Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201338007**
Release Date: 9/20/2013

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

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-102259-13

Date:
June 11, 2013

LEGEND

Taxpayers =

LLC =
Year 1 =
Year 2 =
Year 3 =
$a =
$b =
$c =
Firm =

Dear :

This letter responds to your letter requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a regulatory election. Specifically, you have requested an extension of time to make an election under § 108(c)(3)(C) of the Internal Revenue Code and § 1.108-5(b) of the Income Tax Regulations, to exclude income resulting from the discharge of qualified real property business indebtedness and to reduce the basis of depreciable real property, effective for Taxpayers' Year 1 tax return.

FACTS

Taxpayers, husband and wife, file a joint federal income tax return reporting income on a calendar year and use the cash receipts and disbursements method of accounting. Taxpayers are limited partners, who each own an interest in LLC, a limited liability company that is treated as a partnership for federal income tax purposes.

In Year 1, Taxpayers each received a Schedule K-1 from LLC that showed cancellation of debt income (COD) in the amount of $a, total debt before payoff in the amount of $b, and the market value of the property in December of Year 1 in the amount of $c. The Schedule K-1s also included a footnote stating that the partners may be able to exclude some or all of the cancellation of debt income pursuant to § 108(c), which relates to qualified real property business indebtedness. Prior to LLC filing its Year 1 federal tax returns, a member of LLC contacted Taxpayers, who orally informed the member that they intended to make the § 108(c)(3)(C) election on their Year 1 joint federal income tax return.

Taxpayers' Year 1 Form 1040 was prepared by Firm, which did not take into account the Schedule K-1's footnote regarding § 108(c). Due to this oversight, Firm did not discuss the § 108(c)(3)(C) and § 1.108-5(b) election with Taxpayers nor did it make the election on Taxpayers' behalf to reduce the basis of depreciable property and to exclude income resulting from the discharge of qualified real property business indebtedness. Taxpayers' Year 1 Form 1040 was timely filed.

In Year 3, while preparing Taxpayers' Year 2 federal income tax return, Firm discovered that the current year Schedule K-1s from LLC reduced Taxpayers' tax basis capital accounts and pursuant to § 1.1017-1 reduced Taxpayers' proportionate interest in the adjusted basis of LLC's depreciable property as though the § 108(c)(3)(C) election had been made.

After discovering the Firm's oversight in not including the Form 982 making the § 108(c)(3)(C) election on Taxpayers' Year 1 federal joint income tax return, Taxpayers filed this request for an extension of time to make the election. Firm and LLC have submitted affidavits consistent with the above facts.

Taxpayers represent that: 1) granting relief under § 301.9100-3 will not result in a lower tax liability in the aggregate for all years to which the election applies than Taxpayers would have had if the election had been timely made; 2) Taxpayers' adjusted basis in the depreciable property is greater than the amount of COD income; and 3) Taxpayers will not exclude an amount under § 108(a)(1)(D) that exceeds the excess of the principal amount of indebtedness over the fair market value of the real property.

LAW AND ANALYSIS

Section 108(a)(1)(D) provides that gross income does not include any amount that 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)(2) 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).

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 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 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

Based solely on the information submitted and the facts as represented 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 the election under § 108(c)(3)(C) and § 1.108-5(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: