

Part III - Administrative, Procedural, and Miscellaneous

Information reporting for discharges of indebtedness

Notice 2012-65

PURPOSE

This notice invites public comments regarding guidance to be provided to governmental and financial entities (applicable entities) described in Internal Revenue Code section 6050P(c), who discharge indebtedness and may be required to furnish Form 1099-C information returns pursuant to section 6050P and Treas. Reg. § 1.6050P. Section 6050P(b) provides that an applicable entity must issue an information return if \$600 or more of indebtedness is discharged. The corresponding Treasury regulation, Treas. Reg. § 1.6050P-1(b)(2), lists eight identifiable events that trigger a reporting obligation, including the expiration of a non-payment testing period that results when a creditor does not receive payment or engage in bona fide collection activity for specified periods of time.

The Department of the Treasury (Treasury) and the Internal Revenue Service (Service) are aware that taxpayers who receive a Form 1099-C due to expiration of the non-payment testing period described in Treas. Reg. § 1.6050P-1(b)(2)(i)(H) and (iv)

may be confused regarding whether to include the amount reported on the Form 1099-C as income. This Notice requests comments to help Treasury and the Service determine whether the non-payment testing period rule should be modified or eliminated.

BACKGROUND

Section 6050P provides that an applicable entity must issue an information return if it discharges \$600 or more of indebtedness. The term applicable entity includes governmental entities and financial entities including “any organization a significant trade or business of which is the lending of money.” I.R.C. § 6050P(c)(2)(D). Treasury Regulation § 1.6050P-2 sets forth the test for whether the lending of money is a significant trade or business and contains safe harbors and examples.

Under the regulation, indebtedness is deemed discharged solely for purposes of the section 6050P reporting obligation only upon the occurrence of an identifiable event, whether or not an actual discharge has occurred on or before the date on which the identifiable event has occurred. Treas. Reg. § 1.6050P-1(b)(1). The section 6050P regulations contain eight identifiable events that trigger a reporting obligation for a discharge of indebtedness by an applicable entity. Treas. Reg. § 1.6050P-1(b)(2)(i)(A)-(H). Seven of the eight identifiable events listed in the Treasury regulation are specific occurrences that result from an actual discharge of indebtedness, such as certain judicial proceedings, an agreement between the debtor and creditor, or the creditor’s decision or defined policy to discontinue collection activity. Treas. Reg. § 1.6050P-

1(b)(2)(i)(A)-(G). The eighth identifiable event, expiration of a non-payment testing period, does not necessarily result from an actual discharge of indebtedness. Treas. Reg. § 1.6050P-1(b)(2)(i)(H) and (iv).

Treas. Reg. §1.6050P-1(b)(2)(iv) describes the non-payment testing period as a 36-month period during which time the creditor has not received any payment on the indebtedness. If the testing period expires without payment by the debtor, a rebuttable presumption arises that an identifiable event has occurred, and the creditor should issue a Form 1099-C. The presumption may be rebutted by the creditor, and the creditor is not required to issue a Form 1099-C, if the creditor, or a third party on its behalf, engaged in significant bona fide collection activity at any time during the 12-month period ending at the close of the calendar year. Treas. Reg. §1.6050P-1(b)(2)(iv). The presumption also may be rebutted by the creditor if the facts and circumstances existing as of January 31 of the calendar year following the expiration of the non-payment testing period indicate that the indebtedness has not been discharged. Treas. Reg. §1.6050P-1(b)(2)(iv).

Treasury and the Service added the non-payment testing period to the final regulations in 1996 in response to concerns of creditors that the temporary and proposed regulations were unclear regarding the effect of continuing collection activity. The temporary and proposed regulations had contained a facts and circumstances test for determining when an identifiable event has occurred. Creditors raised concerns that this did not present a sufficiently clear rule for determining when reporting was required

and proposed (among other things) that the final regulations require reporting after a fixed time period during which there had been no collection efforts. In response to these comments, the final regulation added the 36-month non-payment testing period as an additional identifiable event.

Creditors who issue a Form 1099-C upon expiration of a 36-month non-payment testing period are not necessarily signaling that a debt has actually been cancelled. The actual discharge of indebtedness, for purposes of determining when taxable income is incurred, may be prior to or after the identifiable event. In some circumstances, moreover, there may never be an actual discharge of indebtedness. As a consequence, the receipt of a Form 1099-C upon expiration of a non-payment testing period can cause confusion for taxpayers regarding whether and when to include any income attributable to an actual discharge of indebtedness. To address this confusion, Treasury and the IRS are considering clarification, revision, or removal of the non-payment testing period as an identifiable event.

REQUESTS FOR PUBLIC COMMENT

Treasury and the Service are requesting comments from all affected persons and entities and are particularly interested in any comments regarding:

- Whether Treas. Reg. § 1.6050P-1(b)(2)(i) should be amended to remove the non-payment testing period as an identifiable event;
- Whether the removal of the non-payment testing period would increase or decrease the burden on creditors and taxpayers;

- If the non-payment testing period is removed, whether additional rules are necessary to address continuing collection activity; and
- If the non-payment testing period is retained, how it should be modified to improve its usefulness and alleviate confusion.

The information collected will assist Treasury and the IRS in determining whether additional guidance is necessary. Written comments should be sent to:

CC:PA:LPD:PR (Notice 2012-65), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2012-65), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. Comments may also be transmitted electronically via the following e-mail address: Notice.Comments@irsounsel.treas.gov. Please include "Notice 2012-65" in the subject line of any electronic communications.

All comments will be available for public inspection and copying and must be received by February 11, 2013.

DRAFTING INFORMATION

The principal author of this notice is Ronald J. Goldstein, formerly of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice contact Janet Engel Kidd of the Office of Associate Chief Counsel (Procedure & Administration) at (202) 622-4940 (not a toll-free call).