

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B05  
PLR-113394-18  
Date: October 9, 2018

Legend

Taxpayer <sup>1</sup>	=
Partnership	=
Partners 2 and 3	=
Partners 4 and 5	=
LLC	=
x	=
Bank	=
\$a	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Accountant	=
Firm	=
State	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
\$b	=
\$c	=

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<sup>1</sup> During Year 1 through Date 4, Taxpayer filed joint returns with spouse. The designation "Taxpayer" in this document refers to one of the spouses who is seeking the extension of time to make the election on joint return.

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

This letter responds to your letter requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a regulatory election. Specifically, you have requested an extension of time to make an election under § 108(c)(3)(C) 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, effective for Taxpayer's Year 4 tax return.

#### FACTS

Taxpayer uses the cash receipts and disbursements method of accounting, reports income on a calendar year, and is a real estate developer. On or about Date 1, Taxpayer formed Partnership to develop 3x residential condominiums. Partnership was organized in State as a limited liability company and had five partners. Ultimately, only 2x condominiums were constructed. By Year 2, Partners 2 and 3 failed to make required capital contributions causing their partnership interests be reduced to a point at which they ceased being members, and pursuant to the operating agreement of Partnership, Taxpayer's ownership percentage increased accordingly. On Date 2, Partners 4 and 5 gifted the remaining membership interests in Partnership to Taxpayer.

In Year 1, Partnership borrowed \$a from Bank. By Year 3, only 1.2x condominiums had been sold, and by August of Year 3, Taxpayer decided to convert the remaining condominiums into rentals.

On Date 3, Taxpayer formed LLC, owned solely by Taxpayer. LLC purchased Partnership's debt from Bank for \$b. As a result of the purchase, Taxpayer realized cancellation of indebtedness (COD) income of \$c.

Taxpayer engaged Accountant, a qualified tax preparer with many years of experience at Firm, to prepare Form 1040, Individual Federal Income Tax Return for Year 4. Accountant included \$c of COD income on line 21 of Taxpayer's Form 1040, for Year 4, which Taxpayer timely filed.

On Date 4, after discovering Accountant's error, Firm informed Taxpayer about an alternative reporting position under which Taxpayer could exclude income resulting from the discharge of indebtedness and reduce the basis of depreciable qualified real property. At the time Taxpayer learned of the alternative, Accountant had already retired from Firm. Shortly thereafter, Taxpayer submitted request for an extension of time to make the requisite election.

Taxpayer represents that Taxpayer relied on Accountant to report the COD income in the most tax-efficient manner. The most efficient approach would have been for Taxpayer to make a § 108(c)(3)(C) election.

Taxpayer also represents that granting relief under § 301.9100-3 will not result in a lower tax liability in the aggregate for all years to which the election applies than Taxpayer would have had if the election had been timely made.

## LAW AND ANALYSIS

Section 108(a)(1)(D) provides that gross income does not include any amount that (but for § 108(a)) would be 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)(2) provides, in general, that the amount excluded under § 108(a)(1)(D) with respect to any qualified real property business indebtedness shall not exceed the excess of the outstanding principal amount of such indebtedness (immediately before the discharge) over the fair market value of the real property described in § 108(c)(3)(A) (as of such time).

Section 108(c)(3)(C) requires a taxpayer to make an election to exclude COD income under § 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 that is excludible from gross income under § 108(a). The election is made on a completed Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*.

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, 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(c)(3)(C) and § 1.108-5(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). Further, we express no opinion, nor do we possess all of the necessary information to determine whether Taxpayer qualifies to make the election set forth in § 108(c)(3)(C), in particular: whether Taxpayer's adjusted basis in depreciable property is greater than the amount of COD income or what the fair market value of the real property was at the time the debt was cancelled. Further, we express no opinion on whether and to what extent the discharged indebtedness had been incurred or assumed by Taxpayer in connection with real property used in a trade or business.

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,

John M. Aramburu  
Senior Counsel, Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)