opinion

GUEST OPINION: KEVIN JURSINSKI

# Mortgage Debt Relief Act of 2007 to expire; act now

Homeowners faced with the loss of their home need to take positive steps to avoid severe income tax liability due to the looming expiration of the Mortgage Debt Relief Act of 2007.

The MDRA was enacted with bipartisan support and signed into law by President George W. Bush on Dec 20, 2007. This program has been considered the most successful government program enacted to address the national real estate collapse and the resultant mortgage foreclosure crisis.

To be entitled to the protection under MDRA, the home in question has to be the owner's primary residence for two of the last five years, and the debt has to be for the acquisition of the property. A cash take out second mortgage for example is not covered.

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The MDRA provides that if a homeowner suffers a loss of his/her home through foreclosure or short sale and the deficiency is waived, the homeowner will not be further penalized by the imposition of income tax liability on the amount forgiven ("phantom income"). The MDRA enactment has saved these unfortunate homeowners billions of dollars while not costing the taxpayers money to administer.

Notwithstanding the enormous benefits to our economy, the bipartisan support and the lack of impact on the U.S. taxpayer, the MDRA is set to expire on Dec 31, 2012. This means that if you have not consummated your short sale or workout with the lender and quantified the mortgage debt forgiveness by Dec 31, 2012, then after such date (unless the MDRA is extended) a homeowner who loses his/her home may also suffer the penalty of paying income tax on "phantom income" they did not receive.

Here in simplified format on how it would affect homeowners after Dec 31, 2012:

A home is sold at foreclosure or short sale for $100,000, but the mortgage is $200,000. The lender forgives the debt of $100,000. The lender is required to report the forgiveness to the IRS.

The homeowner is issued a 1099 from the lender for the forgiven debt, and the homeowner is required to pay income tax on the amount forgiven.

Using this example, the unfortunate homeowner who has just lost his/her primary residence would now have to pay income tax on $100,000, resulting in a serious income tax liability to the homeowner. This is quite a devastating one-two punch to the homeowner of both losing the home and paying tax on money not received.

Further complicating the coming effect of the Dec 31, 2012, expiration of MDRA is the inherent delays in the foreclosure process and the time it takes to do a short sale.

Solutions for the homeowner:

» Immediately, contact your real estate agent if the home is not already listed for short sale. If listed for short sale, take aggressive steps to price, market and close the short sale prior to the Dec 31, 2012 deadline.

» If the home is in foreclosure, the homeowner can still aggressively market the property for short sale and discuss with their lender, either directly or through their attorney, any other options available to them such as a stipulation to foreclosure with a waiver of deficiency. However, all of this needs to take place prior to Dec 31, 2012.

The key point is for a homeowner who is facing a loss of his/her primary residence to take prompt action in the event the MDRA is not extended so as to avoid the devastating impact of tax liability from "phantom income."

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