Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Refer Reply To:
CC:ITA:B04
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Date:
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LEGEND

Taxpayer =

Personal Representative =

Firm =

CPA =

Trust =

Partnership =

State =

Interest =

Age =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This letter responds to Taxpayer's request, dated Date 6, for a letter ruling pursuant to §§ 301.9100-1 and 301.9100-3 of the Treasury Regulations.[1] Specifically, Taxpayer requests an extension of time to make an election under § 108(c)(3)(C) of the Code and § 1.108-5(b) of the Treasury Regulations to exclude income resulting from the discharge of qualified real property business indebtedness in Year 1 and to reduce the basis of depreciable real property, effective in Year 2.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2025-1, 2025-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer. [2]

FACTS

Taxpayer's gross income included income from two passthrough entities, one of which, Partnership, engaged in rental real estate activities in State. Taxpayer held the Interest in Partnership through Trust. On Date 2, CPA filed Taxpayer's Year 1 Form 1040. Taxpayer, who died on Date 3, at Age, shortly after the Year 1 Form 1040 was filed, resided in an independent/assisted living facility. Taxpayer's spouse died on Date 1. Taxpayer was not conversant with issues related to federal or state income taxation, and Taxpayer and Taxpayer's late spouse relied on CPA in all matters related to taxes.

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[1] Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code of 1986, as amended (Code), Title 26 U.S.C., or the Treasury Regulations (Treas. Reg.), Title 26 C.F.R. pt. 1 (Income Tax), or Title 26 C.F.R. pt. 301 (Procedure and Administration).

[2] References to Taxpayer in this letter ruling mean either the deceased Taxpayer or Personal Representative depending on the context, *i.e.*, before or after Taxpayer's death.

Once a year, with the help of an assistant, Taxpayer delivered to CPA the tax forms collected from Taxpayer's home. Taxpayer never received a dividend or other distribution from Partnership, and it does not appear that Taxpayer received a Schedule K-1 (K-1) from Partnership in Year 1 or any other year since the death of Taxpayer's spouse. As Taxpayer did not receive a Year 1 K-1 from Partnership, Taxpayer did not file Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*, to make an elect to exclude the discharged qualified real property business indebtedness reported on the K-1 from gross income in Year 1.

Following Taxpayer's death, Personal Representative was appointed as Taxpayer's personal representative, and Firm was hired to prepare Taxpayer's Year 2 individual and estate tax returns. Taxpayer requested information from Partnership in connection with the preparation of the estate return. On Date 4, Taxpayer received K-1's for Year 1 and Year 2 and promptly forward the K-1's to Firm. On Date 5, Firm discovered that cancellation of debt income was not reported on Taxpayer's Year 1 Form 1040.

LAW AND ANALYSIS

Section 61(a) of the Code provides, in part, that except as otherwise provided in this subtitle, gross income means all income from whatever source derived. The statute then specifically lists income from discharge of indebtedness as one of the items within the scope of the term income. See § 61(a)(11).

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)(1) provides that the amount excluded from gross income under § 108(a)(1)(D) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

Section 108(c)(2)(A) 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 qualified real property business indebtedness.

Section 108(d)(6) provides that in the case of a partnership, § 108(a) and § 108(c) are applied at the partner level.

Section 1.108-5(b) provides that the election must be 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 section 108(a). The election is to be made on a completed Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*.

Section 301.9100-1(b) defines the term “regulatory election as including any election whose due date is prescribed by a regulation published in the Federal Register. Treas. Reg. § 1.108-5 sets forth the manner and timing for electing to exclude qualified real property business indebtedness. Therefore, these elections are regulatory elections.

Sections 301.9100-1 through 301.9100-3 provide the standards 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 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 and granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer—

(i) requests relief before the failure to make the regulatory election is discovered by the Service;

(ii) failed to make the election because of intervening events beyond the taxpayer's control;

(iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;

(iv) reasonably relied on the written advice of the Service; or

(v) reasonably relied on a qualified tax professional, and the professional failed to make, or advise the taxpayer to make, the election.

Section 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 will be 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 section 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 and that the granting of relief will not prejudice the interests of the Government.

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 to file an amended return for Year 1 to make an election under § 108(c)(3)(C) and Treas. Reg. § 1-108-5(b). The election shall be made on Form 982. As required by § 108(c)(1) in making this election, Taxpayer will reduce basis in depreciable real property on Taxpayer’s Year 2 tax return to the extent that would have been required if a timely election had been made on Taxpayer’s Year 1 return.

CAVEATS

Except as 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. Specifically, this letter does not rule on whether the amount of income at issue is properly treated as cancellation of debt income under § 61a)(11) or whether the income qualifies for exclusion from income under § 108.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Mon L. Lam
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: