

INTERNAL REVENUE SERVICE

Index Numbers: 108.00-00

108.01-00

9100.00-00

Number: **199950028**

Release Date: 12/17/1999

CC:DOM:IT&A:3/PLR-105840-99

September 14, 1999

Legend

Taxpayer =

Partnership =

A =

\$y =

\$x =

\$z =

Date A =

Year P =

Trust S =

Dear

This is in reply to your private letter ruling request dated March 12, 1999, in which you request an extension of time to make an election under section 108(c) of the Internal Revenue Code. Specifically, you have requested an extension of time to make an election under section 108(c) and § 1.108(c)-1 of the Income Tax Regulations to reduce the basis of depreciable property and to exclude income resulting from the discharge of qualified real property business indebtedness.

Facts

Taxpayer is a general partner in Partnership and is the grantor of Trust S, a grantor

trust which is also a general partner in Partnership. Partnership is engaged in the business of owning and operating real property and owns over 20 commercial properties. Taxpayer actively participates in making business decisions for the Partnership, and had exclusive authority to make all decisions in connection with the refinancing of the Partnership's debt. However, taxpayer does not have specialized knowledge of the Internal Revenue Code. One of Partnership's properties was encumbered by \$y of debt. The lender reduced the \$y debt to \$x, resulting in cancellation of indebtedness income of \$z in on Date A. The Partnership return reported \$z of cancellation of indebtedness income in Year P. A is employed by Partnership to prepare Partnership's K-1s. When A prepared Partnership's K-1s for Year P, each partner's share of the \$z of cancellation of indebtedness income was reported on each partner's K-1 as income from rental activities, and was not separately stated as an item of cancellation of indebtedness income. A did not inform taxpayer of the availability of an election under § 108 to exclude the income from the cancellation of indebtedness and Taxpayer failed to make the election to exclude the income on Taxpayer's federal income tax return for Year P. Rather, Taxpayer's share of \$z was included as income from rental activities.

Taxpayer and A's controller have submitted affidavits consistent with the above stated facts.

Applicable Law

Section 108(a)(1)(D) of the Code provides that gross income does not include any amount includible in gross income by reason of the discharge of indebtedness if, in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness. Section 108(c)(3) provides that the taxpayer must make an election in order to take advantage of the exclusion provided by § 108(a).

Section 108(d)(6) of the Code provides that in the case of a partnership, §§ 108(a) and 108(c) shall be applied at the partner level.

Section 1.108(c)-1(b) of the Income Tax Regulations provides that the election available under § 108(c)(3)(C) must be made on the timely-filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has discharge of indebtedness income that is excludible from gross income under § 108(a). The election is to be made on a completed Form 982.

Section 301.9100-3 of the regulations provides that requests for extensions of time for regulatory elections (other than automatic changes covered in § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1) states that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer--

- (i) requests relief before the failure to make the regulatory election is discovered by the Service;
- (ii) inadvertently failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising due diligence, the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the Service; or
- (v) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make the election.

Under § 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer--

- (i) seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;
- (ii) was fully informed of the required election and related tax consequences, but chose not to file the election; or
- (iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c) states that the Commissioner will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. Under paragraph (i), the interests of the government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Analysis

Taxpayer reasonably relied on a qualified tax professional and the professional failed to advise Taxpayer to make the election. A failed to separately state the cancellation of indebtedness income on Taxpayer's K-1 and incorrectly included the cancellation of indebtedness income as income from rental activities. Therefore, although Taxpayer knew that a debt reduction had occurred, Taxpayer was not informed about the possibility of making an election under section 108. Therefore Taxpayer is deemed to have acted reasonably and in good faith under § 301.9100-3(b)(1). In addition, based on the facts as represented, we have determined that § 301.9100-3(b)(3) does not apply. Furthermore, based on the facts as represented, we have determined that the

interests of the Government will not be prejudiced by the granting of relief.

Conclusion

Based solely on the facts as represented and the applicable law, we conclude that the request for relief under § 301.9100-3 of the regulations should be granted.

Accordingly, Taxpayer is granted an extension of time of 45 days from the date of this letter to file an amended return making the election under § 108(c)(3) of the Code. The election is to be made on Form 982.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party.

While this office has not verified any of the material submitted or facts assumed in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This letter does not rule on whether the income at issue is properly treated as cancellation of indebtedness income. This letter also does not rule on whether the income can be excluded from gross income under § 108 of the Code.

A copy of this letter must be attached to any income tax return to which it is relevant.

This ruling is directly only to the taxpayer requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
Assistant Chief Counsel
(Income Tax & Accounting)

By _____
Christopher F. Kane
Assistant to the Chief, Branch 3

Enclosure:

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