

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201408007**  
Release Date: 2/21/2014

Third Party Communication: None  
Date of Communication: Not Applicable

Index Number: 108.00-00, 108.01-00,  
108.02-00, 108.02-01,  
9100.00-00

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B04  
PLR-120674-13

Date:  
November 14, 2013

LEGEND

Taxpayer =  
Year A =  
Year B =  
a =  
CPA =

Dear :

This letter responds to a letter from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make a regulatory election. Specifically, Taxpayer has requested an extension of time to make an election under § 108(b)(5) of the Internal Revenue Code and § 1.108-4(b) of the Income Tax Regulations, to exclude income resulting from the discharge of indebtedness when Taxpayer was insolvent and to reduce the basis of depreciable real property, effective for Taxpayer’s Year A tax return.

FACTS

Taxpayer, an individual, files a federal income tax return reporting income on a calendar year and uses the cash receipts and disbursements method of accounting.

In Year A, Taxpayer forfeited title to one of his rental properties to the lender in a foreclosure transaction. The lender issued Form 1099-C, *Cancellation of Debt*, to Taxpayer reflecting cancellation of recourse debt in the amount of \$a. Taxpayer represents that Taxpayer was insolvent at the time of the foreclosure transaction and that the amount of Taxpayer’s insolvency exceeded the amount of debt cancelled.

CPA prepared Taxpayer's Year A federal income tax return. CPA properly reported Taxpayer's Year A cancellation of indebtedness income on Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*, as income excluded from the insolvency exception under section 108(a)(1)(B) but did not complete Part II of Form 982, which requires reduction of tax attributes. Further, CPA failed to advise Taxpayer to make the election on Line 5 of Part II to reduce basis of depreciable property prior to reducing net operating losses. Taxpayer's Year A federal income tax return was timely filed.

In Year B, the Service initiated an examination of Taxpayer's Year A federal income tax return. In preparing for the examination, CPA and Taxpayer discovered the failures to complete Form 982 and make a timely § 108(b)(5) election.

After discovering CPA's oversight, Taxpayer filed this request for an extension of time to make the election. CPA has filed an affidavit consistent with the above facts. Taxpayer has agreed to extend the period of assessment for the Year A taxable year to October 9, 2014.

Taxpayer represents that Taxpayer acted reasonably and in good faith by Taxpayer's reasonable reliance on a qualified tax professional and the tax professional failed to make, or advise Taxpayer to make, the election.

#### LAW AND ANALYSIS

Section 108(a)(1)(B) provides that gross income does not include any amount that would be includible in gross income by reason of the discharge of indebtedness if the discharge occurs while the taxpayer is insolvent.

Section 108(b)(1) provides, in general, that the amount excluded under § 108(a)(1) will be applied to reduce the tax attributes of the taxpayer, as provided in § 108(a)(2).

Section 108(b)(5)(A) provides, in general, that the taxpayer may elect to apply any portion of the reduction referred to in § 108(a)(1) to the reduction under § 1017 of the basis of the depreciable property of the taxpayer.

Section 108(b)(5)(B) limits the amount to which the election in § 108(b)(5)(A) applies to an amount not exceeding the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

Section 1.108-4(b) provides that to make an election under § 108(b)(5), the taxpayer must enter the appropriate information on Form 982, and attach the form to 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).

Sections 301.9100-1 through § 301.9100-3 provide 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 extension 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 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 informed in all respects of the required election and related consequences, but chose not to make the election; or
- (iii) Uses hindsight in requesting 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). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

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.

Under the facts submitted by Taxpayer, we conclude that Taxpayer has acted reasonably and in good faith under § 301.9100-3(b). In addition, we conclude that granting relief will not prejudice the interests of the government under § 301.9100-3(c).

## CONCLUSION

Based solely on the information submitted and the facts as represented in the ruling request, we grant Taxpayer an extension of 45 days from the date of this letter to file an amended return to make the election under § 108(b)(5) and § 1.108-4(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 amount of income at issue is properly treated as cancellation of indebtedness income under § 61(a)(12). In addition, this letter also does not rule on whether the income in fact qualifies for exclusion from income under § 108.

This ruling is directed only to the taxpayers 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, a copy of this letter is being sent to your authorized representatives.

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 rulings contained in this letter are 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 rulings, it is subject to verification on examination.

Sincerely,

Michael J. Montemurro  
Chief Branch 4  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: