

IRB 2016-31  
August 1, 2016

## ACTION ON DECISION

**Subject:** Voss v. Commissioner, 796 F.3d 1051 (9th Cir. 2015), rev'g Sophy v. Commissioner, 138 T.C. 204 (2012)

**Issue:** Whether the § 163(h)(3) debt limitations on deductions for qualified residence interest apply on a per-taxpayer basis, rather than on a per-residence basis.

**Discussion:** Section 163(h)(2)(D) of the Internal Revenue Code allows taxpayers to deduct a limited amount of personal interest paid on residential mortgages. The mortgage must be secured by a “qualified residence,” defined by § 163(h)(4)(A) to include the taxpayer’s principal residence plus one other residence. Section 163(h)(3) limits the amount of deductible interest to interest paid on \$1 million of acquisition indebtedness (or refinanced acquisition indebtedness, up to the amount of the original loan’s balance), plus interest paid on \$100,000 of home equity indebtedness.

Mr. Voss and Mr. Sophy, unmarried co-owners of two residences, each filed an individual tax return claiming a deduction for qualified residence interest paid on acquisition indebtedness and home equity indebtedness in excess of \$1.1 million (for a combined amount in excess of \$2.2 million). The IRS disallowed portions of each taxpayer’s deduction for qualified residence interest on the grounds that § 163(h)(2) and (3) limit the aggregate amount of indebtedness to \$1 million and \$100,000, respectively, on any qualified residence, allocated among all taxpayers entitled to an interest expense deduction for that qualified residence.

Mr. Voss and Mr. Sophy petitioned the Tax Court, challenging the Service’s determinations. The Tax Court agreed with the IRS, finding that the language of the statute limits the total amount of indebtedness with respect to acquisition indebtedness and home equity indebtedness that may be claimed in relation to the qualified residence, rather than in relation to an individual taxpayer. The taxpayers appealed to the United States Court of Appeals for the Ninth Circuit.

The Ninth Circuit reversed the Tax Court decision, agreeing with the taxpayers that the statutory limitations apply to unmarried co-owners of a qualified residence on a per-taxpayer basis. The court based its conclusion largely on its interpretation of the language of the statute that expressly provides that married individuals filing separate returns are entitled to deduct interest on up to \$500,000 of acquisition indebtedness and \$50,000 of home equity indebtedness. By providing lower debt limits for married

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couples, and not for unmarried co-owners, Congress singled out married couples for specific treatment, implying that an unmarried co-owner filing a separate return is entitled to deduct interest on up to \$1,000,000 of acquisition indebtedness and \$100,000 of home equity indebtedness.

The Internal Revenue Service will follow the Voss opinion and will apply the § 163(h)(2) and (3) limitations on a per-taxpayer basis, allowing each taxpayer to deduct mortgage interest on indebtedness of up to \$1 million and \$100,000, respectively, on a qualified residence.

**Recommendation:** Acquiescence

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**Reviewers:**

**Approved:**

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