



Mortgage Interest Expense

2009 Developments



§163(h)(3)(A)

- “Under §163(h)(3)(A), qualified residence interest means any interest paid or accrued during the taxable year on—
 - (i) acquisition indebtedness or
 - (ii) home equity indebtedness
- with respect to any qualified residence of the taxpayer.
- For purposes of the preceding sentence, the determination of whether any property is a qualified residence of the taxpayer shall be made as of the time the interest is accrued.”



§163(h)(3)(B) & (C)

- “(B) Acquisition indebtedness.

- (i) In general. The term “acquisition indebtedness” means any indebtedness which—
 - (I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and
 - (II) is secured by such residence.
- Such term also includes any indebtedness secured by such residence resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence (or this sentence); but only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.
- (ii) \$1,000,000 Limitation. The aggregate amount treated as acquisition indebtedness for any period shall not exceed \$1,000,000 (\$500,000 in the case of a married individual filing a separate return).

- (C) Home equity indebtedness.

- (i) In general. The term “home equity indebtedness” means any indebtedness (other than acquisition indebtedness) secured by a qualified residence to the extent the aggregate amount of such indebtedness does not exceed—
 - (I) the fair market value of such qualified residence, reduced by
 - (II) the amount of acquisition indebtedness with respect to such residence.
- (ii) Limitation. The aggregate amount treated as home equity indebtedness for any period shall not exceed \$100,000 (\$50,000 in the case of a separate return by a married individual).”



Mtg Interest: \$1 vs \$1.1 million

CCA 200940030

- A single debt in excess of \$1 million used to acquire, construct or substantially improve a residence can be treated as \$1 million of AI and \$100,000 of HEI
- Believed that interpretation of AI as including the \$1 million limitation was the correct one (rather than an interpretation that it did not include a dollar limit).
 - Referred to §108(h)(2) to support position – refers to AI definition but with \$2 million rather than \$1 million (suggesting that \$1 million is part of AI definition)
 - Referred to §56(e) to support position – qualified housing interest refers to AI and HEI definitions. If dollar limits were not part of these definitions, there would be no debt limit for AMT
- Acknowledge that position is inconsistent with *Pau*, T.C. Memo. 1997-43 and *Catalano*, T.C. Memo. 2000-82, but believe it is a better interpretation
 - Likely need to disclose on return since contrary to two Tax Court decisions.



Application of the AI Limitation

- CCA 200911007 (3/09)
 - \$1 million acquisition indebtedness limit is per residence, not per co-owner per IRS interpretation of §163(h) language
 - Facts – co-owners of residence with mortgage in excess of \$1 million. T paid P% of all interest due on the Mortgage and Co-Owner paid Q% of interest due
 - T's deduction = $P\% \times \$1,000,000 /$ amount of Mortgage
 - "Under §163(h)(3)(B)(i), acquisition indebtedness is defined, in relevant part, as indebtedness incurred in acquiring a qualified residence of the taxpayer - not as indebtedness incurred in acquiring taxpayer's *portion* of a qualified residence."
 - IRS also referred to Reg. §1.163-10T(e)
 - Theoretically, would also have to adjust if either co-owner also had AI on a second residence.
 - More guidance needed
 - Why a CCA rather than updating the regs?