

Home Mortgage Interest and Unmarried Couples

Article Highlights:

- Home mortgage interest can generally be deducted only by a person who is legally obligated to pay the mortgage.
- An exception to the preceding general rule applies for interest paid on a real estate mortgage when a person is a legal or equitable owner of the real estate but is not directly liable for the debt.
- If the person making the mortgage payment is not liable or is not an equitable owner, then that individual is not allowed the interest deduction, nor is the individual who is liable on the debt.

It is becoming increasingly common for couples to live together and remain unmarried, which can lead to potential tax problems when they share the expenses of a home but only one of them is liable for the debt on that home.

Home mortgage interest can generally be deducted only by a person who is legally obligated to pay the mortgage (in other words, a person who is named as an obligor on the mortgage document). However, there is an exception to the preceding general rule for interest paid on a real estate mortgage when a person is a legal or equitable owner of the real estate but is not directly liable for the debt.

For example, if the one who is not liable on the mortgage makes the payment, that individual is not allowed to deduct the interest portion of the payment, nor is the other person, because he or she did not pay it. This can lead to some complications when one person in a couple earns significantly more income and would benefit tax-wise from an interest deduction, but the other person is the liable party on the loan. It is not uncommon for couples who both work to share mortgage payments in the mistaken belief that they can each deduct their share of the mortgage interest on their individual tax returns.

Although state law governs what constitutes equitable ownership, equitable ownership can generally be established if both parties are on title to the property, even if only one is liable on the loan. The premise behind equitable ownership is that an individual is protecting his or her ownership in the home by making some or all of the mortgage payments.

This position was upheld in a Tax Court decision when the court denied a taxpayer's home mortgage interest deduction that she paid until she became co-owner of the property with her boyfriend and was legally obligated to make the mortgage payments.

If you are in a similar situation and have questions related to sharing potentially tax-deductible expenses, please give this office a call.