Internal Revenue Service

Number: **201021018**
Release Date: 5/28/2010

Index Number: 6050P.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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, ID No.

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Refer Reply To:
CC:PA:01
PLR-147680-09

Date: February 05, 2010
February 05, 2010

Legend

Entity 1 =
Entity 2 =
Entity 3 =
State X =
Date 1 =
Date 2 =
Date 3 =
Asset =
Collection Remedy =

Dear :

This letter responds to the letter dated October 8, 2009, submitted on behalf of Entity 1, requesting the following ruling:

Entity 1 is not 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 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.

Facts

Entity 1 is a financial institution chartered by State X providing its members thrift services such as checking and savings accounts, certificates of deposit, a source of credit, and other fiscal and financial services. Entity 2 was a financial institution chartered by State X which provided similar services to its members. Entity 1 is the surviving party and successor to Entity 2 by merger effective Date 1. Entity 3 was a

service company that offered Asset sale installment contracts from dealers to financial institutions for the financing of Assets and serviced such contracts, including, when necessary, initiating default proceedings on behalf of the financial institution that held a security interest in the Asset. Entity 2 acquired several Asset loan installment contracts and retained Entity 3 for servicing, collection, and enforcement on those contracts. On Date 2, a class action lawsuit was filed by consumers in State X against Entity 2 and Entity 3 alleging violations of State X state law with respect to Asset financing contracts owned by Entity 2 and serviced by Entity 3. The lawsuit alleged several violations of State X law, including that notices related to Collection Remedy did not meet statutory notice requirements. Entity 3 was subsequently dismissed from the lawsuit and Entity 1 was ordered to be the proper remaining defendant pursuant to its merger with Entity 2. On Date 3, Entity 1 and class plaintiffs signed a Memorandum of Understanding (MOU) settling the entire class action lawsuit. The MOU provides, inter alia, that the lawsuit be dismissed with prejudice and that Entity 1 has agreed under the MOU to close all accounts and write off all balances owed, including judgment balances.

Law & 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. In addition, section 1.6050P-1(b)(2) of the Treasury Regulations provides that a discharge of indebtedness occurs if one of the following identifiable events takes place:

(A) A discharge of indebtedness under title 11 of the United States Code (bankruptcy);
(B) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable in a receivership, foreclosure, or similar proceeding in a federal or state court, as described in section 368(a)(3)(A)(ii) (other than a discharge described in paragraph (b)(2)(i)(A) of this section);
(C) A cancellation or extinguishment of an indebtedness upon the expiration of the statute of limitations for collection of an indebtedness, subject to the limitations described in paragraph (b)(2)(ii) of this section, or upon the expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding;
(D) A cancellation or extinguishment of an indebtedness pursuant to an election of foreclosure remedies by a creditor that statutorily extinguishes or bars the creditor's right to pursue collection of the indebtedness;
(E) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable pursuant to a probate or similar proceeding;
(F) A discharge of indebtedness pursuant to an agreement between an applicable financial entity and a debtor to discharge indebtedness at less than full consideration;
(G) A discharge of indebtedness pursuant to a decision by the creditor, or the application of a defined policy of the creditor, to discontinue collection activity and discharge debt; or
(H) The expiration of the non-payment testing period, as described in paragraph (b)(2)(iv) of this section.

Out of the above events, only two have a potential bearing on the requested ruling.

The first possible event, section 1.6050P-1(b)(2)(F), states that an identifiable event exists where 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 (an applicable financial entity) and the debtors are agreeing to the entry of a Court approved and supervised judgment which incorporates the MOU. At first blush, it appears that there is an agreement between Entity 1 and its debtors to discharge indebtedness. The agreement however, merely reflects the operation of state law. The write-off of all Collection Remedy deficiency balances is based upon applicable State X law, which bars recovery of any deficiency balance remaining after Collection Remedy for failure to strictly comply with notice requirements. Therefore, the decision to discharge these balances and charges is not triggered by an agreement between Entity 1 and the debtors. The discharge is triggered by the applicable State X case law and statutes; the agreement simply reflects the law. The fact that Entity 1 and plaintiffs chose to settle the lawsuit as opposed to going to trial is immaterial. Thus, section 1.6050P-1(b)(2)(F) of the Treasury Regulations does not apply.

The second possible event, section 1.6050P-1(b)(2)(G), holds 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. Neither a decision nor a policy triggers the cancellation of indebtedness in this case. As stated above, the applicable State X statutory provisions trigger the discontinuance of Entity 1's collection activity. Thus, section 1.6050P-1(b)(2)(G) does not apply.

Based on the above analysis, the discharges by Entity 1 are not subject to the reporting requirements of section 6050P or the regulations thereunder.

Conclusion

Based solely on the information provided and the representations made, we conclude that Entity 1 is not 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 not the result of an identifiable event listed in section 1.6050P-1(b)(2), but rather was required by operation of state law.

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 representative.

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,

Charles A. Hall
Senior Technician Reviewer
(Procedure & Administration)

Enclosures (2)