

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-118651-07
Date:
July 27, 2007

Legend

Taxpayer =
LLC1 =
LLC2 =
Town Mall =
Year 1 =
Year 2 =
Accountant =
Lender =
Date 1 =
Date 2 =

Dear :

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

Taxpayer, an individual, is a managing member of a state limited liability company (LLC1) that was formed for the sole purpose of managing and investing in a state limited liability company (LLC2). LLC2 was created for the purpose of owning, operating and redeveloping Town Mall. In Year 1, LLC2 filed a voluntary Chapter 11 Petition under the United States Bankruptcy Code. In Year 2, the bankruptcy trustee (Trustee) directed LLC2 to sell Town Mall to an unrelated third party in order to receive assets to be used to satisfy LLC2's outstanding obligations. Based on Taxpayer's

experience and discussions with Accountant, Taxpayer anticipated that the sale of Town Mall would result in gain and did not anticipate that the sale would result in cancellation of indebtedness income (COD) to LLC1, LLC2 or Taxpayer.

Several times during Year 2 and on later occasions, Taxpayer and Accountant made unsuccessful requests to the Trustee and his counsel, to the state receiver and his counsel, and to the Lender and his counsel to obtain information relating to the sale of Town Mall and the Trustee's payment of LLC2's outstanding obligations. Accountant advised Taxpayer that until the information was obtained from Trustee, LLC1, LLC2 and Taxpayer could not file complete and accurate returns for Year 2. Taxpayer timely filed his income tax return for Year 2 without the information relating to the sale of Town Mall. It was not until Date 1 that Taxpayer obtained the information relating to the sale of Town Mall. Only after receipt of the required information did Taxpayer and Accountant realize that the net proceeds from the sale of Town Mall did not discharge all of the outstanding obligations and resulted in COD income to Taxpayer for Year 2.

Accountant informed Taxpayer that COD income could 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 by filing Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*, with the Service. Accountant advised Taxpayer that, because Form 982 was not attached to the Year 2 income tax return, Taxpayer must request an extension of time to make an election under § 108(c)(3) and § 1.108-5(b). Shortly thereafter, Taxpayer filed this request for an extension of time. On Date 2, Taxpayer filed his amended Year 2 income tax return and attached Form 982. Taxpayer and Accountant have submitted affidavits consistent with the above facts.

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 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 is 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 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 (1) Taxpayer 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). Accordingly, based solely on the facts as represented and the applicable law, the Service grants Taxpayer an extension to file a late election under § 108(c)(3) and § 1.108-5(b).

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.

Although this office has not verified any of the material submitted or facts assumed in support of the requested 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 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.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Donna J. Welch
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure:
Copy for § 6110 purposes