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Person To Contact:
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Refer Reply To:
CC:PA:01
PLR-126226-18

Date:
April 05, 2019

In Re: Request for Ruling Under Section 6050P of the Internal Revenue Code

TY:

Legend:

Entity 1 =
Settlement agreement =

Dear :

This letter responds to your request, dated August 28, 2018, submitted on behalf of Entity 1, for a ruling that Entity 1 is not required to file Forms 1099 with respect to write-offs of balances and charges (including any deficiency judgment balances) of members of a settlement class pursuant to its settlement agreement in furtherance of a preliminary order in "absolute bar states,"[1] because the discharge was not the result of an "identifiable event" listed in Treasury Regulation § 1.6050P-1(b)(2), but rather was required by operation of state law. For the reasons set forth below, we conclude that Entity 1 is required to comply with the reporting requirements of I.R.C. § 6050P and file Forms 1099, because the discharge of indebtedness was the result of an identifiable event listed in Treas. Reg. § 1.6050P-1(b)(2).

[1] These states prohibit creditors from collecting on any deficiency balance before such creditors send out a proper presale notice, and if a presale notice does not strictly comply with notice requirements there is an absolute bar on collecting any remaining deficiency balances.

Facts

Entity 1 is

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When debtors were late in making payments on their loans, Entity 1 sent presale notices to the debtors stating that collateral for the loans was being repossessed. In the course of other litigation over outstanding debts to Entity 1, on , debtors filed a nationwide consumer class-action counterclaim with the , arguing (among other things) that defects in the presale notices render the underlying loan debts unenforceable as a matter of law in "absolute bar states."
On , Entity 1 and the debtor class signed a settlement agreement subject to court approval. On , the court entered a "Preliminary Approval Order" purporting to settle the entire class action lawsuit based on a settlement agreement. On , the court entered a Final Approval Order approving of and incorporating the settlement agreement.

Law and Analysis

Section 6050P of the Internal Revenue Code requires that an applicable entity report any discharges (in whole or in part) of indebtedness of any person in excess of $600.00. The report is to include the name, address and taxpayer identification number of each person whose indebtedness is discharged, the date of the discharge and the amount of indebtedness discharged. In addition, section 1.6050P-1(b)(2) of the Treasury regulations provides that a discharge of indebtedness occurs if one of eight "identifiable events" that the regulation defines takes place. For purposes of this ruling we agree that Entity 1 is an applicable entity.

Of the identifiable events, only two have a potential bearing on the requested ruling. The first possible event, section 1.6050P-1(b)(2)(F), provides that an identifiable event exists when the applicable financial entity and debtor agree to discharge the indebtedness for less than full consideration. To establish consideration, there must be a performance or a return promised which has been bargained for by the parties. Restatement (Second) Contracts § 71(1) (1981). In this case, Entity 1 and the debtor class members agreed to the entry of a judgment, approved and supervised by the court, which incorporates the parties' settlement agreement by which Entity 1 will write off all remaining absolute bar state debt balances as part of the overall settlement of the pending litigation. This is an identifiable event described in subsection (F) of the regulations.

Entity 1's request for a ruling argues that the settlement agreement does not reflect a mere agreement of the parties, or any other identifiable event, but rather is a recognition that the write-off of the deficiency balances was required under the laws of "absolute bar

states." Entity 1 argues that the debt write-off is not triggered by the settlement but by the application of various state laws, and that the settlement merely reflects the operation of state law. The debtor's counterclaim alleged that Entity 1's presale notice was defective in various ways, rendering the debts unenforceable.

The settlement agreement contains no admission or concession by Entity 1 with respect to the claims or defenses alleged in the class action counterclaim. The settlement agreement contains a specific denial of liability in paragraph 1, which denial of liability was incorporated into the Preliminary Order and Final Approval Order. The Final Order recites that by entering into the settlement agreement, the parties are not deemed to have admitted or conceded liability with respect to any of the pending claims or defenses alleged. Although the application of "absolute bar state" laws regarding the sufficiency of the presale notices may have been a factor in the parties' decision to settle the litigation, such considerations are typical of parties' assessment of litigation hazards in arriving at a negotiated settlement. The fact that the terms of the settlement agreement were approved and incorporated into the court's Preliminary Order and Final Order does not serve to convert the discharge of the debt from being entered into voluntarily to one forced by operation of state law. Therefore, section 1.6050P-1(b)(2)(F) applies.

Entity 1 also argues that there was no identifiable event because the court in its Preliminary Order stated that the court had made an independent judicial investigation into the legal sufficiency of the presale notices and held that the presale notices are unenforceable in "absolute bar states." Entity 1 argues that under law, a final order incorporates all preliminary orders, citing

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The Preliminary Order provides that it will be null and void and without prejudice to the rights of the parties if the settlement is rescinded or terminated, or if final approval of the settlement does not occur. The court's Final Approval of the settlement does not incorporate the Preliminary Order, but it does incorporate the settlement agreement, which includes a complete denial of liability. The Final Approval Order also notes in paragraph 15 that nothing in the order or the judgment may be construed as an admission or concession of any claim, including of any alleged violation or failure to comply with any law. does not address preliminary orders; instead, it deals only with interlocutory judgments, which are "prior orders or judgments that adjudicated some—but fewer than all—of the claims and the rights and liabilities of all the parties." Id. Under law, a court's final judgment on a case finalizes all prior adjudication of issues in that case, permitting appeal of the prior adjudications. But this says nothing about court orders that do not, on their own, adjudicate any issues. Here, as discussed the Preliminary Order did not adjudicate any issues. As such, the court's final approval did through incorporation adjudicate the issue of the debts' enforceability, and neither order causes the debts to be unenforceable by operation of law.

Entity 1 has never made any admission regarding the alleged inadequacy of the presale notices. It vigorously pursued the litigation, including filing a Motion for Summary Judgment, throughout the pendency of the case. It was only by entering into a settlement agreement with the class members that Entity 1 gave up its disputed claims to deficiency amounts. The debt write-off is due to the settlement agreement, which is an identifiable event under section 1.6050P-1(b)(2)(F) of the Treasury regulations.

The second possible event, section 1.6050P-1(b)(2)(G), provides that a discharge of indebtedness exists where a creditor discontinues collection activity pursuant to a decision by the creditor or a defined policy of the creditor. According to section 1.6050P-1(b)(2)(iii), a creditor's defined policy includes both a written policy and the creditor's established business practice. In this case, the cancellation of indebtedness is not a result of any defined policy or business practice of Entity 1, but rather by its decision to discontinue collection action as part of settling the litigation. This decision therefore may fall within subsection (G). In any event, even if subsection (G) of the regulation did not apply, the event set forth in regulation subsection (F), as set forth above, does apply and the section 6050P reporting requirements must be met.

Conclusion

Based solely on the information provided and the representations made, Entity 1 is required to file Forms 1099-C with respect to the write-off of balances and charges pursuant to its settlement agreement because the discharge was the result of an identifiable event listed in section 1.6050P-1(b)(2).

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 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, a copy of this letter is being sent to your authorized representatives.

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,

Blaise Dusenberry
Senior Counsel, Branch 1
(Procedure & Administration)