

Combining Section 121 and Section 1031



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A common question asked by taxpayers: “Does a primary residence qualify under section 1031?”. Unfortunately, the answer is, “No”.

However, there is the opportunity to take advantage of both the Section 121 and 1031 tax codes as outlined below:

Section 1031 Exchange

Section 121

Qualifying Property:	Held for productive use in a trade or business or for investment.	Taxpayer's Primary Residence
Advantage:	<i>Deferral</i> of Capital Gains Tax	<i>Exclusion</i> of Capital Gains (\$250,000 if single or \$500,000 if married, filing jointly).
Requirements:	Taxpayer's intent for the property was to hold for productive use in a trade or business or for investment.	Taxpayer has owned and utilized property as a primary residence for at least 24 of the last 60 months.

Mixed Use Properties

Combining both Section 1031 and Section 121 tax strategies for properties that the taxpayer has used for both investment and as a primary residence is a valuable option.

Example: Taxpayer owns a duplex, one half is primary residence and may qualify under Section 121, whereas the other half is rented and may qualify under Section 1031. Therefore, taking advantage of the two tax codes.

H.R. 4520

Signed into law in October 2004 providing restrictions when converting a property acquired in a 1031 exchange into a primary residence. Taxpayer must own the property for at least five years before they are qualified to receive the Section 121 exemption, if said property was acquired in a 1031 exchange.

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