



Foreclosures, Short Sales & Insolvency

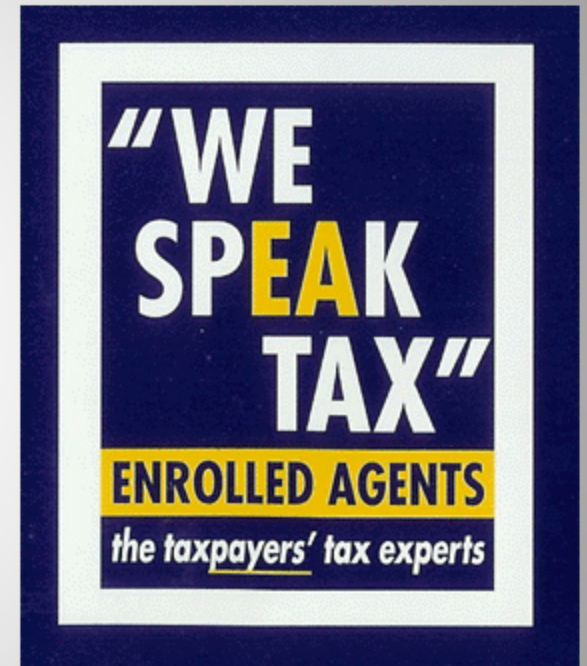
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CIRCULAR 230 DISCLAIMER

Pursuant to U.S. Treasury Department regulations, we are required to advise you that, unless otherwise expressly indicated, federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any tax-related matters addressed herein.



We practice safe taxes at CD Tax & Financial, LLC

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DISCLAIMER

#1 - This is only for Income Tax purposes, we are not speaking about your credit and how the bank can affect it!

#2 - Arizona lawmakers are working hard to “tighten up” their foreclosure laws and make it harder for people to just walk away from a home that they owe more on than it is worth.

#3 – Everyone here has their own “situations.” We are open to discussing what you feel comfortable with discussing in this seminar. But you are not required to talk about your situation here, we would be happy to make an appointment and help you through these taxable or non-taxable events!

FORECLOSURE & SHORT SALE CONSEQUENCES

There are two possible tax consequences you must consider:

- Taxable cancellation of debt income (cancellation of debt income is not taxable in the case of non-recourse loans.).
- A reportable gain from the disposition of the home (because foreclosures are treated like sales for tax purposes).

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.

The lender is usually required to report the amount of the canceled debt to you and the IRS on a Form 1099-C, Cancellation of Debt.

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.

FORM 1099-C

<input type="checkbox"/> CORRECTED (if checked)			
CREDITOR'S name, street address, city, state, ZIP code, and telephone no. Joe Taxpayer 123 Your Street Your City, Your State, 12345		1 Date canceled 11/15/09	OMB No. 1545-1424 2009 Form 1099-C
		2 Amount of debt canceled \$ 8,000.00	
		3 Interest if included in box 2 \$	
CREDITOR'S federal identification number 123-45-6789	DEBTOR'S identification number	4 Debt description Personal Loan	Copy B For Debtor This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported.
DEBTOR'S name Street address (including apt. no.) City, state, and ZIP code			
5 Was borrower personally liable for repayment of the debt? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Account number (see instructions)	6 Bankruptcy (if checked) <input type="checkbox"/>	7 Fair market value of property \$	

Form 1099-C (keep for your records) Department of the Treasury - Internal Revenue Service

EXCEPTIONS

Debts cancelled by a lender are presumed to be taxable income, ***unless an exception applies.***

EXCEPTIONS



#1 - Debt cancelled in a Title 11 bankruptcy case (Title 11 of the United States Code) is not included in your income.

EXCEPTIONS



#2 - Do not include cancelled debt in income to the extent that you were insolvent immediately before the cancellation.

EXCEPTIONS



#3 - A non-recourse loan is a loan for which the lender's only remedy in case of default is to repossess the property being financed or used as collateral. That is, the lender cannot pursue you personally in case of default.

INSOLVENCY

The IRS explains the insolvency exclusion in
Publication 908:

“You are insolvent when, and to the extent, your liabilities exceed the fair market value of your assets. Determine your liabilities and the fair market value of your asset immediately before the cancellation of your debt to determine whether or not you are insolvent and the amount by which you are insolvent.”

INSOLVENCY

How do we determine insolvency and what is the required recordkeeping?

INSOLVENCY WORKSHEET

You do not include canceled debt in your income to the extent you are insolvent immediately before the cancellation.

Insolvent immediately before the cancellation means:

Your liabilities exceed the FMV of your assets

INSOLVENCY WORKSHEET

THE MOST IMPORTANT ADVICE: Keeping your Records for this worksheet could prove to be important. Print out & include any proof for the FMV of your assets (what you use to determine FMV) and the balances of your liabilities .

You never know when or if the IRS
is going to ask you to PROVE IT!

INSOLVENCY WORKSHEET

What is a liability?

A liability is an obligation for which an individual is responsible and which may be satisfied out of your assets.

Records that will be needed for your LIABILITIES are (but not limited to):

Credit card debt, mortgage(s) on real property, Car and other vehicle loans, medical bills, student loans, accrued or past-due mortgage interest, real estate taxes, utilities, child care costs, federal or state taxes due, loans owed to IRA accounts, 401(k), and any other retirement plans, loans against life insurance policies, judgments, business debts, or any other type debt.

INSOLVENCY WORKSHEET

What is an asset?

Anything tangible or intangible that one possesses. Simplistically stated, assets are things of value that can be readily converted into cash (although cash itself is also considered an asset).

Records that will be needed for your ASSETS are (but not limited to):
Cash & bank account statements, FMV of your home, vacation homes, 2nd homes, cars, trucks, boats, recreation or off-road vehicles, motor homes, jewelry, tools, TVs, household goods, coins, firearms, sports memorabilia, cash value of life insurance, stock, bonds, 401(k), mutual fund, interest in pension statements, value of an investment in a business, or any other assets that were not included.

HOW DO I DETERMINE FAIR MARKET VALUE?

Fair market value (FMV) is the price that property would sell for on the open market. It is the price that would be agreed on between a willing buyer and a willing seller, with neither being required to act, and both having reasonable knowledge of the relevant facts. If you put a restriction on the use of property you donate, the FMV must reflect that restriction.

This means that you need to have an official appraisal, use thrift store or garage sale value. If you are going to use the internet to determine value we would suggest that you retrieve your information from more than one site.

USEFUL SITES:



www.zillow.com

www.valuemyhouse.com

www.moveup.com

www.realestate.yahoo.com/homevalues

www.goodwill.com

www.irs.gov

INSOLVENCY EXAMPLE

Asset:	
Primary Residence (FMV):	<u>\$150,000</u>
Liability:	
Mortgage Balance:	<u>\$235,000</u>
Extent of Insolvency:	<u>\$85,000</u>

Assuming there is NO OTHER ASSETS OR LIABILITIES

THE MORTGAGE FORGIVENESS DEBT RELIEF ACT OF 2007

Generally allows taxpayers to exclude income from the discharge of debt on their principal residence.

- This relief is for Calendar Years 2007 through 2012
- Up to \$2 million of forgiven debt (\$1 million MFS)

Exclusion doesn't 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.

FORECLOSURE, REPOSSESSION, & SHORT-SALES REPORTING THE “SALE”

A reportable gain from the disposition of the home (because foreclosures are treated like sales for tax purposes).

Often some or all of the gain from the sale of a personal residence qualifies for exclusion from income.

REPORTING THE "SALE"

Figuring Gain from Foreclosure or Short Sell

1. Enter the fair market value of the property foreclosed. For non-recourse loans, enter the amount of the debt immediately prior to the foreclosure \$380,000
2. Enter your adjusted basis in the property. (Usually your purchase price plus the cost of any major improvements.) \$365,000
3. Subtract line 2 from line 1. \$15,000

You cannot deduct a loss from the sale of your main home.

SECTION 121 EXCLUSION

- If you have owned and used the home as your principal residence for periods totaling at least two years during the five year period ending on the date of the sale or foreclosure.
- Up to \$250,000 (up to \$500,000 for married couples filing a joint return) from income.
- If you do not qualify for this exclusion, report the taxable amount on Schedule D, Capital Gains and Losses.

YOU RECEIVE A NOTICE FROM THE IRS REGARDING THIS, WHAT DO YOU DO?

*NEVER IGNORE THESE LETTERS!
THEY WON'T JUST GO AWAY!*

Stop by the office so that we can make a copy of the letter. We will review it and decide what we need to do.

Don't worry! By preparing now any letter received regarding this issue should be easy to deal with! Whatever the issue is, you can be confident that we will be able to assist you and steer you in the right direction. You will be able to breathe easier.



**QUESTIONS,
COMMENTS,
OR CONCERNS???**