Received 1099-A After Foreclosure and Bankruptcy, Now What?

If the property foreclosed is an investment property, you must at least address the 1099-A on your taxes. For a primary residence, a 1099-A is moot because there is no capital gains tax on disposition of a primary residence. For investment properties, it is a different story. So that is why I refer people to IRS Publication 544 and 4681.

In my prior article, my general point was twofold, (1) no action is required on a 1099-A if you received it for a primary residence foreclosure, and (2) it would be an odd set of circumstances where someone would realize a taxable gain on a foreclosure sale in a recourse state such as Colorado. Sorry, time to get technical.

If you received a 1099-A from foreclosure of an investment property, you will need to run the calculations to determine if there is a gain or loss on the foreclosure. The figures in the analysis are your *basis*, *adjusted basis*, and *amount realized* (these are terms of art with the IRS, see the above referenced publications). When a property is upside down in value when foreclosed, it would be very odd to realize a gain unless you had a very low or no asset *basis*. For example, buyer purchases house for $200,000, puts $10,000 down, and borrows a mortgage for $190,000. The bank forecloses the home for $140,000 and at time of foreclosure the owner still owed $180,000. To make things easy, we will assume no *adjusted basis*, and therefore your *basis* is $200,000 (see publication 551 regarding calculating your basis, but it is usually the price paid, and your *adjusted basis* is price paid minus any casualty loss or depreciation or plus any improvements). In this case, you would have a non-deductable loss of ($40,000) and thereby, no capital gain tax liability. From here, you would move onto the forgiven debt issues, form 1099-C and assuming you filed bankruptcy in the same year as the foreclosure, you would use IRS Form 982 to address not paying tax on forgiven debt income. (note, you don't need to wait for the 1099-C to file form 982, the filing of bankruptcy is the event that triggers the forgiven debt taxable event).

However, if by some chance you would have a taxable gain as a result of a foreclosure, the bankruptcy does not help; you are liable for that tax. So, is it possible to have a taxable gain on a foreclosure post bankruptcy, yes; is it likely, not really, and if you did have a gain after the initial calculations, you really need to go back and review the *basis* and *adjusted basis.*

If you reside in Colorado and desire a consultation, contact
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