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LEGAL UPDATE MEMORANDUM

October 6, 2009

TO: Clients and Friends of the Firm

RE: **IRS Rules that Interest on up to \$1.1 Million of Home Acquisition Loan is Deductible**

In news of particular importance to those owning homes in high-cost markets (such as Central California), the IRS' Chief Counsel has issued an opinion that will allow deduction of home mortgage interest on up to \$1.1 million of a home acquisition loan.

You may know that there are mortgage interest deductions available for a home acquisition loan, normally up to \$1 million in amount (\$500,000 for married individual filing separately), plus up to \$100,000 of home equity debt.¹

The Tax Court has ruled that a home purchaser cannot use both rules to deduct interest on up to \$1.1 million of a home acquisition loan, saying that this is not within the scope of the "home equity" interest deduction.²

The IRS' Chief Counsel has now issued an official opinion³ ruling to the contrary. In the Chief Counsel's view, the "home equity" interest deduction is broad enough to include up to \$100,000 of an acquisition loan. As a result, interest on up to \$1.1 million of acquisition debt may be deductible.

We think this opinion is well reasoned and is likely to be followed as official IRS policy. Though the Tax Court has ruled to the contrary, the court's position poses no issue if the IRS' own policy is that the deduction is legitimate.

Please note that there are many detailed rules about how to qualify for these two types of interest deduction. This memo merely discusses one aspect of the home equity deduction addressed in

¹ I.R.C. §§ 163(h)(3)(B)(ii) and (C)(i).

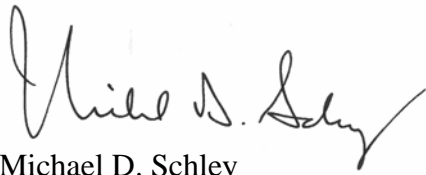
² *Pau*, TC Memo 1997-43 and *Catalano*, TC Memo 2000-82.

³ IRS Chief Counsel Advice 200940030, Oct. 2, 2009

the Chief Counsel's opinion. For more information about the home mortgage interest deductions, refer to [IRS Publication 936, Home Mortgage Interest Deduction](#).

If you have any questions regarding this decision or desire more information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Michael D. Schley". The signature is written in a cursive style with a long, sweeping tail on the "y".

Michael D. Schley