

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:IT&A:4- PLR-109865-01

Date:

August 2, 2001

Legend

Taxpayer =

Partnership =

\$x =

\$y =

Dear

This is in reply to the private letter ruling request in which the taxpayer requests an extension of time to make an election under § 108(c) of the Internal Revenue Code. Specifically, the taxpayer has requested an extension of time to make an election under § 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

Partnership is a limited liability company that is treated as a partnership for federal income tax purposes. Taxpayer is an S Corporation and is a partner in Partnership. Partnership realized \$x cancellation of indebtedness income, and \$y was allocated to Taxpayer. Taxpayer filed its Form 1120S by the due date for the year in which the cancellation of indebtedness income should have been reported. Partnership's accountant delivered the Schedule K-1 to Taxpayer after Taxpayer had already filed its income tax return for the year in which the cancellation of indebtedness income should have been reported. Therefore, Taxpayer failed to include the cancellation of indebtedness income and failed to make the election on Form 982. However, Taxpayer filed its return consistent with having made the election. If the late election is granted, then the only change to Taxpayer's return will be the attachment of Form 982.

Applicable Law

Section 108(a)(1)(D) 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 in order to take advantage of the exclusion provided by § 108(a)(1)(D).

Section 108(d)(6) 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) 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 Procedure and Administration Regulations 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 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) 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 requested relief before the failure to make the election was discovered by the Service. 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 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). The election is to be made on Form 982.

Caveats

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. Thus, no opinion is expressed or implied on whether the income at issue is cancellation of indebtedness income or whether it is excludable from gross income under § 108. 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(k)(3) provides that it may not be used or cited as precedent.

Sincerely,
Robert A. Berkovsky
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure:

Copy for § 6110 purposes