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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

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February 17, 2021

Legend

Taxpayers	=
State	=
Year 1	=
Year 2	=
Entity A	=
Entity B	=
Entity C	=
Firm	=

Dear :

This letter responds to your request for an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a regulatory election. Specifically, Taxpayers have requested an extension of time to make an election under section 108(c)(3)(C) of the Internal Revenue Code of 1986, as amended (IRC), and § 1.108-5(b) of the Income Tax Regulations, with respect to discharge of indebtedness income, effective for Taxpayers' Year 1 federal income tax return.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to Taxpayers.

FACTS

Entity A and Entity B are State limited partnerships taxed as a partnership for federal income tax purposes and are indirectly wholly owned by Taxpayers. Entity A and Entity B borrowed money from Entity C to fund the acquisition of several real property assets which then were used in the trade or business of Entity A and Entity B. The loans were evidenced by notes and were secured by the real property assets. In Year 1, the loans were forgiven as part of a new market tax credit transaction.

Taxpayers engaged Firm, a qualified tax professional with many years of experience, to prepare the federal income tax returns for Taxpayers, Entity A and Entity B for the tax year ended Year 1.

Taxpayers provided Firm with the relevant facts regarding the debt forgiveness that happened in Year 1. Firm discussed the Year 1 cancellation of debt with Taxpayers and researched the matter and facts. Firm concluded that such debt was "qualified real property business indebtedness" within the meaning of § 108(c)(3), as (i) the debt was incurred in connection with the acquisition of real property used in a trade or business and secured by such property, and (ii) the debt was incurred after January 1, 1993 to acquire, construct, reconstruct, or substantially improve such real property.

Firm advised Taxpayers that the income from the discharge of the "qualified real property indebtedness" was excludable from Taxpayers gross income under §§ 108(a)(1)(D) and 108(c). Taxpayers discussed the availability of an election pursuant to § 108(c)(3)(C) with Firm and was advised that the basis of the real property would have to be reduced in order for the income from discharge of indebtedness to be excluded from Taxpayers' gross income. Firm understood that Taxpayers wanted to make an election under § 108(c)(3)(C) to exclude the income from discharge of indebtedness from Taxpayers gross income.

Accordingly, Firm prepared Taxpayers' federal income tax return for Year 1 excluding the income from the discharge of indebtedness from gross income and reduced the assets' basis pursuant to §§ 108 and 1017. Taxpayers reviewed the federal income tax return and the taxable income reflected the expected excluded income from the discharge of indebtedness under §§ 108(a)(1)(D) and 108(c).

Firm also prepared the Year 1 Form 1065 for Entity A and the Year 1 Form 1065 for Entity B along with the relevant Schedule K-1s. At the direction of Firm, each of Entity A and Entity B reduced the basis of the depreciable real property previously secured by the promissory notes on their respective Form 1065 by creating negative depreciable assets that equaled the amount of the forgiven debt and the relevant Schedule K-1s excluded the income from discharge of indebtedness.

During the preparation of Taxpayers' Year 2 federal income tax return, Firm discovered that the relevant Form 982 (Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)) ("Form 982") was inadvertently omitted from the Year 1 federal income tax return and therefore, the § 108(c)(3)(C)

election was not effectively made, despite excluding the income from discharge of indebtedness from the Taxpayers' gross income and reducing the basis the depreciable real property previously secured by such indebtedness.

Additionally, Firm concluded that both Entity A and Entity B's Year 1 Form 1065 should have shown the income from discharge of indebtedness which would then be excluded by Taxpayers on the Year 1 federal income tax return. In addition, Entity A and Entity B's treatment of reduction of basis was erroneously made on the respective Year 1 Form 1065s, as pursuant to § 1017(a)(1) and § 1.1017-1(a) the reduction of basis should be made on the first day of the taxable year following the taxable year that the taxpayer excluded the discharge of indebtedness income and should be made as a reduction of the adjusted basis of the property and not as a negative asset as presented on both Entity A and Entity B's Year 1 Form 1065. If such request is granted, Taxpayers intend to amend their Year 1 Tax Return to correctly reflect the requirements of § 1.1017-1. Taxpayers also intend to cause Entity A and Entity B to file amended Year 1 and Year 2 Form 1065's to properly reflect the §108(c)(3)(C) election.

Taxpayers represent that (i) Taxpayers' adjusted basis in the depreciable property is greater than the amount of the cancellation of debt income and (ii) Taxpayers did not exclude an amount under § 108(a)(1)(D) that exceeded the excess of the principal amount of indebtedness over the fair market value of the real property.

Taxpayers are not accountants or tax professionals. Taxpayers were not aware of the requirement that a Form 982 was required to be included with Taxpayers individual federal income tax return and Firm did not advise Taxpayers that Form 982 was needed to make an effective election.

In separate affidavits, Taxpayers and Firm represent that Taxpayers had communicated their intention to make the Section 108(c)(3)(C) election to Firm, Firm was ultimately responsible for making the election, and Form 982 was inadvertently omitted by Firm from Taxpayers' Year 1 federal income tax return.

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 COD income under § 108(a)(1)(D).

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 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 that is excludible from gross income under § 108(a). The election is made on a completed Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).

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 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) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service, or 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 will not be 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.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer –

> (i) seeks to alter a return position for which an accuracy-related penalty 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 material respects of the required election and related tax consequences, but chose not to file 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 Taxpayers, we conclude that Taxpayers have 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

Accordingly, based solely on the facts and information submitted and the representations made in the ruling request, we grant Taxpayers an extension of 45 days from the date of this letter to file an amended return to make an election under Code Section 108(c)(3)(C) and Treas. Reg. § 1.108-5(b). The election is to be made on Form 982 as required by § 108(c)(1) in making this election, Taxpayers will reduce basis in their depreciable real property on their Year 2 tax return to the extent that would have been required if the election had been timely made on the original return.

Additionally, within 45 days of the date of this letter, Taxpayers are also required to amend Entity A and Entity B’s Year 1 and Year 2 Form 1065s to properly reflect the § 108(c)(3)(C) election and the requirements of § 1.1017-1.

CAVEATS

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. 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)(11). 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 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 faxed to your authorized representative.

Sincerely,

Angella L. Warren
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: