

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B05

PLR-113769-17

Date: September 12, 2017

Legend

Taxpayer =

Bankruptcy Court =
Plan =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year =

X =

Firm 1 =

Firm 2 =

Dear :

This letter responds to your letter requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 108(b)(5) of the Internal Revenue Code. Specifically, you have requested an extension of time to make an election under § 108(b)(5) and § 1.108-4 of the Income Tax Regulations to exclude income resulting from the discharge of indebtedness and to reduce the basis of depreciable real property, effective for Taxpayer's Year federal income tax return.

FACTS

Taxpayer uses the accrual method of accounting and has a Date 1, taxable year end as an annual accounting period. It is incorporated in State. Originally, Taxpayer was engaged in the development and production of, and exploration for, crude oil, natural gas, and natural gas liquids. On Date 2, Taxpayer filed a voluntary petition in the Bankruptcy Court. On Date 3, Bankruptcy Court entered an order confirming the Plan. On Date 4, Taxpayer was converted into a State limited liability company, and, subsequently, changed its name.

Taxpayer made an election to be classified as a corporation for federal income tax purposes, effective on Date 4. As a result of the bankruptcy proceedings, Taxpayer represents that it had cancellation of indebtedness (COD) income of x. At the time, Taxpayer did not have an internal tax advisor. In addition, Taxpayer had significant turnover in key management personnel, including the chief financial officer and internal legal counsel.

For Year, Taxpayer engaged Firm 1 as its new auditor and tax advisor. As part of the tax advisory engagement, Firm 1 was to prepare Taxpayer's Form 1120, including filing of Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, which extends the due date of Form 1120. Filing an extension was explicitly written in the engagement letter, and Taxpayer relied on Firm 1 for filing of the tax forms, including Form 7004. Firm 1, however, did not file Form 7004. On, or about Date 5, Taxpayer filed Form 1120 for Year under the assumption that the automatic extension was obtained through the timely filing of Form 7004. Taxpayer's Form 1120, as filed, included Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*, which documented the discharge of indebtedness and elected under § 108(b)(5) to first apply the reduction to the basis of depreciable property.

Once Taxpayer discovered that the automatic extension was not obtained, it consulted Firm 2 and was advised to request relief under § 301.9100-1 for an extension of time to file the election under § 108(b)(5) and § 1.108-4.

Taxpayer represents that it relied on Firm 1 to timely file Form 7004. Taxpayer further represents that granting of the relief under § 301.9100-3 will not result in a lower tax liability for Year.

LAW AND ANALYSIS

Under § 108(a), gross income does not include an amount otherwise includible in income due to a discharge of indebtedness if the discharge is described in

§ 108(a)(1)(A), (B), (C), or (D). If a taxpayer excludes income under § 108(a)(1)(A),(B) or (C), the taxpayer must reduce certain tax attributes, as described in § 108(b).

Section 108(b)(5)(A) permits a taxpayer to elect to apply any portion of the reduction to the reduction under § 1017 of the basis of taxpayer's depreciable property. Section 1017 provides the rules for making the basis reductions required by §§ 108(b)(2) and 108(b)(5). Section 108(d)(9) provides that an election under § 108(d)(5) is made on the taxpayer's return for the taxable year in which the discharge of indebtedness occurs or at such time and manner as permitted in regulations prescribed by the Secretary.

Section 1.108-4(b) of the Income Tax Regulations provides, in part, that to make an election under § 108(b)(5), a taxpayer must complete and file Form 982 together with its federal income tax return for the taxable year in which the taxpayer has discharge of indebtedness income that is excludable under § 108(a).

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic extensions 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 the grant of relief will not prejudice the interests of the Government.

Under § 301.9100-3(b) a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election. However, a taxpayer is not considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

In addition, § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was fully informed in all material respects of the required election and related tax consequences but chose not to make 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)(1) provides that the Commissioner will grant a reasonable extension of time to make the regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Section 301.9100-3(c)(1)(i) provides that 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).

Section 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable year that would have been affected by the election, had it been timely made, are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based on the information submitted by Taxpayer, we conclude that (1) Taxpayer has acted reasonably and in good faith under § 301.9100-3(b), and (2) the interests of the Government will not be prejudiced by the granting of relief under § 301.9100-3(c).

CONCLUSION

Accordingly, based solely on the facts and information submitted and the representations made in the ruling request, we grant Taxpayer an extension of 45 days from the date of this letter ruling to file an amended return to make the election under § 108(b)(5) and § 1.108-4(b). The election is to be made on Form 982.

Except as expressly provided in the preceding paragraph, we do not express or imply an opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, this letter does not rule on whether the income at issue is properly treated as COD income under § 61(a)(12). In addition, we express no opinion as to whether the taxpayer qualifies to make the election set forth in § 108(b)(5).

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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The ruling contained in this letter is 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 ruling, it is subject to verification on examination.

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

Sincerely,

Shareen S. Pflanz
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)