

## **OFFICE IN HOME**

### **(Either Home Based Business or Employees Working at Home)**

There are approximately 34 million businesspersons that work out of their homes. With the events of September 11, 2001, telecommuting can figure into corporate contingency planning.

What can be used for a home office? The term "HOME" includes a house, apartment, condominium, mobile home, or boat.

In the past many homeowners were discouraged from taking the office in home deduction because they would have had to pay capital gains tax on that portion which was used for the home office deduction which could prove very costly with the increase in home prices today. Dear Homeowner, it is now time to TAKE the deduction and get the tax benefit you deserve. See Following note!

#### **Special note to Homeowners:**

On December 24, 2002, the IRS handed taxpayers an unexpected Christmas gift. Final regulations governing the exclusion of gain from the sale or exchange of a taxpayer's principal residence are taxpayer friendly. Along with the final regulations, new temporary regulations were issued, which may be applied retroactively, which liberalize the prior rules relating to gain from the sale or exchange when the taxpayer does not fully meet the ownership or use requirements to fully utilize the exclusion. The final regulations are applicable for sales and exchanges on or after December 24, 2002. However, rules on electing to apply the provisions of the new regulations retroactively also apply.

This means that a homeowner will not have to report a part of the home as a business sale. You will however have to pay recapture tax on any depreciation allowed or allowable.

However, please note that the home office must be part of the dwelling unit under the same roof as the house. If you are using a separate structure on the same property, then that structure will be treated as the sale of a business asset.

Here are the tests that you must pass:

- A. The space is used in a trade or business on a regular, continuing basis.
  1. To store inventory for a wholesale or retail sales business, and the taxpayer's home is the business's only fixed location;
  2. To provide day-care services;
  3. In a separate structure which is not attached to the residence and is used exclusively for business;

4. As a place to meet with patients, clients, or customers; or
5. As a principal place of business for any trade or business of the taxpayer.
6. Management by an individual of his/her investment portfolio is never considered a trade or business.
7. The taxpayer must present sufficient evidence to convince the IRS that business was conducted on a regular basis.

B. Exclusive Use Defined

1. There can be no personal use (other than de minimus personal use) of the home office portion of the residence at any time during the taxable year (Prop. Reg. 1.280A-2(g)(1)).
2. The use of only a portion of a room is acceptable, as long as the taxpayer can prove a particular portion was used exclusively for business (a difficult test).