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## Planning for the Sale of a Home

[Scott B Johnson](#)

Many homeowners are aware that, upon selling one's principal residence, up to \$250,000 of the profit may be exempt from tax. If the homeowner is married and files a joint tax return with his or her spouse, up to \$500,000 of the profit may be exempt from tax. To qualify for this exempt treatment, generally speaking, the homeowner must have owned and used the property, as a principal residence, for at least two years during the five-year period leading up to the sale of the property.

On January 1, 2009, the goalposts will be moved. The Housing Assistance Tax Act of 2008, enacted last month, provides that the \$250,000 and \$500,000 exemption amounts will be prorated beginning in 2009 in cases where a person's principal residence was previously held by the person as a rental property, vacation home, or otherwise not as a principal residence. The proration is based on the number of years the person occupied the property as his or her principal residence as compared to the number of years the person owned the property. For example, under the new rules if an unmarried person acquires a property in January 2009, operates it as a rental property for five years, then moves into the property and occupies it as the person's principal residence before selling it in January 2019, the \$250,000 exemption amount is prorated to 50% (that is, the exemption amount becomes \$125,000) because the homeowner occupied the property as a principal residence for five years, but owned the property for 10 years.

If you perceive this development as a dark cloud, there is a silver lining or two. First, the new proration rules ignore any rental, vacation or similar use of a property prior to 2009. Second, generally speaking the new rules prorate the \$250,000 and \$500,000 exemption amounts in cases where a

### NEWSLETTER EDITORS

**Donald W. Meaders**

Partner

[dmeaders@manatt.com](mailto:dmeaders@manatt.com)

310.312.4345

**Donald J. Fitzgerald**

Partner

[dfitzgerald@manatt.com](mailto:dfitzgerald@manatt.com)

415.291.7420

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rental, vacation or similar property is converted to one's principal residence, but not in cases where one's principal residence is converted to a rental, vacation or similar property. In other words, under the new exemption rules it is generally okay if you *move out* of your home and rent it to others, but not if you *move in* to a property you previously rented to others.

What's the bottom line? If you have plans to convert a rental or vacation property into your principal residence, with the eventual goal of raking in profits under the \$250,000 or \$500,000 exemption rules, it may be time to revisit those plans.

To determine how the foregoing rules may apply to your particular facts and circumstances, please consult your tax advisor.

**FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:**



[Scott B. Johnson](#) Mr. Johnson advises and assists clients with respect to the legal aspects of their business matters, including the formation, acquisition, operation and disposition of sole proprietorships, joint ventures, partnerships, limited liability companies and corporations, and the preparation of entity governance documentation as well as transactional, commercial and employment contracts necessary or appropriate for a transaction or for the ongoing conduct of business. He also advises and assists clients, including institutional investors, in the preparation and negotiation of private equity investment documentation, and he advises and assists individual clients in business succession planning and in the formation and operation of family limited partnerships.