

THE Wisconsin Accountant

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Form 982 - Cancellation of Debt Exclusion

Submitted by **By Bob Jennings, Taxspeaker.com**



Introduction

The cancellation of debt by a creditor creates taxable income for the debtor which is reported on Form 1040, Line 21 as other income. The Internal Revenue Code has 6 exceptions to this rule in [IRC Section 108](#). Additional activities similar to cancellation of debt include short sales, discounts for early principal repayment, foreclosures, debt forgiveness and other similar activities. If the cancellation is intended as a gift the cancellation does not represent taxable income, although the lender may be required to file a gift tax return. Interest included in canceled debt is usually also taxable if forgiven.

To utilize one of the exceptions below the taxpayer must file [Form 982](#) with the return for the year of the exclusion. Attach a statement to Form 982 describing the transactions that resulted in the loss of basis and identifying the property whose basis was reduced.

Exception 1: The student loan exception. Some student loans which are accepted by the student only under conditions that the student will work in certain professions for a certain period of time are exempt if made by qualified agencies. Only student loans from governmental agencies and certain educational institutions and charities qualify.

Exception 2: The bankruptcy exception. If the debt is canceled in a bankruptcy case under Title 11 of the US Code (which includes Chapters 7, 11 and 13), the forgiven debt is excluded but only if the debtor is under the jurisdiction of the court and the cancellation of the debt is granted by the court or occurs as a result of a plan approved by the court. If bankrupt, the taxpayer may not utilize the insolvency, qualified farm debt or qualified real property business indebtedness exclusions according to IRC 108 (a)(2)(A).

Exception 3: The insolvency exception. Insolvency is defined as a situation where the taxpayer's total debt is greater than the FMV of the taxpayer's total assets. However, only debt to the extent insolvent is excludable. If the amount of debt discharged is more than the amount insolvent, the excess is taxable.

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Executive Corner . . .

The WAA just celebrated another successful convention at the beautiful Heidel House Resort on the equally beautiful Green Lake . The staff at the resort was very accommodating and I would endorse this resort as a great get a way for everyone. Our speakers did a very good job. They had great handouts that were very informative. Dave Krebs of Gear Up spoke on Tuesday on Practice Management. He has quite a lot of practice procedures that gives direction to everything done in his practice within this manual. Sunday night after golf included a boat ride with cocktails. Then we cheered on the Packers vs. Dallas in a traditional tailgate party - the game didn't go well but everyone seemed to have fun anyway.



Byron Dopkins,
Executive Director

We also enjoyed a visit from NSA Vice President Robert Cross of Colorado . He seemed to enjoy Wisconsin's camaraderie and even some of the seminars. New officers were elected with Jim Molenda as President, William Suttner and Tom Adler as Vice Presidents, Jim Badertscher as Treasurer, and Mary Jo Boldt as Board Member.

Special thanks to those going off the board for their service to the association - Past President Jim Weickgenant, Steve Smith Treasurer, and Gary Wautier Board Member.

Byron L Dopkins, EA ABA ECS
WAA Executive Director

From the Outgoing President . . .

The 53rd Annual WAA Convention in Green Lake is over and this will be my last message to you as the outgoing WAA President. I thank all members and their spouses who attended this years' convention. It was a huge success.

I thank the membership and the board of directors for electing me as your President this past year. I'm very proud and honored to have served our Association as its President.

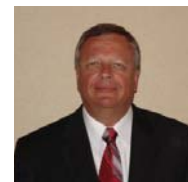
I would like to thank all board members who served this past year for their support, hard work and dedication to the WAA. This board met the challenges put before them and accomplished each task they were given.

There are still challenges out there to accomplish and I feel very confident the newly elected board will continue to meet those challenges and work for every member of this Association. You can be assured the WAA will continue to protect your right to practice, provide you with the best continuing education, to monitor and provide legislative support and great networking for all members.

As the prospect of the licensing of tax and accounting professionals, the policing of the ethical standards of practice for our profession continues I ask that you continue to support our Association in its efforts. Please consider serving your Association if called upon. You won't regret it by giving back for all that you receive.

Thanks again, I truly enjoyed serving as your President.

Tom Jankowski, EA, ATP, ATA
WAA President



Tom Jankowski,
President

Form 982 - Cancellation of Debt Exclusion

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Example 1: Kyle recently graduated from college and got caught in the temptations of credit cards. His total credit card debt is \$40,000; he owes \$30,000 on his car and \$30,000 on student loans, for total debt of \$100,000. His assets are the car with a FMV of \$25,000 and \$5,000 of personal property, for FMV of assets of \$30,000. He is therefore insolvent to the tune of \$70,000 (\$100,000 debt- FMV assets of \$30,000).

If the credit card companies discharge the entire \$40,000 he may exclude the full amount.

If the credit card and auto loan companies discharge all debts (\$70,000) he may exclude the full amount.

If the credit card, auto loan and student loan companies discharge all debts, he may exclude \$70,000 (the amount insolvent) but the remaining \$30,000 is taxable.

The FMV of all assets of the taxpayer, including personal residence, retirement accounts, etc., must be included in the FMV calculation for insolvency purposes. All recourse debt is included in the calculation under Code Section 108(d)(3).

Forgiveness of a non-recourse loan resulting from a foreclosure does not result in cancellation of debt income in most cases, although it is treated as a sale of a personal residence for the amount of the non-recourse debt. In California and some other states, purchase money mortgages, which are mortgages where the borrowed funds are used to purchase the house, are generally treated as non-recourse debt (This includes 2nd mortgages obtained at the initial purchase in 90-100% financing situations). This means there will be no COD income on a foreclosure, but that there will be sale of personal residence income. However, if the California loan has been refinanced the loan is now considered a recourse loan because it is no longer a "purchase money" loan.

Action on foreclosure	Non-Recourse Debt	Recourse Debt
Debt forgiveness income?	No	Yes-To extent debt > FMV
Home Sale?	Yes-At debt balance	Yes-At FMV on foreclosure
COD Income	N/A	Total Debt -Actual Payoff Made
Sale of Home Income qualifying for exclusion	Debt Balance -Basis	Actual Payoff Made -Basis

Exception 4: The qualified farm debt exception. If the debt is qualified farm debt and is canceled by a qualified, unrelated person who is actively and regularly engaged in the business of lending money. The debt must have been incurred directly in the business of farming and 50% or more of total receipts in the past 3 years must have been from farming.

Exception 5: The qualified real property business debt exception. Qualified real property business indebtedness is a debt incurred or assumed in connected with a piece of real property used in a trade or business and that is secured by that piece of real property. For debts incurred or assumed after 1992, the debt proceeds must be used to acquire, construct, reconstruct, or substantially improve the real property.

Exception 6: The qualified principal residence exclusion. In the Mortgage Forgiveness Debt Relief Act of 2007 signed into law on 12/20/2007 an additional exclusion was allowed for qualified debt forgiveness on a principal residence of up to \$2,000,000 (\$1 MM MFS) if the discharge is because of a decline in value of the residence.

The qualified amount is for acquisition indebtedness which is the amount paid to buy, build or improve a home. The relief applies to refinancing of qualifying debt to the extent that the refinancing did not exceed the amount of the original debt. Forgiveness of debt on vacation or other second homes will still count as income as do equity loans for personal purposes or investments do not qualify for the exclusion, nor do loans to purchase second homes. The forgiveness of home-equity debt where the cash was used to pay off credit card debt, education, medical expenses, etc is fully taxable.

In our fall 1040 In Depth seminars we will discuss debt forgiveness in detail, with examples on completing the forms, excluding forgiveness and tax issues for foreclosure, short sales, abandonments, deeds in lieu of foreclosure and much more.

WAA Benefits

- Seminars and Educational Forums
- Accreditation
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- Insurance Programs
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WAA Objectives

- To raise professional standards and improve the practice of accountancy.
- To strive for excellence in the profession.
- To encourage accountants in a continuing program of professional development.
- To foster increased recognition for the professional in the public, private and educational sectors of our state.
- To initiate legislative action and provide government liaison between the accounting profession and government leaders.
- To provide meetings and fellowship for accountants.
- To promote the highest standard of ethical conduct among its member.



Special Pricing for the WAA



Our association receives a donation for each product purchased under this special discount code - and you receive a discounted price on every product! The WAA discount code is G850. Go to quickfinder.thompson.com to place your order.

Tax Credit to Aid First-Time Homebuyers; Must Be Repaid Over 15 Years

Submitted by the IRS Newswire

WASHINGTON — First-time homebuyers should begin planning now to take advantage of a new tax credit included in the recently enacted Housing and Economic Recovery Act of 2008.

Available for a limited time only, the credit:

- Applies to home purchases after April 8, 2008, and before July 1, 2009.
- Reduces a taxpayer's tax bill or increases his or her refund, dollar for dollar.
- Is fully refundable, meaning that the credit will be paid out to eligible taxpayers, even if they owe no tax or the credit is more than the tax that they owe.

However, the credit operates much like an interest-free loan, because it must be repaid over a 15-year period. So, for example, an eligible taxpayer who buys a home today and properly claims the maximum available credit of \$7,500 on his or her 2008 federal income tax return must begin repaying the credit by including one-fifteenth of this amount, or \$500, as an additional tax on his or her 2010 return.

Eligible taxpayers will claim the credit on new IRS Form 5405. This form, along with further instructions on claiming the first-time homebuyer credit, will be included in 2008 tax forms and instructions and be available later this year on IRS.gov, the IRS Web site.

If you bought a home recently, or are considering buying one, the following questions and answers may help you determine whether you qualify for the credit.

Q. Which home purchases qualify for the first-time homebuyer credit?

A. Only the purchase of a main home located in the United States qualifies and only for a limited time. Vacation homes and rental property are not eligible. You must buy the home after April 8, 2008, and before July 1, 2009. For a home that you construct, the purchase date is the first date you occupy the home.

Taxpayers who owned a main home at any time during the three years prior to the date of purchase are not eligible for the credit. This means that first-time homebuyers and those who have not owned a home in the three years prior to a purchase can qualify for the credit.

If you make an eligible purchase in 2008, you claim the first-time homebuyer credit on your 2008 tax return. For an eligible purchase in 2009, you can choose to claim the credit on either your 2008 (or amended 2008 return) or 2009 return.

Q. How much is the credit?

A. The credit is 10 percent of the purchase price of the home, with a maximum available credit of \$7,500 for either a single taxpayer or a married couple filing jointly. The limit is \$3,750 for a married person filing a separate return. In most cases, the full credit will be available for homes costing \$75,000 or more. Whatever the size of the credit a taxpayer receives, the credit must be repaid over a 15-year period.

Q. Are there income limits?

A. Yes. The credit is reduced or eliminated for higher-income taxpayers.

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Tax Credit to Aid First-Time Homebuyers; Must Be Repaid Over 15 Years

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The credit is phased out based on your modified adjusted gross income (MAGI). MAGI is your adjusted gross income plus various amounts excluded from income—for example, certain foreign income. For a married couple filing a joint return, the phase-out range is \$150,000 to \$170,000. For other taxpayers, the phase-out range is \$75,000 to \$95,000.

This means the full credit is available for married couples filing a joint return whose MAGI is \$150,000 or less and for other taxpayers whose MAGI is \$75,000 or less.

Q. Who cannot take the credit?

A. If any of the following describe you, you cannot take the credit, even if you buy a main home:

- Your income exceeds the phase-out range. This means joint filers with MAGI of \$170,000 and above and other taxpayers with MAGI of \$95,000 and above.
- You buy your home from a close relative. This includes your spouse, parent, grandparent, child or grandchild.
- You stop using your home as your main home.
- You sell your home before the end of the year.
- You are a nonresident alien.
- You are, or were, eligible to claim the District of Columbia first-time homebuyer credit for any taxable year.
- Your home financing comes from tax-exempt mortgage revenue bonds.
- You owned another main home at any time during the three years prior to the date of purchase. For example, if you bought a home on July 1, 2008, you cannot take the credit for that home if you owned, or had an ownership interest in, another main home at any time from July 2, 2005, through July 1, 2008.

Q. How and when is the credit repaid?

A. The first-time homebuyer credit is similar to a 15-year interest-free loan. Normally, it is repaid in 15 equal annual installments beginning with the second tax year after the year the credit is claimed. The repayment amount is included as an additional tax on the taxpayer's income tax return for that year. For example, if you properly claim a \$7,500 first-time homebuyer credit on your 2008 return, you will begin paying it back on your 2010 tax return. Normally, \$500 will be due each year from 2010 to 2024.

You may need to adjust your withholding or make quarterly estimated tax payments to ensure you are not under-withheld.

However, some exceptions apply to the repayment rule. They include:

- If you die, any remaining annual installments are not due. If you filed a joint return and then you die, your surviving spouse would be required to repay his or her half of the remaining repayment amount.
- If you stop using the home as your main home, all remaining annual installments become due on the return for the year that happens. This includes situations where the main home becomes a vacation home or is converted to business or rental property. There are special rules for involuntary conversions. Taxpayers are urged to consult a professional to determine the tax consequences of an involuntary conversion.
- If you sell your home, all remaining annual installments become due on the return for the year of sale. The repayment is limited to the amount of gain on the sale, if the home is sold to an unrelated taxpayer. If there is no gain or if there is a loss on the sale, the remaining annual installments may be reduced or even eliminated. Taxpayers are urged to consult a professional to determine the tax consequences of a sale.
- If you transfer your home to your spouse, or, as part of a divorce settlement, to your former spouse, that person is responsible for making all subsequent installment payments.

September Tax Talk Today Highlights EITC Due Diligence Rules

Submitted by the IRS Newswire

WASHINGTON- The Internal Revenue Services next Tax Talk Today Web cast on Tuesday, Sept. 9, 2008 at 2 p.m. focuses on EITC Due Diligence - It's Your Responsibility.

Practitioners who prepare Earned Income Tax Credit (EITC) claims must meet four due diligence requirements. For example, they must ask the required questions on Form 8867, Paid Preparer's Earned Income Credit Checklist, and probe further when information seems incorrect, inconsistent or incomplete.

Failure to meet the due diligence requirements can result in a \$100 penalty for each failure.

The broadcast will be a good opportunity for return preparers to review the requirements and get the latest information from the IRS executive and technical staff responsible for this \$43 billion program.

Moderated by Les Witmer, panelists for the September program are: Debra S. Holland, EITC program director; Sue Gaston, director of industry operations, H&R Block; Sherrill L. Gregory, an Orange County, Calif., tax practitioner; and Bridget E. Tombul, IRS counsel.

Tax Talk Today is a Web cast aimed at educating tax and payroll professionals on the most current and complex tax issues. Tax professionals are encouraged to watch and submit questions.

To access the Web cast at no charge, viewers can register online. Tax professionals in need of continuing education credits are eligible to receive one CPE credit by viewing the September 9 Web cast.

Archived shows are available on the site also.

The next show is on Tuesday, Nov. 4, 2008 when the topic will be Preparing for the New Form 990.



Tax Extenders: To Be Or Not To Be?

The House voted 257-166 Sept. 26 to pass a revenue-neutral \$60.3 billion energy and tax extenders bill, fully aware that it faces an uncertain future.

The next step for the legislation (H.R. 7060) is murky. The White House said Sept. 25 it would veto the House bill and urged the House to pass the Senate's bill (H.R. 6049), which is vastly different, including the fact that much of the Senate bill would in essence provide a tax cut without a corresponding tax increase. Many House members, primarily the so-called Blue Dog Democrats (who makes up these names??), do not want to enact tax extenders if doing so would increase the federal budget deficit. It was only with the greatest reluctance that they agreed to vote for passage of the AMT patch that is currently being considered by the Senate.

The fact of this legislation is important for tax professionals because it contains a number of expired or expiring tax provisions that small businesses and individuals have come to rely on, including extensions of the research and development tax credit, the deduction for state and local general sales taxes, and the residential energy-efficient property credit.

IRS Updates Business Travel Reimbursement Allowances

The Internal Revenue Service Sept. 25 issued Revenue Procedure 2008-59, updating the rules for determining the amounts an employee or self-employed individual may be reimbursed for ordinary and necessary business expenses for lodging, meals, and incidentals while traveling away from home.

Among other things, the Revenue Procedure provides a transition rule for the last three months of calendar year 2008, sets the per diem rate for travel to high-cost localities and for travel to other localities in the continental United States, and described circumstances in which a payer's reimbursement or expense allowance arrangement shows evidence of abuse of the rules under tax code Section 62.

The per diem rate for travel to high-cost localities in the new Rev. Proc. is \$256; for all other sites within the continental United States the rate is \$158. The meal expense daily allowance for high-cost localities is \$58 and \$45 for other locations. A copy of Rev. Proc. 2008-59 may be found at the following weblink: <http://www.irs.gov/pub/irs-drop/rp-08-59.pdf>

IRS To Open Identity Theft Office

The Internal Revenue Service will soon open an office dedicated to the resolution of identity theft cases, panelists said Sept. 11 at the fall meeting of the American Bar Association Tax Section. This is in response to issues raised at a hearing at the Senate Finance Committee on April 15 where it was noted that identity theft cases reported to IRS Taxpayer Advocate Service have increased from 1,000 in 2005 to 6,000 in 2008.

The new office will function much like TAS, keeping a case open until all identity theft issues are resolved. Apparently, the new office will open none too soon, since panelists at the ABA conference stated that since IRS began tagging and tracking identity theft cases in January 2008, it has identified 18,000 taxpayer accounts affected by the crime.

Most tax identity theft cases involve either refunds or employment, according to one of the panelists, Chris Lee of TAS. With refund crimes, a perpetrator files a return early in the season using a stolen tax identification number to obtain a refund. When the real taxpayer files later in the season, he or she is denied a refund.

With employment cases, a person usually obtains a job using a stolen Social Security number, and a W-2 is filed for wages earned by the thief. A taxpayer usually finds out about the crime because IRS sends a notice of failure to report income on a return based on the thief's W-2 earnings.

IRS Clarifies Rules For First Time Homebuyer Credit

The Internal Revenue Service Sept. 16 issued a news release detailing who qualifies for the first-time home buyer tax credit provided for by the recently passed Housing and Economic Recovery Act of 2008. The credit, which is available for a limited time, applies to main homes, not vacation homes or rental property, purchased after April 8, 2008, and before July 1, 2009, IRS said.

The credit reduces the home buyer's tax bill or increases his or her refund, dollar-for-dollar, IRS said. The credit is also fully refundable, so eligible taxpayers can receive the credit even if they do not owe tax or the credit is more than the tax they must pay, it said.

The credit is 10 percent of the home's purchase price, with a cap set at \$7,500 for either a single taxpayer or a married couple filing jointly, IRS said. A married person filing a separate return can only claim \$3,750, it said. The credit is reduced or eliminated for higher-income taxpayers, according to the news release. The credit is phased out based on a taxpayer's modified adjusted gross income (MAGI), with the phase-out range for married couples filing jointly between \$150,000 and \$170,000, and between \$75,000 to \$95,000 for other taxpayers, it said.

The credit must be repaid in 15 years, similar to how one would repay a 15-year interest-free loan—in 15 equal annual installments beginning the second tax year after the year the credit is claimed, IRS said.

Taxpayers who owned a main home at any time during the three years before the date of purchase do not qualify for the credit. Other limitations, as well as other rules for claiming the credit, can be found in the IRS press release, which is available at the following weblink: <http://www.irs.ustreas.gov/newsroom/article/0,,id=186831,00.html>

AMT Patch Seems Imminent

The House Sept. 24 voted to approve an alternative minimum tax patch for tax year 2008. The bill, H.R. 7005 is essentially a hold-harmless patch that would keep the number of affected taxpayers steady at about 4.2 million. The bill was not accompanied by any measures to increase taxes, so the effect will be to increase the federal budget deficit by more than \$60 billion for this fiscal year.

Specifically, the legislation would increase the exemption levels to \$46,200 for individuals and \$69,950 for married couples filing jointly. By contrast, for tax year 2007 the exemption levels were \$44,350 and \$66,250, respectively.

The legislation now goes back to the Senate. The Senate passed an unpaid-for AMT patch Sept. 23 as part of a bigger tax package (H.R. 6049), but House Ways and Means Committee Chairman Charles Rangel (D-N.Y.) said he wants to move the agreed-upon AMT language separately from the rest of the still disputed energy and tax extenders bill, the House version of which the President has already said he would veto (see the discussion above).

NSA Happenings from the District V Governor . . .

I now enter my final year as District V Governor. For the upcoming year I was elected to serve as Senior Governor for the NSA Board. Last year I had the opportunity to serve on the NSA Budget Committee and Executive Committee.

In April 2008, NSA held a productive "get acquainted" function with the NASBA Board and guests. The NSA Officers and Representatives opened an important door for future issues of joint interest. I had the opportunity to speak with Sam Cotterell, current year NASBA Chair. ACAT continues to be in the forefront of tax practitioner credentialing.

Congratulations to Arland Stone and Tom Hoyer for their 2007-08 NSA recognitions. Thank you to Byron Dopkins, Jim Weickgenant and Sam Micale who serve on NSA committees. Thank you to the WAA 2007-08 elected officers and board members who served while I congratulate those WAA elected officers and board members who have stepped up to serve WAA for 2008-09.

One final note as a result of the multiple encouragements I received at the 2008 Convention, I have decided to run for 2009-10 NSA Second Vice President in San Diego. I do ask for WAA's support and assistance to get elected. If the National Society of Accountants can assist you, let me know.

Harlan Rose, EA, ABA
District V Governor



Harlan Rose
NSA District V Governor

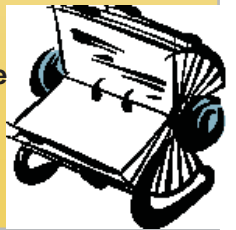
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