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The sky is falling, the sky is falling: Don't believe everything you read in cyberspace

October 25, 2012 - Spotlights

Once again cyberspace and email accounts are abuzz with claims regarding a "3.8% transfer tax on the sale of real estate as part of the Health Care Reform act."

Many of us recall the story, although sometimes vaguely, of Foxy Loxy convincing Chicken Little that "the sky is falling." Interestingly most attribute the modern adaptation of the fable to the 1943 Disney produced cartoon commissioned by the U.S. Government in an effort to discredit totalitarianism. The story reminds us that preying on people's fears can have a profound impact on their willingness and ability toward sound and principled decisions. It's not just Foxy Loxy's intent to convince Chicken Little of the preposterous, unfortunately it also serves as a reminder that Foxy then takes advantage of the situation at Chicken Little's expense.

Regardless of your view regarding the Health Care Reform Act, it's important that we understand what is true and what is false about the "3.8% tax" and how unchecked rumor spreading could well serve as an additional impediment slowing our housing recovery.

Like all good stories, let's start at the beginning. The Health Care Reform Act does contain a capital gains tax that is tied to the realized capital gain on the sale of primary residences after 2012. The characterization in emails that are now clogging up many email servers takes the tremendous and inaccurate leap to state that after 2012 there will be a national sales tax of 3.8% due on the sale of every single home sold in the U.S. Sounds pretty scary and it's not surprising the speed at which these emails are getting forwarded, posted to Facebook and jamming blogs. We all like to help our friends and families be aware, and in these delicate economic times this kind of exaggeration preys on our mutual fears.

Of course everyone's individual tax and financial situation is different and it's always prudent to seek professional tax advice when considering your options and best decisions.

Here are some of the facts:

First, the 3.8% tax will operate as a capital gains tax and is not tied or calculated based upon the sales price of the home. There is an exemption of \$250,000 / \$500,000 depending on whether you file a single or joint return. As an example, a husband and wife who sell their home and realize a GAIN of more than \$500,000 -- not sell their home for more than \$500,000 but actually realize a capital gain of greater than \$500,000 -- could potentially be subject to the tax. If the gain was \$525,000, then the \$25,000, the amount above the exemption would be potentially subject to the tax.

Secondly, the \$25,000 will be considered a capital gain and added to the couple's adjusted gross income. There's another threshold, \$200,000 / \$250,000 of adjusted gross income, again depending on whether a single or joint return. If your adjusted gross income levels are below these thresholds the tax will not apply. In our example from above, let's say our couple has an adjusted gross income

of \$125,000, we would then add the \$25,000 in capital gain from the sale of their home. Under the new lawm their adjusted gross income would be \$150,000. This is below the threshold of \$250,000 and therefore not subject to the tax.

The most recent email also has some other troubling claims and references that attempt to provide legitimacy to the claims. The National Association of Realtors (NAR) is quoted as saying "they're against this law, against the tax and are vigorously fighting to repeal the law." The email also quotes the NAR recommending recipients to forward to every voter they know before the November election. Again, these are false statements and NAR doesn't advocate when it comes to presidential choices.

So while some would prefer to run rampant spouting "the sky is falling" it's important to know the facts. Our housing recovery is an integral part of our economic engine and we can't afford even a small percentage of sellers to operate from a position of fear or distrust. While we would all like to be in the position where capital gains from the sale of primary residences was routinely in excess of \$500,000, we all know the truth is much more challenging. Too many sellers are in exactly the opposite situation and now more than ever they need to be armed with confidence and accurate information about the true cost of selling their home. National estimates are that nearly 98% of all homeowners are unaffected by this tax. Let's not hand over the keys to the hen house to Foxy Loxy. Speak to your trusted tax advisor for more information about your specific financial matters.

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