

What Distressed Homeowners Should Know:

The Mortgage Forgiveness Debt Relief Act and Debt Cancellation

If an individual owes a debt to someone else and the creditor cancels or forgives that debt, the canceled amount may be taxable under current IRS rules. The Mortgage Debt Relief Act of 2007 generally allows taxpayers to exclude income from the discharge of debt on their principal residence. Debt reduced through mortgage restructuring, as well as mortgage debt forgiven in connection with a foreclosure, qualifies for the relief. This is an important piece of the Act as many individuals whose homes are foreclosed upon, have outstanding deficiencies still owed to their lenders.

This Act applies to debt forgiven in calendar years 2007 through 2012. Up to \$2 million of forgiven debt is eligible for this exclusion (\$1 million if married filing separately). The exclusion does not apply if the discharge is due to services performed for the lender or any other reason not directly related to a decline in the home's value or the taxpayer's financial condition.

What is Cancellation of Debt?

If you borrow money from a commercial lender and the lender later cancels or forgives the debt, you may have to include the cancelled amount in income for tax purposes, depending on the circumstances. When you borrowed the money you were not required to include the loan proceeds in income because you had an obligation to repay the lender. When that obligation is subsequently forgiven, the amount you received as loan proceeds is normally reportable as income because you no longer have an obligation to repay the lender. Here's a very simplified example. You borrow \$10,000 and default on the loan after paying back \$2,000. If the lender is unable to collect the remaining debt from you, there is a cancellation of debt of \$8,000, which generally is taxable income to you.

Is Cancellation of Debt income always taxable?

The cancellation of debt is NOT always taxable. There are some exceptions and common situations when cancellation of debt income is not taxable involve some of the following circumstances:

- (1) Qualified principal residence indebtedness: This is the exception created by the Mortgage Debt Relief Act of 2007 and applies to most homeowners.
- (2) Bankruptcy: Debts discharged through bankruptcy are not considered taxable income.
- (3) Insolvency: If you are insolvent when the debt is cancelled, some or all of the cancelled debt may not be taxable to you. You are insolvent when your total debts are more than the fair market value of your total assets.

What is the Mortgage Forgiveness Debt Relief Act of 2007?

The Mortgage Forgiveness Debt Relief Act of 2007 was enacted on December 20, 2007. The Act allows exclusion of income realized as a result of modification of the terms of the mortgage, or foreclosure on your principal residence.

What does exclusion of income mean?

Normally, debt that is forgiven or cancelled by a lender must be included as income on your tax return and is taxable. But the Mortgage Forgiveness Debt Relief Act allows you to exclude certain cancelled debt on your principal residence from income. Debt reduced through mortgage restructuring, as well as mortgage debt forgiven in connection with a foreclosure, qualifies for the relief.

Does the Mortgage Forgiveness Debt Relief Act apply to all forgiven or cancelled debts?

No. The Act applies only to forgiven or cancelled debt used to buy, build or substantially improve your principal residence, or to refinance debt incurred for those purposes. In addition, the debt must be secured by the home. This is known as qualified principal residence indebtedness. The maximum amount you can treat as qualified principal residence indebtedness is \$2 million or \$1 million if married filing separately.

Does the Mortgage Forgiveness Debt Relief Act apply to debt incurred to refinance a home?

Debt used to refinance your home qualifies for this exclusion, but only to the extent that the principal balance of the old mortgage, immediately before the refinancing, would have qualified. For more information, including an example, see Publication 4681.

How long is this special relief in effect?

It applies to qualified principal residence indebtedness forgiven in calendar years 2007 through 2012.

Is there a limit on the amount of forgiven qualified principal residence indebtedness that can be excluded from income?

The maximum amount you can treat as qualified principal residence indebtedness is \$2 million (\$1 million if married filing separately for the tax year), at the time the loan was forgiven.

Can I exclude debt forgiven on my second home, credit card or car loans?

Not under this provision. Only cancelled debt used to buy, build or improve your principal residence or refinance debt incurred for those purposes qualifies for this exclusion.

If I sold my home at a loss and the remaining loan is forgiven, does this constitute a cancellation of debt?

Yes. To the extent that a loan from a lender is not fully satisfied and a lender cancels the unsatisfied debt, you have cancellation of indebtedness income.