



NAILTA Supports Extension of the Mortgage Forgiveness Debt Relief Act of 2007.

The Mortgage Forgiveness Debt Relief Act of 2007¹ (MDRA) temporarily excludes qualified cancellation of debt (COD) income. Thus, the act allows taxpayers who do not qualify for the existing exceptions to exclude COD income. The provision is effective for debt discharged before January 1, 2010. The Emergency Economic Stabilization Act of 2008² extends the exclusion of COD income to debt discharged before January 1, 2013.

Most recently, several bills have been introduced in the 112th Congress that would extend the exclusion of COD income again. H.R. 4336 would extend the exclusion through 2013, S. 2250 and H.R. 4202 would extend the exclusion through 2014, and H.R. 4250 and H.R. 4290 would extend the exclusion through 2015.

S. 2250 recently passed the Senate Banking Committee and awaits a full vote on the floor of the Senate.³ S. 2250 is a bipartisan bill.

MDRA has allowed struggling homeowners to obtain forgiveness for the tax burden under certain qualified circumstances.

- It applies to up to \$2 million dollars (\$1 million dollars if married and filing separately) in forgiven debt for calendar years 2007 through 2012, but only if the forgiven debt is related to a decline in the home's value or due to the taxpayer's financial situation.
- The exclusion applies only to the debt on the principal residence. Vacation homes, investment properties and other second homes do not qualify.
- The tax rule can be applied to debt used to refinance your home, provided the principal balance of the old mortgage, immediately before the refinancing, would have qualified, or you have documented receipts showing cash-out refinance funds were used for home improvements.

A rationale for excluding canceled mortgage debt income has focused on minimizing hardship for households in distress.⁴ Congress has expressed concern that households experiencing hardship

¹ P.L. 110-142, signed into law on December 20, 2007.

² P.L. 110-343.

³ <http://www.deadlinenews.com/2012/09/10/congress-to-consider-extending-mortgage-debt-relief-act-renewing-mortgage-insurance-tax-deduction/> (visited November 9, 2012).

⁴ "Analysis of the Tax Exclusion for Canceled Mortgage Debt Income," Congressional Research Service, May 10, 2012.

and that are in danger of losing their home, presumably as a result of financial distress, should not incur an additional hardship by being taxed on canceled debt income. Some analysts have also drawn a connection between minimizing hardship for individuals and consumer spending; reductions in consumer spending, if significant, can lead to economic recession.⁵

NAILTA members include independent settlement service providers who, as part of their professional functions, help homeowners through the real estate closing process. Due in part to the availability of MDRA as an exclusion of COD income, distressed homeowners have used the benefits of short sales and other lender-incentivized offerings to avoid foreclosure or bankruptcy proceedings, thereby improving the value retention characteristics of the real estate market. Short sale transactions now comprise approximately 25% of all real estate sales in the United States.⁶ The availability and desirability of the short sale option depends upon MDRA.

NAILTA members work closely with lenders, real estate firms, mortgage companies and homeowners as part of the short sale process to clear title impairments and to facilitate positive short sale outcomes for distressed homeowners. Our member efforts have helped to contribute to the decline in foreclosure rates across the United States. In addition, the increase in short sale and other lender-incentivized loan programs, such as HARP and others, have helped keep our small businesses competitive in what has been a very difficult real estate marketplace.

For these reasons, NAILTA, and the thousands of independent service providers and small business owners across the United States we represent, supports an extension of the Mortgage Forgiveness Debt Relief Act of 2007 and we join the National Association of Realtors (NAR) and the National Association of Home Builders (NAHB) in asking you to co-sponsor and/or support the aforementioned bills already pending in both the House and the Senate, respectively.

About NAILTA

The National Association of Independent Land Title Agents (NAILTA) is a non-profit trade association that represents the interests of independent title insurance agents and independent real estate settlement professionals from across the United States. It was created by independent real estate settlement professionals to further the agenda of small business owners from within the title insurance, abstracting, surveying, and real estate community who lack representation at local, state and national levels.

To contact NAILTA, please visit our website at www.nailta.org.

⁵ Id.

⁶ http://www.washingtonpost.com/realestate/short-sales-are-complicated-but-can-help-homeowners-who-owe-more-than-property-is-worth/2012/08/16/f8931e26-dcf1-11e1-a894-af35ab98c616_story.html (visited November 9, 2012).