

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PA:02
PLR-140522-14

Date:
May 06, 2015

Legend

Entity =

State X =

Asset =

Collection Remedy =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Quote 1 =

Quote 2 =

Dear

This letter responds to the letter dated October 28, 2014, submitted on behalf of Entity requesting a ruling that Entity is not required to file Forms 1099-C to report the write-off of certain balances and charges under a settlement agreement and court order approving the settlement agreement because the discharge was not the result of an “identifiable event” listed in Treasury Regulation § 1.6050P-1(b)(2).

Facts

Entity is a financial institution chartered in State X engaged in, among other things, the business of extending credit to consumers for the purchase of certain assets.

Plaintiff filed a class action lawsuit against Entity, alleging violations of State X law with respect to Asset financing contracts entered into with Entity and seeking statutory damages and an injunction prohibiting Entity from collecting the outstanding deficiency balances. Specifically, the lawsuit alleged that notices related to Collection Remedy did not meet statutory notice requirements.

On Date 1, Entity made an offer of judgment to plaintiff, which plaintiff did not accept. Entity then filed a motion to dismiss or, alternatively, for summary judgment, arguing that its offer of judgment had rendered plaintiff’s claims moot and deprived him of standing to prosecute the class action. In the alternative, Entity argued that it should be able to offset the amount of the deficiency balance owed to it by plaintiff before paying plaintiff the statutory damages for failure to comply with the State X statutory notice requirements. On Date 2, the court issued an order denying Entity’s motion to dismiss for mootness/lack of standing, but granted Entity’s request to offset the claimed deficiency balances against the class’s statutory damages. Entity did not argue in this motion that it had not violated State X law.

The parties then entered into a settlement agreement, which was preliminarily approved by the court on Date 3 (“preliminary order”). Among other things, the preliminary order provides that Entity is barred from collecting the deficiency balances from class members, but may offset those amounts from its payment of statutory damages. After Quote 1 the court found in the preliminary order: Quote 2. The settlement agreement contains an admission that the notices failed to comply with state law. On Date 4, the court entered final approval of the settlement.

Law & Analysis

Section 6050P of the Internal Revenue Code requires that an applicable entity report any discharges (in whole or in part) of indebtedness of any person in excess of \$600 on a Form 1099-C. The Form 1099-C is to include the name, address and taxpayer identification number of each person whose indebtedness is discharged, the date of the discharge and the amount of indebtedness discharged. In addition, section 1.6050P-1(a)(1) of the Treasury Regulations provides that, for information reporting purposes, a discharge of indebtedness is deemed to have occurred upon the occurrence of an “identifiable event.”

Of the identifiable events, only two are potentially relevant to the requested ruling: agreement by the parties to discharge the debt for less than full consideration or a decision by the creditor to discontinue collection activity and discharge the debt.

Discharge by agreement of the parties

Regulation section 1.6050P-1(b)(2)(F) provides that an identifiable event occurs when the applicable entity and debtor agree to discharge the indebtedness for less than full consideration. To establish consideration, there must be a performance or a return promise which has been bargained for by the parties. Restatement (Second) Contracts § 71(1) (1981). In this case, Entity and the debtor-class members agreed to the entry of a judgment, approved and supervised by the court, which incorporates the parties’ agreement by which Entity will write off all remaining deficiency balances as part of the overall settlement of the pending litigation. The discharge in this case does not fall under the identifiable event described in subsection (F) of the regulations because the debt was discharged by operation of state law, and not pursuant to the agreement of the parties to settle the litigation.

The violation of state law admitted by Entity in the settlement agreement and found by the court in the preliminary order means that the deficiency balances never accrued in the first place and Entity is barred from recovering any deficiency balances. This bar is effective whether or not the creditor “agrees” to discharge the debt. Therefore, the write-off of the balances for the class is not triggered by an agreement between Entity and the debtors, but rather by application of state law.

Discharge by decision of the creditor

Regulation section 1.6050P-1(b)(2)(G) provides that a discharge of indebtedness occurs upon a decision by the creditor, or the application of a defined policy of the creditor, to discontinue collection activity and discharge debt. For the same reasons as set forth above, this identifiable event does not apply. The discharge was by operation of state law and not by a decision or application of a defined policy by Entity.

Conclusion

Based solely on the information provided and representations made, we conclude that Entity is not required to file Forms 1099-C with respect to the write-off of deficiency balances pursuant to the settlement agreement and preliminary order because the discharge was not the result of an identifiable event listed in section 1.6050P-1(b)(2), but rather was by operation of state law.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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 in support of the request for rulings, it is subject to verification on examination.

Sincerely,

James G. Hartford
Special Counsel
(Procedure & Administration)

cc: