

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:ITA:B04  
PLR-132843-06

Date:  
December 18, 2006

Legend

R =

S =

Bank =

Year 1 =

Year 2 =

Accountant =

X =

Attorney =

Dear \_\_\_\_\_ :

This letter responds to your private letter ruling request for an extension of time to make an election under § 108(c)(3) of the Internal Revenue Code 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.

The facts as represented in the ruling request and the supporting affidavits are as follows. You timely filed a joint federal income tax return for Year 1. Accountant prepared that return, as well as your returns for several prior years.

You are in the business of R and, prior to Year 1, developed, constructed, and operated S, a business in which the use of real estate is a major factor. You financed S through a recourse loan from Bank, with your promissory note being secured by S.

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In Year 1, you defaulted on the loan and Bank foreclosed on S. As a result of the foreclosure, you realized discharge of indebtedness income. In Year 2, Bank mailed a Form 1099-C, *Cancellation of Debt*, reflecting \$X as discharge of indebtedness income. You did not receive the Form 1099-C, because Bank mailed it to the wrong address. You knew nothing of the Form 1099-C, therefore, until late in Year 2, when the Internal Revenue Service asked you why you had not reported the \$X on your Year 1 return.

Promptly upon receipt of the IRS notification, you consulted Accountant and Attorney. You promptly filed an amended return for Year 1 and attached Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness Income (and Section 1082 Basis Adjustment)*, reflecting the discharge of indebtedness income, and making corresponding adjustments.

You had never before defaulted on a loan or gone through a foreclosure proceeding. You do not have a background in tax law and are unfamiliar with the concept of debt discharge income. You believed, at the time of the foreclosure and thereafter, that all your rights, duties, and obligations under the promissory note had been satisfied by the transfer of S to Bank in the foreclosure proceeding. You so informed Accountant before she prepared the original Year 1 return.

You further represent that you would have made the election under § 108(c)(3) on the original Year 1 return had you known at that time of the discharge of indebtedness income. In addition, Accountant represents that she would have made the election under § 108(c)(3) on the original Year 1 return if she had seen a copy of the Form 1099-C before filing that return.

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

Section 1.108-5(b) 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 is made on Form 982.

Sections 301.9100-1 through 301.9100-3 of the Regulations on Procedure and Administration provide the standards that the IRS 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

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(including affidavits) to establish that the taxpayer acted reasonably and in good faith under § 301.9100-3(b), and granting relief will not prejudice the interests of the government under § 301.9100-3(c).

Under the facts as represented, we conclude that (i) you have acted reasonably and in good faith under § 301.9100-3(b) and (ii) the interests of the Government will not be prejudiced by the granting of relief under § 301.9100-3(c). Accordingly, based solely on the facts as represented and the applicable law, your request for relief 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 you and Accountant 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 or whether the income can be excluded from gross income under § 108.

This ruling is directly only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

Pursuant to a power of attorney on file in this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Michael J. Montemurro  
Branch Chief  
Office of Associate Chief Counsel  
(Income Tax and Accounting)

Enclosure:  
Copy for § 6110 purposes