

▲ **Residence Debt Forgiveness**

Generally, debt forgiven is income added to a taxpayer's return but, if such debt is forgiven before 2013 and the debt was for a personal residence (qualified), there will be no additional income added to the taxpayer. The debt must have been used to acquire, construct, or substantially improve the taxpayer's principal residence and must have been secured by that residence. Debt used to refinance qualified principal residence debt is eligible for the exclusion up to the amount of the old mortgage principal just before the



refinancing. No more than \$2 million (\$1 million if married filing separately) can be excluded.

The taxpayer cannot exclude the forgiveness from income if it was consideration for services or for any reason not directly caused by financial situation or decline in property value. If the taxpayer continues to own their residence after forgiveness they will need to reduce their basis in the property by the amount of the forgiveness. Make sure the basis is not reduced below zero.

If there is a partial forgiveness, the exclusion applies only to the extent

the amount canceled exceeds the amount of the loan immediately before the cancellation. The remainder, although not qualified under this law; may still be excluded under other Code sections.

Beware, in case of a Chapter 11 bankruptcy, the bankruptcy exclusion must be used instead. The taxpayer may elect to apply the insolvency exclusion instead of applying the qualified principal residence indebtedness exclusion if they were insolvent immediately before the cancellation.

To qualify for these exclusions the taxpayer needs to provide the proper forms and check the proper boxes.

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▼ **Timing & Gifting**

Limited Liability Companies (LLCs) and family limited partnerships have been useful wealth-transfer and estate-planning tools for many years. Gifts of LLC membership interests will generally be valued at lower amounts because of discounts, which vary in amount but can exceed 40 percent of the value of underlying assets. By using the LLC estate-planning technique, the client can transfer wealth to family members at a very low gift tax cost. But caution must be exercised. In two recent LLC cases, *Liton v. United States*, No. 2:08-CV-00227 (W.D. Wash. July 1, 2009) and *Heckerman v. U.S.*, Cause No. C08-0211-JCC (W.D. Wash., July 27, 2009), the IRS was successful in attacking discounts under two theories: 1) the "indirect gift theory" and 2)



the "step transaction theory." The court held that no discounts were allowed because the LLC was funded with assets on the same day that gifts of LLC interests were made to family members, and the transfers were really indirect gifts of the underlying LLC assets to family members. Also, because there was no gap in time between the funding of the LLC and the gifting of the LLC interests, the court held that the taxpayer suffered "no real economic risk," and that the integrated transaction was entered into for the sole purpose of minimizing gift taxes.

To minimize such risk, adhere to a "30, 60, 90 day rule." Allow at least 30 days between funding the LLC and gifting LLC interests to family members if most of the underlying assets are marketable securities. Have a 60-day gap if most of the underlying assets are bonds or other similar less volatile assets. And finally, have a 90-day gap if most of the assets consist of real estate.

When in doubt, use the 90-day rule.

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▲ **Temporary Professional Workers**

Given the current state of employment in the United States, it should be no surprise that this year's supply of H-1B quota numbers for foreign temporary professional workers in the United States is still available. Approximately 20,000 H-1B quota numbers (open spots) remain for the annual period from October 2009 to September 2010. Once these H-1B numbers are gone, no new H-1Bs can be added for most private employers until October 2010. Each year a limited number of new H-1Bs can be admitted or placed into that status: 20,000 with a U.S. master's degree or higher and 65,000 with at least a U.S. or foreign bachelor's degree or

equivalent. The demand for the limited number of quota spots is so high in a normal year that the United States Citizenship and Immigration Service (USCIS) runs a random lottery to assign winners and losers.

The abundance of quota numbers this year creates an opportunity for employers who want to recruit from the widest talent pool for professional positions. Employers who fail to capitalize on the temporary availability of H-1Bs may regret this missed opportunity later, when they are holding a losing lottery ticket for a foreign professional that they really need.

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