

Number: **200637023**
Release Date: 9/15/2006
Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Index Number: 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-145629-05
Date: 6/12/06

Legend

X –
Y –
Z –
A –
B –
Year 1 –
Date 1 –

Dear _____ :

This is in reply to the private letter ruling request in which X has requested an extension of time, under the provisions of §§ 301.9100-1 and 301.9100-3 of the Procedure and Administrative Regulations, to make an election under § 108(b)(5) of the Internal Revenue Code.

FACTS

X is a public limited company incorporated under the laws of A and B. In Year 1, X underwent a financial restructuring in which it transferred all of its assets and liabilities to a newly-created successor corporation, Y. Y became a wholly-owned subsidiary of Z. In the course of the financial restructuring, X had discharge of indebtedness income subject to § 108(a). X retained a qualified tax professional to provide tax advice, including the advisability of making an election under § 108(b)(5). Due to inadvertence (and not hindsight or an intention to avoid federal taxes), the § 108(b)(5) election was not made.

X is requesting administrative relief, under §§ 301.9100-1 and 301.9100-3 for an extension of time to file an election under § 108(b)(5) to reduce the basis of depreciable property before reducing other tax attributes, for the taxable year ending on Date 1.

LAW AND ANALYSIS

Under § 108(a), gross income does not include amounts otherwise includible in income due to a discharge of indebtedness if the discharge is described in § 108(a)(1)(A), (B), (C), or (D). If a taxpayer excludes income under § 108(a)(1)(A), (B), or (C), the taxpayer must reduce certain tax attributes, as described in § 108(b)(2).

Section 108(b)(5) provides that a taxpayer can elect to reduce the basis of depreciable property before making the reductions required under the ordering rules set forth in § 108(b)(2). Section 1017 provides the rules for making the basis reductions required by §§ 108(b)(2) and 108(b)(5). Section 108(d)(9) provides that an election under § 108(d)(5) is made on the taxpayer's return for the taxable year in which the discharge of indebtedness occurs or at such time and manner as permitted in regulations prescribed by the Secretary.

Section 1.108-4(b) of the Income Tax Regulations provides, in part, that to make an election under § 108(b)(5), a taxpayer must enter the appropriate information on Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment). Further, the taxpayer must attach the form to the timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under § 108(a).

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the government. Section 9100-3(b) sets forth rules for determining when a taxpayer has acted reasonably and in good faith, while § 301.9100-3(c) addresses circumstances in which the interests of the government are prejudiced by the granting of relief under § 301.9100-3.

CONCLUSION

Based on all the facts and information submitted and the representations made, it is our determination that X acted reasonably and in good faith as described in § 301.9100-3(b)(1), and granting the requested relief will not prejudice the interests of the government. Accordingly, X is granted an extension of time of 60 days from the date of this letter ruling to make the election under § 108(b)(5). The taxpayer should attach this letter to its tax return on which the election is made.

CAVEATS

The ruling contained in this letter is based upon the 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 ruling, it is subject to verification on examination.

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. In particular, we express no opinion as to whether the taxpayer qualifies to make the election set forth in § 108(b)(5). This ruling simply extends the period of time in which the taxpayer may make such election.

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. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

In accordance with the provisions of a Power of Attorney on file with this office, we are sending a copy of this letter to the taxpayer's authorized representatives.

Sincerely,

Michael J. Montemurro
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures
Copy of this letter
Copy for § 6110 purposes