



THE FINE PRINT – December 2013 Issue

LOSS OF MORTGAGE DEBT FORGIVENESS TAX RELIEF IMPENDING?

Question: I am a real estate broker and understand the federal Mortgage Forgiveness Debt Relief Act is set to expire on December 31, 2013. Any news about an extension?

Answer: Good question, and for those aware of the Act and what has transpired over the past few years, likely a source of frustration. The short answer is that no extension has passed. Given the congressional adjournment, nothing will occur until 2014, and one will have to wait and see if the Act is retroactively extended.

The Act enables a qualifying homeowner who goes through a short sale, receives a principal reduction loan modification, or executes a deed in lieu of foreclosure (and as a result avoids having to pay off the loan in full), to avoid having to pay income tax on the amount of debt forgiven (the deficiency). For more details on the Act, see the following links to my previous writings on the Act:

- <http://total-property.com/userfiles/THE%20FINE%20PRINT%20December%202012.pdf>
- <http://total-property.com/userfiles/The%20Fine%20Print%20-%20Aug%202012.pdf>
- <http://total-property.com/userfiles/Fine%20Print%20July%202012.pdf>

What is a homeowner to do? If there is a pending transaction which will result in a taxable deficiency, attempt to close on or before December 31, 2013. If this is not possible, then negotiate a delay of any closing until Congress reconvenes and see if retroactive legislation is passed and becomes law (if a short sale, condition closing on the Act being extended). For more details from the National Association of Realtors, see: <http://www.realtor.org/articles/nar-issue-update-mortgage-cancellation-tax-relief>.

If the Act is not extended, then before closing, a homeowner should review their situation closely with a tax advisor as well as possibly a bankruptcy attorney, to determine the best course of action. For example, if a homeowner files bankruptcy and gets a discharge, any deficiency will not be taxable. The reverse is not true. If the homeowner has a deficiency as a result of a transaction, and then files bankruptcy, the taxable income associated with the deficiency will be taxable.

An insolvency exclusion may be available to avoid the immediate taxation of the deficiency, but the rules are complicated, and again, a knowledgeable tax advisor should be consulted before the transaction closes.

The key point, real estate brokers, in your representation of the homeowner/seller, is to make sure a closing does not occur in connection with a short sale transaction unless and until the homeowner/seller fully understands the potential adverse tax consequences.

Is there anything you can do to help get the Act extended? YES! Contact your Senators and Congressmen and urge them to pass legislation extending the Act, and preferably, for more than just another one year term. For those interested, the following is a discussion of the legislation which was introduced in 2013 to extend the Act, and the involvement of our two senators and five congressmen.

Three bills were introduced, as follows:

H.R. 2788: Mortgage Forgiveness Tax Relief Act

Introduced: Jul 23, 2013

Sponsor: Rep. Joseph Heck [R-NV]

Status: Referred to House Ways and Means Committee

Title: To prevent homeowners from being forced to pay taxes on forgiven mortgage loan debt.

Purpose: extend the Act for two years, through and including December 31, 2015.

Co-Sponsors: 3

H.R. 2994: Mortgage Forgiveness Tax Relief Act of 2013

Introduced: Aug 02, 2013

Sponsor: Rep. Tom Reed II [R.-NY]

Status: Referred to House Ways and Means Committee on August 2, 2013

Title: To amend the Internal Revenue Code of 1986 to extend for 1 year the exclusion from gross income of discharges of qualified principal residence indebtedness.

Purpose: extend the Act for one year, through and including December 31, 2014.

Co-Sponsors: 52, including Representative Earl Blumenauer (D.- OR)

S.B. 1187: Mortgage Forgiveness Tax Relief Act.

Introduced: Sen. Debbie Stabenow (D-Mich)

Status: Referred to Senate Finance Committee on June 19, 2013

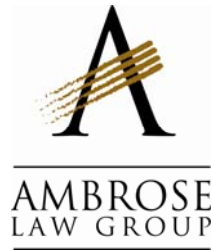
Title: A bill to prevent homeowners from being forced to pay taxes on forgiven mortgage loan debt.

Purpose: extend the Act for two years, through and including December 31, 2015.

Co-Sponsors: 19, including Senator Jeff Merkley (D - OR)

As of December 24, 2013, neither Senator Ron Wyden, nor Representatives Peter DeFazio, Greg Walden, Suzanne Bonamici or Kurt Schrader have become co-sponsors of any of these bills.

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