on his investment would have been taxable, Mr. Clanton says.

— Steve Dinnen

Questions about finances?
We're prepared to help you find answers. Write:
Work & Money Q&A
The Christian Science Monitor
1 Norway Street
Boston, MA 02115
E-mail: work@csps.com