MYclosing
We treat every closing like it's our own.

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Tax Implications and FICO Credit Scores

Important Notice: The following information has been gathered from public sources and the information is not guaranteed or deemed true and reliable due to the constant changes to the IRS tax code. It is to be used as informational purposes only. Consult your accountant or tax professional for answers to all of your questions. They are the experts in this field and it is recommended you call on them. Here is the contact information for a trusted Accountant/Accounting firm recommended by the staff of MYclosing:

Chuck Henry, CPA
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Please contact Chuck with any questions you may have. Let him you are working with MYclosing on a Short Sale of your home.

The Mortgage Forgiveness Debt Relief Act and Debt Cancellation

If you owe a debt to someone else and they cancel or forgive that debt, the canceled amount may be taxable.

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 provision 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.

More information, including detailed examples can be found in Publication 4681, Canceled Debts, Foreclosures, Repossessions, and Abandonments. Also see IRS news release IR-2008-17.

The following are the most commonly asked questions and answers about The Mortgage Forgiveness Debt Relief Act and debt cancellation:

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. 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.

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?
Not always. There are some exceptions. The most common situations when cancellation of debt income is not taxable involve:

- Qualified principal residence indebtedness: This is the exception created by the Mortgage Debt Relief Act of 2007 and applies to most homeowners.
- Bankruptcy: Debts discharged through bankruptcy are not considered taxable income.
- 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.
- Certain farm debts: If you incurred the debt directly in operation of a farm, more than half your income from the prior three years was from farming, and the loan was owed to a person or agency regularly engaged in lending, your cancelled debt is generally not considered taxable income.
- Non-recourse loans: 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. Forgiveness of a non-recourse loan resulting from a foreclosure does not result in cancellation of debt income. However, it may result in other tax consequences.

These exceptions are discussed in detail in Publication 4681.

What is the Mortgage Forgiveness Debt Relief Act of 2007?
The Mortgage Forgiveness Debt Relief Act of 2007 was enacted on December 20, 2007 (see News Release IR-2008-17). Generally, 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. If the balance was greater, see the instructions to Form 982 and the detailed example in Publication 4681.

If the forgiven debt is excluded from income, do I have to report it on my tax return?
Yes. The amount of debt forgiven must be reported on Form 982 and this form must be attached to your tax return.

Do I have to complete the entire Form 982?
No. Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Adjustment), is used for other purposes in addition to reporting the exclusion of forgiveness of qualified principal residence indebtedness. If you are using the form only to report the exclusion of forgiveness of qualified principal residence indebtedness as the result of foreclosure on your principal residence, you only need to complete lines 1e and 2. If you kept ownership of your home and modification of the terms of your mortgage resulted in the forgiveness of qualified principal residence indebtedness, complete lines 1e, 2, and 10b. Attach the Form 982 to your tax return.

Where can I get this form?
If you use a computer to fill out your return, check your tax-preparation software. You can also download the form at IRS.gov, or call 1-800-829-3676. If you call to order, please allow 7-10 days for delivery.

How do I know or find out how much debt was forgiven?
Your lender should send a Form 1099-C, Cancellation of Debt, by February 2, 2009. The amount of debt forgiven or cancelled will be shown in box 2. If this debt is all qualified principal residence indebtedness, the amount shown in box 2 will generally be the amount that you enter on lines 2 and 10b, if applicable, on Form 982.

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. See Publication 4681 for further details.

If part of the forgiven debt doesn't qualify for exclusion from income under this provision, is it possible that it may qualify for exclusion under a different provision?
Yes. The forgiven debt may qualify under the insolvency exclusion. Normally, you are not required to include forgiven debts in income to the extent that you are insolvent. You are insolvent when your total liabilities exceed your total assets. The forgiven debt may also qualify for exclusion if the debt was discharged in a Title 11 bankruptcy proceeding or if the debt is qualified farm indebtedness or qualified real property business indebtedness. If you believe you qualify for any of these exceptions, see the instructions for Form 982. Publication 4681 discusses each of these exceptions and includes examples.

I lost money on the foreclosure of my home. Can I claim a loss on my tax return?
No. Losses from the sale or foreclosure of personal property are not deductible.

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. If the amount forgiven or canceled is $600 or more, the lender must generally issue Form 1099-C, Cancellation of Debt, showing the amount of debt canceled. However, you may be able to exclude part or all of this income if the debt was qualified principal residence indebtedness, you were insolvent immediately before the discharge, or if the debt was canceled in a title 11 bankruptcy case. An Exclusion is also available for the cancellation of certain nonbusiness debts of a qualified individual as a result of a disaster in a Midwestern disaster area. See Form 982 for details.

If the remaining balance owed on my mortgage loan that I was personally liable for was canceled after my foreclosure, may I still exclude the canceled debt from income under the qualified principal residence exclusion, even though I no longer own my residence?
Yes, as long as the canceled debt was qualified principal residence indebtedness. See Example 2 on page 13 of Publication 4681, Canceled Debts, Foreclosures, Repossessions, and Abandonments.

Will I receive notification of cancellation of debt from my lender?
Yes. Lenders are required to send Form 1099-C, Cancellation of Debt, when they cancel any debt of $600 or more. The amount cancelled will be in box 2 of the form.

What if I disagree with the amount in box 2?
Contact your lender to work out any discrepancies and have the lender issue a corrected Form 1099-C.

How do I report the forgiveness of debt that is excluded from gross income?
(1) Check the appropriate box under line 1 on Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment) to indicate the type of discharge of indebtedness and enter the amount of the discharged debt excluded from gross income on line 2. Any remaining canceled debt must be included as income on your tax return.
(2) File Form 982 with your tax return.

How do I know if I was insolvent?
You are insolvent when your total debts exceed the total fair market value of all of your assets. Assets include everything you own, e.g., your car, house, condominium, furniture, life insurance policies, stocks, other investments, or your pension and other retirement accounts.

How should I report the information and items needed to prove insolvency?
Use Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment) to exclude canceled debt from income to the extent you were insolvent immediately before the cancellation. You were insolvent to the extent that your liabilities exceeded the fair market value of your assets immediately before the cancellation.

To claim this exclusion, you must attach Form 982 to your federal income tax return. Check box 1b on Form 982, and, on line 2, include the smaller of the amount of the debt canceled or the amount by which you were insolvent immediately prior to the cancellation. You must also reduce your tax attributes in Part II of Form 982.

Are there any publications I can read for more information?
Yes.
(1) Publication 4681, Canceled Debts, Foreclosures, Repossessions, and Abandonments (for Individuals) is new and addresses in a single document the tax consequences of cancellation of debt issues.

(2) See the IRS news release IR-2008-17 with additional questions and answers on IRS.gov.

Important Notice: Due to the ever-changing IRS Tax Codes, it is recommended that you contact an Accountant or Tax Professional to answer any questions you may have. It is imperative to use these Professionals to file your tax returns after completing a Short Sale.

Information on Credit Score Impacts

Your credit rating affects your ability to procure financing and obtain favorable rates. **FICO** is the most widely used credit scoring system manager in the world. FICO guidelines state the following go into your credit score:

- **Payment History - 35% of score -** includes past due, late payment data, derogatory information, such as "paid as agreed", bankruptcy, judgments, etc.
- **Amounts Owed - 30% of score** - including percentage of balances to credit limits
- **Length of Credit History - 15% of score**
- **New Credit - 10% of score -** includes credit inquiries, length of time to establish new credit following past payment problems, number of new accounts, etc.
- **Type of Credit Used - 10% of score -** include percentages you have of mortgages, credit cards, installment loans etc.

You can see that the biggest category on your credit is payment history. So outside of the short sale or foreclosure event, late payments, delinquencies and credit limits/balances all add up to affect your score. Each person's situation will be different, so there is no exact number that can be quoted about how much your score will change if you do a short sale or have a foreclosure.

A short sale and a foreclosure are both similar derogatory events on your credit score (score factor 22). **However, a short sale may have a lesser impact on your future ability to borrow than a foreclosure or deed-in-lieu of foreclosure.**

Fannie Mae, the nation's largest backer of mortgages, recently announced that borrowers who just "walk away" from their home loans may be restricted from getting a new Fannie Mae loan for seven years. Further, Fannie Mae may also pursue deficiency judgments against those who choose foreclosure, stating they will take "legal action" to pursue unpaid balances.

After doing a Short Sale, however, you may be able to purchase a new home in as little as 2 years, or even sooner depending on your payment history and your arrangement with your Short Sale lender. The Fannie Mae policy clearly indicates that Short Sales are preferable to foreclosures. Following is an excerpt from the new policy guide and memo, where you will see future borrowing restrictions outlined:

"If the borrower is purchasing a new property and the previous mortgage history complies with our excessive prior mortgage delinquency policy and does not have one or more 60-, 90-, 120-, or 150-day delinquencies reported within the 12 months prior to the credit report date, the loan is eligible for delivery to Fannie Mae, provided the lender or servicer who completed the short sale has not entered into any agreement that obligates the borrower to repay any amounts associated with the short sale, including a deficiency judgment."

Another factor to consider with short sale versus foreclosure is the benefit for applying for non-mortgage credit (such as car loans). You will be asked if you have had a foreclosure. If you have had either, a "walk away" or "deed-in-lieu" (since it is a type of foreclosure), you must answer "Yes" and that will likely affect the interest rate you are offered.

Finally, a short sale may have a lesser effect than foreclosure for your security clearance. If you are U.S. government employee, government contractor, or military member, check with your HR Dept. or Security Officer.