

## A 3.8 Percent “Sales Tax” on Your Home?

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**Q:** Does the new health care law impose a 3.8 percent tax on profits from selling your home?

**A:** No, with very few exceptions. The first \$250,000 in profit from the sale of a personal residence won't be taxed, or the first \$500,000 in the case of a married couple. The tax falls on relatively few — those with high incomes from other sources.

### FULL ANSWER

We've been flooded with queries about this one ever since the health care bill became law. At the last minute, Democratic lawmakers decided on a new 3.8 percent tax on the net investment income of high-income persons. But the claim that this would amount to a \$15,200 tax on the sale of a typical \$400,000 home is utterly false.

The truth is that only a tiny percentage of home sellers will pay the tax. First of all, only those with incomes over \$200,000 a year (\$250,000 for married couples filing jointly) will be subject to it. And even for those who have such high incomes, the tax still won't apply to the first \$250,000 on profits from the sale of a personal residence — or to the first \$500,000 in the case of a married couple selling their home.

We can understand how this misconception got started. The law itself is couched in highly technical language that only a qualified tax expert can fully grasp. (This provision begins on [page 33 of the reconciliation bill](#) that was passed and signed into law.) And it does say the tax falls on "net gain ... attributable to the disposition of property." That would include the sale of a home. But the bill also says the tax falls only on that portion of any gain that is "taken into account in computing taxable income" under the existing tax code. And the fact is, the first \$250,000 in profit on the sale of a primary residence (or \$500,000 in the case of a married couple) is excluded from taxable income already. (That exclusion doesn't apply to vacation homes or rental properties.)

The Joint Committee on Taxation, the group of nonpartisan tax experts that Congress relies on to analyze tax proposals, underscores this in [a footnote on page 139 of its report](#) on the bill. The

note states: "Gross income does not include ... excluded gain from the sale of a principal residence."

And just to be sure, we checked with William Ahern, director of policy and communications for the nonprofit, pro-business [Tax Foundation](#). "Some home sales would see a tax increase under this bill," Ahern told us, "but it would have to be a second home or a principal residence generating [a gain of] more than \$250,000 (\$500,000 for a couple)."

So there you have it. The sort of people who would have to pay the tax might include, for example:

- A single executive making \$210,000 a year who sells his \$300,000 ski condo for a \$50,000 profit. His tax on the sale of that vacation home would amount to \$1,900, **in addition to the capital gains tax** he would have paid anyway.
- An "empty nester" couple with combined income of over \$250,000 a year who sell their \$1 million primary residence to move to smaller quarters. If they cleared \$600,000 on the sale, they would be taxed on \$100,000 of the profit (the amount over the half-million-dollar exclusion). Their health care tax on the sale would amount to \$3,800 over and above the usual capital gains levy.

However, a typical home sale would not incur any tax. In March, for example, half of all existing homes sold for \$170,700 or less, [according to the National Association of Realtors](#). Obviously, none of those sales could possibly generate a \$250,000 profit, and so none would be subject to the tax.

Thus, for the vast majority, the 3.8 percent tax won't apply. The Tax Foundation, in [a report released April 15](#), said the new tax on investment income (including real estate) "will hit approximately the top-earning two percent of families" when it takes effect in 2013.

The Internal Revenue Service [says](#) that to qualify for the \$250,000/\$500,000 exclusion, a seller must have owned the home and lived there as the seller's "main home" for at least two years out of the five years prior to the sale.

– *Brooks Jackson*

## Sources

Joint Committee on Taxation. "[Technical Explanation of the Revenue Provisions of the 'Reconciliation Act of 2010,' As Amended, In Combination with the 'Patient Protection and Affordable Care Act.'](#)" 21 Mar 2010.

Ahern, William. E-mail to FactCheck.org, 22 Apr 2010.

Courtesy of JB Goodwin