**Mortgage Debt Forgiveness Survives Fiscal Cliff Settlement**

**By: David L. Gibbs, Senior Partner, The Gibbs Law Firm, APC**

In a last minute – okay, more like a "well after the last minute" deal struck by the US Congress, a key provision protecting borrowers losing their homes was extended for one more year. The Mortgage Forgiveness Debt Relief Act of 2007, which technically expired on December 31, 2012 was extended to December 31, 2013 as a part of the legislation approved yesterday to pull us back from the "Fiscal Cliff." For those not familiar with the Act, under normal circumstance is a debt owed is forgiven by the lender, it results in a taxable event for the borrower. By way of example, if I borrow $1,000 from a lender, and I don't pay it back AND the lender agrees to forgive that debt, I am deemed to have "forgiveness of indebtedness income" which is generally subject to being taxed. However, as will all things "tax," there are loopholes. Bankruptcy is the single largest, and most reliable exception – debt forgiven as a result of a bankruptcy is not taxable as income.

In the case of a foreclosure, there can be circumstances under which a mortgage debt is forgiven (the debt not fully paid by the recovery of the home in foreclosure), and a homeowner then "charged" with additional, taxable income. In 2007, however, as a result of the flood of foreclosures then just starting, a law was passed which provided that under certain limited circumstances, that forgiveness of indebtedness would not be considered taxable. The rule is very complex, and subject to a wide range of qualifying criteria, but generally speaking, it has helped hundreds of thousands of homeowners who've lost their homes avoid the next nightmare – a monstrous tax bill. The law, however, was not written to be permanent – in Congress' infinite wisdom, they declared that by December 31, 2012 the foreclosure crisis would be over, and there would be no need for this law. Thanks, however, to the extensive lobbying efforts of real estate trade groups the exception has now survived for another year. This is very good news as there are likely to still be millions of foreclosures coming over the next few years, and certainly those persons will need the relief accorded by this extended law.

For California residents, there will need to be a "conformity act" passed which brings California's tax laws into conformity with the extension of this exemption at the Federal level. As of today, there is no indication on the FTB's website, or in the State Legislature's record of a change to the December 31, 2012 sunset date of the companion California tax law. Today, it would appear that you may avoid taxation on cancellation of certain mortgage debt with the IRS, but not the Franchise Tax Board. It is likely, however, that the California law which expired on December 31, 2012 will be extended.

As with any tax issues, this article is not intended to substitute for specific, professional tax advice. This article is general in nature and may not be relied upon by the reader for specific legal advice. You must consult with your own tax professional – a CPA or Tax Attorney – as the law is littered with exceptions, qualifications and other criteria which may or may not make you eligible for such relief.

**About The Gibbs Law Firm, APC**

The Gibbs Law Firm, APC has represented clients in all aspects of Real Estate, Bankruptcy and Business Transactions for more than 39 years from its office in San Clemente. Gerald R. Gibbs [Retired], and his son David Gibbs have a combined 58 years' experience representing For more information about this article or about the firm, please call David L. Gibbs at (949) 492-3350, or visit our website at http://gibbslaw.com.