

Massachusetts Alliance Against Predatory Lending

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AN ACT RELATIVE TO THE TAX RELIEF OF MORTGAGE DEBT: FACTSHEET

S.1719, Main Sponsor: Senator Sal DiDomenico

H.2550, Main Sponsor: Representative Liz Malia

What Does This Bill Do?

This legislation will bring state tax law in line with federal tax law providing relief to the thousands of Massachusetts homeowners who lose their home and, as such, their biggest financial investment of their lives to a foreclosure (over 5,000 in 2018 alone) and then get a tax charge as if the foreclosure of their mortgage had provided them with a windfall profit by cutting their debt. Or, if our programs are working, they come to a mutually agreeable principal reduction or short sale their home, but have no real windfall to be taxed. Federal representatives in response to the burgeoning foreclosure crisis created an exemption to taxation on unearned “profits” from a foreclosure sale, the Mortgage Forgiveness Debt Relief Act of 2007.

Background:

Many households continue to attempt to pay predatory loans; thousands in Massachusetts lose that fight each year, keeping foreclosures at historic rates; household incomes are often devastated trying to pay an unaffordable mortgage. Some are foreclosed upon and end up with a deficiency because they owed more on their mortgage than their home because of what it went for in the fire sale of a foreclosure auction. Some do a “short sale” where the lender allows the property to be sold for less than the outstanding debt. Some homeowners get modifications of their mortgages where the amount owed is reduced. In each of these cases, the forgiven debt is taxable under the Massachusetts tax code. Debt forgiveness is considered “income”, and although the taxpayer never actually receives any money, they are taxed on the amount by which their debt is reduced.

Under federal law the discharge of debt under these circumstances is not taxable under the Mortgage Debt Relief Act of 2007. Because Massachusetts stopped following the federal exemptions in 2005, this “income” is currently taxable as income in Massachusetts. The current rate is 5.25 %, so for example, if a family received a mortgage modification that resulted in a principal reduction of \$100,000, the family would owe \$5,250 in state taxes.

If you own a property that was valued at \$500,000 for the purpose of your mortgage, and it is foreclosed on at \$350,000, then there’s a \$150,000 “loss”. The foreclosing lender sends the former homeowner/borrower a tax form claiming that the homeowner gained \$150,000 by the devaluing of the loan, even though they never got \$150,000 and lost their primary residence as well.

When the IRS receives the lender’s tax form, the homeowner fills out a special IRS form showing that it was a foreclosure and that the homeowner does not owe any tax liability on non-existent income.

We are asking the state to create the equivalent of the federal exemption. Thus, people who lose their homes are not additionally burdened with a huge tax bill for profits never realized.

Who will be impacted?

This bill provides relief to every Massachusetts citizen who receives any kind of debt forgiveness related to their primary residence. Already financially devastated, with savings and credit rating ruined, former homeowners now face levied and frozen bank accounts, loss of drivers' licenses and more. Even when the Mass DOR is shown evidence of a reversal of an illegal foreclosure without the returning of the deed in the registry, the DOR has refused to reverse the tax debt.

Even more troubling is the fact that the tax consequences of debt forgiveness are especially onerous for borrowers who are very low income. The largest amount of debt forgiveness typically goes to those who give up their home to a short sale. In Massachusetts this means an average tax bill of over \$3,810 for borrowers who have already given up their homes as well as any and all money they have paid toward that home for however long they owned it.

What impact will this bill have on state revenues/expenses?

As described above, the current policy of taxing forgiven debt as income is disproportionately burdening a low and moderate income taxpayers. Massachusetts could very well spend more on the cost of attempting to collect taxes from these low income people than they would receive in revenues.

Other States Provide Tax Relief

The majority of states either recognize the federal tax exemption for debt reduction related to mortgages on borrowers' homes or have adopted similar laws. Massachusetts should recognize the devastating impact of the foreclosure crisis on its citizens and adopt common sense tax relief for mortgage debt.

Why Do Homeowners Still Need Financial Protection from Foreclosures?

The cumulative impact of foreclosures continues to grow with loss of 10s of billions in consumer spending, 67,000 foreclosures since 2005 and the predicted return to increasing foreclosures: December 2014 showed a year over year increase of 323% — the highest in the US. Foreclosures are now spread statewide including in rural communities such as Winchendon and Athol and high income suburbs. The National Consumer Law Center affirmed national projections in early 2012 — projecting almost 100,000 more foreclosures in Massachusetts before the crisis ends.

Other bills filed include:

An Act to Facilitate Alternatives to Foreclosure, An Act to Prevent Unnecessary Vacancies in Foreclosed Homes, An Act to Establish a Foreclosure Review Division of Superior Court

MAAPL MEMBERS/SUPPORTING ORGANIZATIONS: *Action for Boston Community Development, Inc., Action for Regional Equity, Alliance of Providers of Legal Services to Individuals Facing Foreclosure, ARISE for Social Justice, Arlington Community Trabajando, Boston Tenants Coalition, Brazilian Women's Group, Brockton Interfaith Community, Carpenters Local 40, Carpenters Local 107, Charles Hamilton Houston Institute For Race & Justice, Chelsea Collaborative, Chinese Progressive Association, City Life/Vida Urbana, Coalition for Social Justice, Community Economic Development Ctr of S.E. MA, Community Labor United, Democratic Socialists of America, Dorchester People for Peace, Era Key Realty Services, ESAC, Fair Housing Center of Greater Boston, Greater Boston Legal Services, Greater Four Corners Action Coalition, Green-Rainbow Party of MA, Harvard Legal Aid Bureau, Homeowner Options for MA Elders, Jewish Alliance for Law and Social Action, Lawrence Community Works, Lawyers' Committee for Civil Rights Under Law, Lynn United for Change, Legal Assistance Corporation of Central Mass, Mass Advocates for Children, Mass AFL-CIO, Mass Coalition for the Homeless, Mass Community Action Network, Massachusetts Fair Housing Center, Mass Jobs With Justice, Mass Law Reform Institute, Mass Welfare Rights Union, Merrimack Valley Labor Council, NAACP N.E. Area Council, National Community Reinvestment Coalition, National Consumer Law Center, National Lawyers Guild, Neighbor-to-Neighbor, Neighborhood Legal Services, New England United for Justice, North Shore Labor Council, ¿Oiste?, Organization for a New Equality, Painters District Council 35, Pleasant St. Neighborhood Network Center, Southbridge Community Connections, Springfield No One Leaves Coalition, Survivors Inc., Northeast Region, Union of Minority Neighborhoods, United Auto Workers Mass CAP, United Food & Commercial Workers 1445, United For a Fair Economy, United Steel Workers Local 5696, Volunteer Lawyers Project, Worcester Anti-Foreclosure Team*

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