

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:

, ID No.

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In Re:

Refer Reply To:

CC:ITA:B04

PLR-123359-06

Date:

September 29, 2006

### Legend

Taxpayer =

SSN: =

Year =

LLC1 =

EIN: =

LLC2 =

EIN: =

Property =

FL =

Mr. A =

Mr. B =

Mr. C =

Mr. D =

\$x =

\$y =

\$z =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to your private letter ruling request in which you requested an extension of time to make an election under § 108(c) of the Internal Revenue Code (Code). Specifically, you have requested an extension of time to make an election under § 108(c)(3) and §1.108-5(b) of the Income Tax Regulations to exclude income resulting from the discharge of qualified real property business indebtedness and to reduce the basis of depreciable real property.

### Facts

The facts as represented in the ruling request are as follows. Taxpayer is an individual and the sole member of two limited liability companies, LLC1 and LLC 2. On Date 1, LLC1 borrowed \$x on a nonrecourse basis from an unrelated financial lender to finance the purchase of Property. Several years later, on Date 2, LLC1 and FL began negotiations about Taxpayer making a discounted prepayment to FL. These negotiations resulted in FL agreeing to accept the discounted prepayment of \$y in full satisfaction of the debt. FL advised Taxpayer that its acceptance of the lesser amount might result in cancellation of debt (COD) income of approximately \$z. Taxpayer promptly discussed the matter with his regular accountant, A, who advised Taxpayer to seek the advice of a qualified tax attorney. Taxpayer then immediately contacted his real estate attorney, B, who advised him to consult a tax attorney, C.

C erroneously suggested a transaction aimed at avoiding the realization of COD income. Some months after Taxpayer had entered into the suggested transaction, Taxpayer learned, through D, another tax adviser, that COD income could not be avoided in the manner advised by C. D informed Taxpayer that COD income could instead be deferred through an election to treat the debt as qualified real property business indebtedness and to reduce the basis of depreciable real property by the deferred COD amount. This election is made by filing Form 982, "Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)," with the Internal Revenue Service (Service). Taxpayer was unaware of the availability of the election until advised by D and did not file timely file Form 982. Once Taxpayer learned of its availability, it promptly sought permission from the Service to make a late election. Taxpayer filed his Year return on Date 3. Taxpayer and A have submitted affidavits consistent with the above 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)(C) provides that the taxpayer must make an election to take advantage of the exclusion provided by § 108(a)(1)(D).

Section 1.108-5(b) of the Income Tax Regulations provides that the election under § 108(c)(3)(C) is made on the timely-filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has discharge of indebtedness income excludible from gross income under § 108(a). The election made on Form 982.

Section 301.9100-1 through § 301.9100-3 of the Regulations on Procedure and Administration provides the standards that the Service 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 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) provides 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) 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) provides that the Service will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. 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.

### Analysis

Taxpayer requested relief before the failure to make the election was discovered by the Service. In addition, under the facts as represented, Taxpayer both exercised due diligence and reasonably relied upon the advice of a qualified tax professional, C, who did not advise the taxpayer about the availability of the election. Therefore, Taxpayer is deemed to have acted reasonably and in good faith under § 301.9100-3(b)(1). Additionally, based on the facts as represented, we conclude first, that § 301.9100-3(b)(3) does not apply and second, that under § 301.9100-3(c), 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's request to file a late election under § 108(c)(3) and § 1.108-5(b) on Form 982 is granted.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and A made under penalties of perjury.

Although this office has not verified any of the material submitted or facts assumed in support of the request for ruling, 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.

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

Sincerely,

Associate Chief Counsel  
(Income Tax & Accounting)

By: \_\_\_\_\_  
Donna Welch  
Senior Technician Reviewer, Branch 4

Enclosure:  
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