§ 1.120–3 Notice of application for recognition of status of qualified group legal services plan.

(a) *In general.* In order for a plan to be a qualified group legal services plan for purposes of the exclusion from gross income provided by section 120(a), the plan must give notice to the Internal Revenue Service that it is applying for recognition of its status as a qualified plan. Paragraph (b) of this section describes how the notice is to be filed for the plan. Paragraph (c) of this section describes the action that the Internal Revenue Service will take in response to the notice submitted for the plan. Paragraph (d) of this section describes the period of plan qualification.

(b) *Filing of notice*—(1) *In general.* A notice of application for recognition of the status of a qualified group legal services plan must be filed with the key district director of internal revenue as described in § 601.201(n). The notice must be filed on Form 1024, Application for Recognition of Exemption Under section 501(a) or for Determination Under section 120, with the accompanying Schedule L, and must contain the information required by the form and any accompanying instructions. The form may be filed by either the employer adopting the plan or the person administering the plan. No Form 1024 and Schedule L may be filed for a plan before an employer adopts the plan, or proposes to adopt the plan contingent only upon the recognition of the plan as a qualified plan.

(2) *Plans to which more than one employer contributes.* In general, for purposes of section 120 the adoption of a plan by an employer constitutes the adoption of a separate plan to which that employer alone contributes, notwithstanding that, in form, the employer purports to adopt a plan with respect to which the employer is one of two or more contributing employers. Accordingly, a separate Schedule L must be filed pursuant to the instructions accompanying Form 1024 for each employer adopting a plan.

(3) *Certain collectively bargained plans.* Notwithstanding subparagraph (2) of this paragraph, if a plan to which more than one employer contributes is a plan to which this subparagraph (3) applies, the plan is treated as a single plan for purposes of section 120. Accordingly, only one Form 1024 and Schedule L is required to be filed for the plan, regardless of the number of employers originally adopting the plan. In addition, once a Form 1024 and Schedule L is filed, no additional filing is required with respect to an employer who thereafter adopts the plan. In general, this subparagraph (3) applies to any plan that is maintained pursuant to a collective bargaining agreement between employee representatives and more than one employer who is required by the plan instrument or other agreement to contribute to the plan with respect to employees (or their spouses or dependents) participating in the plan. This subparagraph does not apply, however, if all employers required to contribute to the plan are corporations which are members of a controlled group of corporations within the meaning of section 1563(a), determined without regard to section 1563(e)(3)(C). If all employers required to contribute to the plan are corporations which are members of such a controlled group, the filing requirements described in subparagraph (2) of this paragraph apply, notwithstanding that the plan is maintained pursuant to a collective bargaining agreement.

(c) *Internal Revenue Service action on notice of application for recognition.* The Internal Revenue Service will issue to the person submitting Form 1024 and Schedule L a ruling or determination letter stating that the plan is or is not a qualified group legal services plan. For general procedural rules, see § 601.201 (a) through (n), as that section relates to rulings and determination letters.

(d) *Period of plan qualification*—(1) *In general.* In the case of a favorable determination, the plan will be considered a qualified group legal services plan. If a Form 1024 and Schedule L required to be filed by or on behalf of an employer is filed before—

(i) The end of the first plan year (as determined under the plan),

(ii) The end of the plan year within which the employer adopts the plan, or

(iii) July 29, 1980,

the period of plan qualification with respect to the employer will begin on

the date the plan is adopted by the employer (or, if later, January 1, 1977). If the form and schedule are not filed before the latest of the dates described in subdivisions (i), (ii) and (iii), the period of plan qualification with respect to the employer will begin on the date of filing. In any case in which either the Form 1024 or Schedule L filed by or on behalf of an employer is incomplete, the date of filing is the date on which the incomplete form or schedule is filed, if the necessary additional information is provided at the request of the Commissioner within the additional time period allowed by the Commissioner. If the additional information is not provided within the additional time period, allowed, the date of filing is the date on which the additional information is filed. If no separate Form 1024 and Schedule L are required to be filed by or on behalf of an employer (see paragraph (b)(3) of this section), the period of plan qualification with respect to the employer will begin on the date the plan is adopted by the employer (or, if later, January 1, 1977). In any case in which a plan is materially modified to conform to the requirements of section 120, either before or after a Form 1024 and Schedule L are filed, the period of plan qualification will not include any period before the effective date of the modification.

(2) *Plans in existence on June 4, 1976.* (i) Notwithstanding paragraph (d)(1) of this section, a written group legal services plan providing for employer contributions which was in existence on June 4, 1976, will be considered a qualified group legal services plan for the period January 1, 1977, through April 2, 1977. However, if the plan is maintained pursuant to one or more agreements which were in effect on October 4, 1976, and which the Secretary of Labor finds to be collective bargaining agreements, the period of deemed qualification will extend beyond April 2, 1977, and end on the date on which the last of the collective bargaining agreements relating to the plan terminates. Extensions of a bargaining agreement which are agreed to after October 4, 1976, are to be disregarded. The period of deemed qualification for a plan maintained pursuant to a collective bargaining agreement will not, however, extend beyond December 31, 1981.

(ii) A written group legal services plan will be considered to have been in existence on June 4, 1976, if on or before that date the plan was reduced to writing and adopted by one or more employers. No amounts need have been contributed under the plan as of June 4, 1976.

(iii) Notwithstanding that a plan is a qualified plan for the period of deemed qualification described in this paragraph (d)(2), the rules of paragraphs (c) and (d)(1) of this section still apply with respect to a Form 1024 and Schedule L filed for the plan. For example, if a Form 1024 and Schedule L filed by or on behalf of an employer are filed before the latest of the 3 dates described in paragraph (d)(1) of this section, in the case of a favorable determination the plan will be a qualified plan from the date the plan is adopted by the employer (or, if later, January 1, 1977), and any period of deemed qualification and the period of qualification based upon the favorable determination will overlap. However, in the case of a plan to which this paragraph (d)(2) applies, if a Form 1024 and Schedule L required to be filed by or on behalf of an employer is not filed before the latest of the 3 dates described in paragraph (d)(1) of this section, the following rules shall apply. In general, if Form 1024 and Schedule L are filed before the end of the plan year following the plan year with or within which the plan's period of deemed qualification expires, in the event of a favorable determination the plan will be a qualified plan with respect to the employer beginning on the earlier of the day following the date on which the period of deemed qualification expires or the date on which the Form 1024 and Schedule L are filed. The period of plan qualification with respect to an employer cannot, however, include any period before the employer adopts the plan. If the Form 1024 and Schedule L are not filed before the end of the plan year following the plan year with or within which the plan's period of deemed qualification expires, in the case of a favorable determination the plan will be a

qualified plan with respect to an employer from the later of the date of filing or adoption of the plan by the employer. The rules described in paragraph (d)(1) of this section relating to incomplete filings and plan modifications apply with respect to a filing described in this paragraph (d)(2).

(e) *Effective date.* This section is effective for notices of application for recognition of the status of a qualified group legal services plan filed after May 29, 1980.

(Secs. 120(c)(4) and 7805 of the Internal Revenue Code of 1954, 90 Stat. 1926, 68A Stat. 917; (26 U.S.C. 120(c)(4), 7805))

[T.D. 7696, 45 FR 28320, Apr. 29, 1980]

§ 1.121–1 Gain from sale or exchange of residence of individual who has attained age 55.

(a) *General rule.* Section 121(a) provides that a taxpayer may, under certain circumstances, elect to exclude from gross income gain realized on the sale or exchange of property which was the taxpayer's principal residence. Subject to the other provisions of section 121 and the regulations thereunder, the election may be made only if—

(1) The taxpayer attained the age of 55 before the date of the sale or exchange of the taxpayer's principal residence, and

(2) Except as provided in paragraph (b) of this section, during the 5-year period ending on the date of the sale or exchange of the property the taxpayer owned and used the property as the taxpayer's principal residence for periods aggregating 3 years or more.

(b) *Transitional rule.* In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to have this section applied by substituting ''8-year period'' for ''5-year period'' and ''5 years'' for ''3 years'' in paragraph (a) of this section and where appropriate in §§ 1.121–4 and 1.121–5.

(c) *Ownership and use.* The requirements of ownership and use for periods aggregating 3 years or more may be satisfied by establishing ownership and use for 36 full months (or 60 full months if the transitional rule is elected) or for 1,095 days (365×3) (or 1,825 days if the transitional rule is elected). In establishing whether a taxpayer has satisfied the requirement of three years of use, short temporary absences such as for vacation or other seasonal absence (although accompanied with rental of the residence) are counted as periods of use.

(d) *Examples.* The provisions of paragraph (a) are illustrated by the following examples:

Example (1). Taxpayer A owned and used his house as his principal residence since 1966. On January 1, 1980, when he is over 55, A retires and moves to another state with his wife. A leases his house from then until September 30, 1981, when he sells it. A may make an election under section 121(a) with respect to any gain on such sale since he has owned and used the house as his principal residence for 3 years out of the 5 years preceding the sale.

Example (2). Taxpayer B purchased his house in 1971 when he was 65 and lived there with his wife. On July 1, 1977, he moved out and leased the house to a tenant. On September 15, 1979, he sold the house. Although he does not meet the use requirements of section 1.121–1(a), he may elect to use the transitional rule in section 1.121–1(b), since the sale was made before July 26, 1981. Because he owned and used the house as his principal residence for 5 out of the 8 years preceding the sale, under the transitional rule he may elect the section 121 exclusion.

Example (3). Taxpayer C lived with his son and daughter-in-law in a house owned by his son from 1973 through 1979. On January 1, 1980, he purchased this house and on July 31, 1982 , he sold it. Although B used the property as his principal residence for more than 3 years, he is not entitled to make an election under section 121(a) in respect of such sale since he did not own the residence for a period aggregating 3 years during the 5 year period ending on the date of the sale.

Example (4). Taxpayer D, a college professor, purchased and moved into a house on January 1, 1980. He used the house as his principal residence continuously to February 1, 1982, on which date he went abroad for a 1-year sabbatical leave. During a portion of the period of leave the property was unoccupied and it was leased during the balance of the period. On March 1, 1983, 1 month after returning from such leave, he sold the house. Since his leave is not considered to be a short temporary absence for purposes of section 121(a), the period of such leave may not be included in determining whether D used the house as his principal residence for periods aggregating 3 years during the 5 year period ending on the date of the sale. Thus, D is not entitled to make an election under