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Part III - Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, § 108)

Rev. Proc. 2009-XX

SECTION 1. PURPOSE

.01 This revenue procedure provides the exclusive procedures for taxpayers to make an election to defer recognizing discharge of indebtedness income (cancellation of debt or COD income) under § 108(i) of the Internal Revenue Code.

.02 This revenue procedure also requires taxpayers making the § 108(i) election to provide additional information on returns beginning with the taxable year following the taxable year for which the taxpayer makes the election. This revenue procedure describes the time and manner of providing this additional information.

.03 The Internal Revenue Service and Treasury Department may issue additional guidance under § 108(i) and, if appropriate, will modify this revenue procedure to provide procedures consistent with the additional guidance.

SECTION 2. BACKGROUND

.01 *Section 108(i), Generally.* Section 108(i) was added to the Code by § 1231 of the American Recovery and Reinvestment Tax Act of 2009, Pub. L. No. 111-5, 123 Stat. 338. In general, § 108(i) provides that, at the election of a taxpayer, COD income realized in connection with a reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument is includible in gross income ratably over a 5-taxable-year inclusion period, beginning with the taxpayer's fourth or fifth taxable year following the taxable year of the reacquisition. Generally, if a taxpayer makes a § 108(i) election and reacquires (or is treated as reacquiring) the applicable debt instrument generating the COD income for a new debt instrument with original issue discount (OID), then interest deductions for this OID also are deferred, as provided in § 108(i)(2). The OID deferral rule in § 108(i)(2) applies at the entity level for a pass-through entity. For example, a partnership (and therefore its partners) may not deduct the OID described in § 108(i)(2)(A)(ii). The OID deferral rule, however, does not apply if the amount of OID is less than a de minimis amount, as determined under § 1273(a)(3) and § 1.1273-1(d) of the Income Tax Regulations. A taxpayer must take into account any item of income or deduction deferred under § 108(i) and not previously taken into account in the taxable year in which certain events occur (such as the liquidation or sale of substantially all the assets of the taxpayer and upon other events specified in administrative guidance). Section 108(i)(5)(D). The rule regarding acceleration of deferred COD income and OID deductions also applies in the case of certain dispositions by persons holding ownership interests in pass-through entities. Section 108(i)(5)(D)(ii). For purposes of § 108(i), regulated investment companies (as defined

in § 851(a)) and real estate investment trusts (as defined in § 856(a)) are not pass-through entities**.**

.02 *Applicable Debt Instrument.* Section 108(i)(3)(A) defines the term "applicable debt instrument" to mean any debt instrument issued by a C corporation or by any other person in connection with the conduct of a trade or business by that person. The term "debt instrument" means any bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness within the meaning of § 1275(a)(1). Section 108(i)(3)(B). For purposes of § 108(i), in the case of an intercompany obligation (as defined in § 1.1502-13(g)(2)(ii)), an applicable debt instrument includes only an instrument for which COD income is realized upon the instrument's deemed satisfaction under § 1.1502-13(g)(5).

.03 *Reacquisition.* Section 108(i)(4)(A) defines the term "reacquisition" to mean, with respect to any applicable debt instrument, any acquisition of the debt instrument by the debtor that issued (or is otherwise the obligor under) the debt instrument, or a person related to the debtor under § 108(e)(4). The term "acquisition" includes an acquisition of the debt instrument for cash or other property, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, the contribution of the debt instrument to capital, and the complete forgiveness of the indebtedness by the holder of the debt instrument. See § 108(i)(4)(B). The term "acquisition" also includes an indirect acquisition within the meaning of § 1.108-2(c) if a direct acquisition of the debt instrument would qualify for an election under § 108(i). For

example, if a corporation acquires debt of a partnership that the partnership issued in connection with its trade or business, and the partnership and corporation become related within six months of the corporation's acquisition of the debt, the indirect acquisition is an acquisition for which an election under § 108(i) may be made.

.04 *General Requirements for the Section 108(i) Election.* Section 108(i)(5)(B) provides, in general, that a taxpayer makes the § 108(i) election by including a statement that clearly identifies the applicable debt instrument with the return of tax imposed for the taxable year in which the reacquisition of the instrument occurs. The statement must include the amount of income to which § 108(i)(1) applies and other information the Internal Revenue Service may prescribe. The election is irrevocable.

.05 *Section 108(i) Elections Made by Pass-through Entities.* In the case of COD income realized by a pass-through entity from the reacquisition of an applicable debt instrument, the pass-through entity makes the § 108(i) election. Section 108(i)(5)(B)(iii).

.06 *Additional Information on Subsequent Years' Returns.* Section 108(i)(7) authorizes the Service to issue guidance necessary or appropriate for applying § 108(i), including requiring reporting the election and other information on returns of tax for subsequent taxable years.

.07 *Allocation of Deferred COD Income on Partnership Indebtedness.* If a partnership elects to defer all or any portion of COD income realized from the reacquisition of an applicable debt instrument, all of the COD income with respect to that debt instrument is allocated to the partners in the partnership immediately before the discharge in the manner in which the income would have been included in the

distributive shares of these partners under § 704 if that income was not deferred under § 108(i), and each partner's share of this COD income is the partner's COD income amount ("COD income amount"). The partner's COD income amount that is deferred under § 108(i) is the partner's deferred amount ("deferred amount"). The partner's COD income amount that is included in the partner's distributive share of partnership income for the taxable year of the partnership in which the reacquisition occurs is the partner's included amount ("included amount"). If a partnership elects to defer less than all of the COD income realized from the reacquisition of an applicable debt instrument, see section 4.04(3) of this revenue procedure.

.08 *Partner's Deferred § 752 Amount*. A decrease in a partner's share of a partnership liability resulting from the reacquisition of an applicable debt instrument that is not treated as a current distribution of money to the partner under § 752 by reason of § 108(i)(6) is the partner's deferred § 752 amount ("deferred § 752 amount"). A partner's deferred § 752 amount may not exceed the lesser of (i) the partner's deferred amount or (ii) gain that the partner would recognize in the year of reacquisition under § 731 as a result of the reacquisition absent § 108(i)(6). To determine the amount of gain that the partner would recognize under clause (ii) of the preceding sentence, the amount of any deemed distribution of money under § 752(b) resulting from the decrease in the partner's share of a reacquired applicable debt instrument that is treated as an advance or draw of money under § 1.731-1(a)(1)(ii) is determined as if no COD income resulting from the reacquisition of the applicable debt instrument is deferred under § 108(i). See Rev. Rul. 92-97, 1992-2 C.B. 124 and Rev. Rul. 94-4, 1994-1 C.B. 195. A

partner's deferred § 752 amount is treated as a distribution of money to the partner under § 752 at the same time, and to the extent remaining in the same amount, as the partner recognizes the COD income deferred under § 108(i).

.09 *Allocation of Deferred COD Income on S Corporation Indebtedness*. For purposes of § 108(i), an S corporation's deferred COD income under § 108(i) is shared pro rata only among those shareholders that are shareholders of the S corporation immediately before the reacquisition transaction.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that realize COD income from a reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in § 108(i).

SECTION 4. ELECTION PROCEDURES

.01 *In General.* A taxpayer within the scope of this revenue procedure makes the § 108(i) election by—

(1) Attaching a statement meeting the requirements of section 4.05 of this revenue procedure to the taxpayer's timely filed federal income tax return (including extensions) for the taxable year in which the reacquisition of the applicable debt instrument occurs, and

(2) If applicable, satisfying the additional requirements of section 4.07 or 4.08 of this revenue procedure.

.02 *Section 108(i) Elections Made by Members of Consolidated Groups*. The common parent of a consolidated group makes the § 108(i) election on behalf of all

members of the group. *See* § 1.1502-77(a).

.03 *Aggregation Rule*. A taxpayer within the scope of this revenue procedure may treat one or more applicable debt instruments that are part of the same issue, and that are reacquired during the same taxable year, as one applicable debt instrument. A pass-through entity may not aggregate applicable debt instruments that are part of the same issue under this section 4.03 if the owners and their ownership interests in the pass-through entity immediately prior to each reacquisition are not identical.

.04 *Partial Elections*.

(1) A taxpayer within the scope of this revenue procedure may make an election for any portion of COD income realized from the reacquisition of any applicable debt instrument. Thus, for example, if a taxpayer realizes $100 of COD income from the reacquisition of an applicable debt instrument, the taxpayer may elect to defer only $40 of the $100 of COD income under § 108(i)(1). The taxpayer may exclude the portion of COD income that the taxpayer does not elect to defer under § 108(i) ($60) under § 108(a)(1)(A), (B), (C), or (D), if applicable.

(2) A taxpayer is not required to make an election for the same portion of COD income arising from each applicable debt instrument that it reacquires, but may make an election for different portions of COD income arising from different applicable debt instruments (whether or not part of the same issue). Thus, for example, if a taxpayer realizes $100 of COD income from the reacquisition of an applicable debt instrument (Instrument A) and $100 of COD income from the reacquisition of a different applicable debt instrument (Instrument B), the taxpayer may elect to defer all or a portion of the

COD income associated with Instrument A and none or a different portion of the COD income associated with Instrument B.

(3) A partnership that elects to defer less than all of the COD income realized from the reacquisition of an applicable debt instrument may determine, in any manner, the portion, if any, of a partner's COD income amount that is the partner's deferred amount and the portion, if any, of a partner's COD income amount that is the partner's included amount. Thus, for example, one partner's deferred amount may be zero while another partner's deferred amount may equal that partner's COD income amount (or any portion thereof). Section 108(a)(1)(A), (B), (C), and (D) may apply to a partner's included amount. The partner's COD income amount, the partner's deferred amount, if any, and the partner's included amount, if any, are reported by the partnership as provided under section 4.07(1) of this revenue procedure and once reported may not be changed.

.05 *Contents of Statement*. A statement meets the requirements of this section 4.05 if the statement—

(1) *Label*. States "Section 108(i) Election" across the top.

(2) *Required information*. Provides, for each applicable debt instrument the reacquisition of which generates COD income that the taxpayer is electing to defer under § 108(i)—

(a) The name and taxpayer identification numbers of the issuer or issuers of the applicable debt instrument;

(b) A general description of the applicable debt instrument (including the issue

and maturity dates) and, in the case of any person other than a C corporation, a description of the person's trade or business to which the applicable debt instrument is connected;

(c) A general description of the reacquisition transaction or transactions generating the COD income (including the date(s) of the transaction(s));

(d) The total amount of COD income for the applicable debt instrument that results from the reacquisition and a general description of the manner in which this amount is calculated (in the case of a partnership, the aggregate of the partners' COD income amounts);

(e) The amount of COD income for the applicable debt instrument that the taxpayer is electing to defer under § 108(i) (in the case of a partnership, the aggregate of the partners' deferred amounts); and

(f) In cases in which a new debt instrument is issued or deemed issued in exchange for the applicable debt instrument (including exchanges under § 108(e)(4), § 108(i)(2)(B), and § 1.1001-3), the issuer's name, the issuer's taxpayer identification number, a general description of the new debt instrument and whether the new debt instrument has OID, and if the new debt instrument has OID, a schedule of the OID that the issuer expects to accrue each taxable year on the instrument and the amount of OID that the issuer expects to defer under § 108(i)(2) each taxable year.

.06 *Supplemental information*. The statement described in section 4.05 of this revenue procedure also may specify an amount greater than the amount identified in section 4.05(2)(e) of this revenue procedure that the taxpayer elects to defer under

§ 108(i) if the Service subsequently concludes that the taxpayer understated the amount of COD income described in section 4.05(2)(d) of this revenue procedure. This amount also may be described as a percentage of the additional COD income.

.07 *Additional Information Required for a § 108(i) Election by a Partnership.*

(1) *Partnership reporting requirements*. A partnership making the election must attach a statement meeting the requirements of section 4.05 of this revenue procedure and, if applicable, section 4.06 of this revenue procedure, to the partnership's timely filed federal income tax return (including extensions) for the taxable year in which the reacquisition of the applicable debt instrument occurs and attach to each Schedule K-1 (Form 1065) for that taxable year, a statement that-

(a) *Label*. States "Section 108(i) K-1 Election Statement" across the top.

(b) *Required information*. Clearly identifies for each applicable debt instrument to which an election under § 108(i) applies—

(i) The partner's COD income amount, the partner's deferred amount, and the partner's included amount;

(ii) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) in the current taxable year;

(iii) The partner's share of each liability of the partnership described in section 4.05(2)(f) of this revenue procedure;

(iv) The partner's share of the decrease in the partnership liability that results from the reacquisition of the applicable debt instrument;

(v) The partner's share of the decrease in the partnership liability that

results from the reacquisition of the applicable debt instrument that is treated as a distribution of money under § 752 in the current taxable year; and

(vi) The partner's deferred § 752 amount as described in section 2.08 of this revenue procedure, if any. If a partner fails to provide the written statement required by section 4.07(2) of this revenue procedure, the partnership must indicate that the amounts described in section 4.07(1)(b)(v) and (vi) of this revenue procedure may not be calculated because the partner did not provide the information necessary to report these amounts.

(2) *Partner reporting requirements*. If a partnership makes a § 108(i) election each partner with a deferred amount must provide to the partnership, within 30 days of the date of a request by the partnership, a written statement signed under penalties of perjury that includes information requested by the partnership necessary to compute the partner's basis in the partnership and the partner's deferred § 752 amount as described in section 2.08 of this revenue procedure. A partner's failure to comply with this reporting requirement does not affect a partnership's election under § 108(i) for an applicable debt instrument only if the partnership makes reasonable efforts before making the § 108(i) election to obtain the required information from the partner and otherwise complies with the requirements of this revenue procedure. If a partner provides its written statement under this section 4.07(2) after the partnership has filed the Section 108(i) K-1 Election Statement, the partnership must file with the Service and provide to the partner an amended Section 108(i) K-1 Election Statement reporting the information required under section 4.07(1)(b)(v) and (vi) of this revenue procedure and

amended Section 108(i) K-1 Information Statement(s), as appropriate.

.08 *Additional Information Required for a § 108(i) Election by an S Corporation*. A taxpayer making the election that is an S corporation must attach a statement meeting the requirements of section 4.05 of this revenue procedure and, if applicable, section 4.06 of this revenue procedure to the S corporation's timely filed federal income tax return (including extensions) for the taxable year in which the reacquisition of the applicable debt instrument occurs and attach to each Schedule K-1 (Form 1120S) for that taxable year a statement that—

(1) *Label*. States "Section 108(i) K-1 Election Statement" across the top.

(2) *Required information*. Clearly identifies for each applicable debt instrument to which an election under § 108(i) applies—

(i) The shareholder's share of the S corporation's COD income that the S corporation elects to defer under § 108(i); and

(ii) The shareholder's share of the S corporation's OID deduction deferred under § 108(i)(2)(A)(i) in the current taxable year.

.09 *Certain Foreign Persons*. The rules of this section 4.09(1), (2), (3) and (4) apply to a foreign partnership that is not otherwise required to file a federal income tax return ("nonfiling foreign partnership"). See section 1.6031(a)-1(b).

(1) A nonfiling foreign partnership making the election must attach a statement satisfying the requirements of section 4.05 of this revenue procedure and, if applicable, section 4.06 of this revenue procedure, to a partnership return it files satisfying the requirements of § 1.6031(a)-1(b)(5).

(2) The nonfiling foreign partnership must make the election, in accordance with § 1.6031(a)-1(b)(5), by the date for the partnership to timely file a tax return, as if it had a filing obligation, for the taxable year in which the reacquisition of the applicable debt instrument occurs.

(3) For each U.S. person and controlled foreign corporation that is a partner in the nonfiling foreign partnership ("affected partner"), the partnership must file a Schedule K-1 (Form 1065) for that taxable year and attach to its return and to each Schedule K-1 (Form 1065) a statement satisfying the requirements of section 4.07(1) of this revenue procedure. The partnership need not complete Part III of the Schedule K-1 (Form 1065), Partner's Share of Current Year Income, Deductions, Credits, and Other Items. A copy of the Schedule K-1 (Form 1065) for the year of the election must be provided to these partners by the date (including extensions) provided in § 1.6031(b)-1T(b).

(4) Each affected partner must satisfy the reporting requirements of section 4.07(2) of this revenue procedure.

(5) The rules of this section 4.09(5) apply to a foreign corporation described in this section. The controlling domestic shareholder(s) of a controlled foreign corporation or a noncontrolled § 902 corporation may make the election described in § 108(i) on behalf of the foreign corporation if it satisfies the requirements of § 1.964-1(a)(3), including satisfying the requirements of section 5 of this revenue procedure.

.10 *Protective § 108(i) Election.* A taxpayer may make a protective election under § 108(i) if the taxpayer issues a new debt instrument or is deemed to issue a new debt instrument in exchange for the applicable debt instrument (including exchanges under

§ 108(e)(4), § 108(i)(2)(B), and § 1.1001-3) and the taxpayer concludes that the exchange does not result in the realization of COD income, reports the exchange on its federal income tax return in a manner consistent with the taxpayer's conclusion, and would be within the scope of this revenue procedure if the taxpayer's conclusion were incorrect. If the Service determines the taxpayer's conclusion that the exchange does not result in the realization of COD income is incorrect, the taxpayer's protective election is treated as a valid, irrevocable election under § 108(i). A taxpayer makes a protective election by attaching a statement meeting the requirements of this section 4.10 to the taxpayer's timely filed federal income tax return (including extensions) for the taxable year in which the reacquisition of the applicable debt instrument occurs, and for each of the 10 taxable years following the taxable year of the election. A statement meets the requirements of this section 4.10 if the statement—

(1) States "Section 108(i) Protective Election" across the top;

(2) Provides the information required under section 4.05(2)(a), (b), and (c), of this revenue procedure;

(3) Provides that the amounts described in sections 4.05(2)(d) and (e) of this revenue procedure are zero; and

(4) Specifies the amount that the taxpayer elects to defer under § 108(i) if the Service concludes that the taxpayer realized COD income, which the taxpayer may describe as the entire amount of COD income or as a percentage of the COD income. If the taxpayer is a partnership, the partnership must specify each partner's share of this amount (the partner's deferred amounts), which the partnership may describe for each

partner as the partner's COD income amount or as a percentage of the partner's COD income amount.

SECTION 5. REQUIRED INFORMATION STATEMENT

.01 *Information Statement.* Pursuant to § 108(i)(7)(B), a taxpayer that makes an election under § 108(i) (except for a protective election under section 4.10 of this revenue procedure) must attach a statement meeting the requirements of section 5.02 of this revenue procedure (and in the case of a partnership or S corporation, an additional statement meeting the requirements of section 5.03 and 5.04 of this revenue procedure, respectively) to its federal income tax return for each taxable year beginning with the taxable year following the taxable year for which the taxpayer makes the election and ending with the taxable year in which the taxpayer has included all remaining COD income deferred under § 108(i) in gross income. The taxpayer may use a form the Service provides for this purpose.

.02 *Contents of Statement*. A statement meets the requirements of this section 5.02 if the statement—

(1) *Label.* States "Section 108(i) Information Statement" across the top;

(2) *Required information.* Clearly identifies for each applicable debt instrument to which an election under § 108(i) applies—

(a) The amount of COD income deferred under § 108(i) that is included in income in the current taxable year under § 108(i)(1)(A) or (B), if any;

(b) The amount of COD income deferred under § 108(i) that is included in income in the current taxable year under § 108(i)(5)(D), if any, including a description

and date of the acceleration event described in § 108(i)(5)(D);

(c) The amount of the remaining deferred COD income (in the case of a partnership, the remaining deferred COD income is the aggregate of the partners' deferred amounts that have not been included in income in the current or prior taxable years);

(d) The amount of OID deduction deferred under § 108(i) that is allowable as a deduction in the current year under § 108(i)(2)(A)(ii), if any;

(e) The amount of any OID deduction deferred under § 108(i) that is allowable as a deduction in the current taxable year under § 108(i)(5)(D), if any; and

(f) The amount of the remaining deferred OID deduction.

(3) *Election Attached.* Includes a copy of the election statement described in section 4.05 and 4.06 of this revenue procedure.

.03 *Additional Information for an Information Statement Filed by a Partnership.* Pursuant to § 108(i)(7)(B), a partnership that makes an election under § 108(i) (except for a protective election under section 4.10 of this revenue procedure) must attach to its federal income tax returns the statements required under section 5.02 of this revenue procedure and also attach to each Schedule K-1 (Form 1065) for each taxable year in which a statement is required under section 5.01 of this revenue procedure a statement meeting the requirements of this section 5.03. A statement meets the requirements of this section 5.03 if the statement—

(1) *Label*. States "Section 108(i) K-1 Information Statement" across the top of the statement.

(2) *Required information*. Clearly identifies for each applicable debt instrument to which a § 108(i) election applies—

(a) The amount of the partner's deferred amount that has not been included in income as of the end of the prior taxable year;

(b) The amount of the partner's deferred amount that the partner must include in income in the current taxable year under § 108(i)(1)(A) or (B), if any, and § 108(i)(5)(D), if any, and the remaining amount of the partner's deferred amount that has not been included in income in the current or prior taxable years;

(c) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) in the current taxable year;

(d) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(2)(A)(ii), if any, and § 108(i)(5)(D), if any, and the partner's share of the partnership's remaining deferred OID deduction; and

(e) The partner's deferred § 752 amount that is treated as a distribution of money to the partner under § 752 in the current taxable year, if any, and the amount of any remaining deferred § 752 amount, if any. If a partner fails to provide the written statement required by section 4.07(2) of this revenue procedure, the partnership must indicate that the amounts described in this section 5.03(2)(e) may not be calculated because the partner did not provide the information necessary to report these amounts.

.04 *Additional Information for an Information Statement Filed by an S Corporation*. Pursuant to § 108(i)(7)(B), an S corporation that makes an election under § 108(i)

(except for a protective election under section 4.10 of this revenue procedure) must attach to its federal income tax returns the statements required under section 5.02 of this revenue procedure and also attach to each Schedule K-1 (Form 1120S) for each taxable year in which a statement is required under section 5.01 of this revenue procedure, a statement meeting the requirements of this section 5.04. A statement meets the requirements of this section 5.04 if the statement—

(1) *Label*. States “Section 108(i) K-1 Information Statement” across the top;

(2) *Required information*. Clearly identifies for each applicable debt instrument to which an election under § 108(i) applies, the shareholder’s share of the S corporation’s —

(a) Deferred COD income under § 108(i) that has not been included in income as of the end of the prior taxable year;

(b) Deferred COD income under § 108(i) that the shareholder must include in income in the current taxable year under § 108(i)(1)(A) or (B), if any, and § 108(i)(5)(D), if any, and the remaining deferred COD income that has not been included in income in the current or prior taxable years;

(c) OID deduction deferred under § 108(i)(2)(A)(i) for the current taxable year; and

(d) OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(2)(A)(ii), if any, and § 108(i)(5)(D), if any, and the remaining deferred OID deduction.

.05 *Additional Information For An Information Statement Filed By A Foreign*

Partnership Not Otherwise Required To File A Return.

(1) The rules of this section 5.05 apply to nonfiling foreign partnerships.

(2) Pursuant to § 108(i)(7)(B), a nonfiling foreign partnership that makes an election under § 108(i) (except for a protective election under section 4.10 of this revenue procedure) must file federal income tax returns meeting the requirements of § 1.6031(a)-1(b)(5) for each taxable year beginning with the taxable year following the taxable year for which the partnership makes the election and ending with the taxable year in which the partnership has included all remaining COD income deferred under § 108(i) in gross income.

(3) The nonfiling foreign partnership must attach to its federal income tax returns the statements required under section 5.02 of this revenue procedure taking into account only the portion of the COD income allocated to affected partners.

(4) For each affected partner the partnership must attach to a Schedule K-1 (Form 1065) for each taxable year in which a statement is required under section 5.01 of this revenue procedure a statement satisfying the requirements of section 5.03 of this revenue procedure.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for elections made after **[date of release].**

SECTION 7. TRANSITION RULE

The Service will treat a § 108(i) election as timely if a taxpayer files an election with the taxpayer's timely filed income tax return (including extensions) on or before **[insert date that is 30 days after date of release],** using any reasonable procedure to make

the election. However, if the election does not comply with this revenue procedure, the taxpayer must, on or before [**insert date that is 90 days after the date of release**], file an amended return for the taxable year of the election and attach an election statement that complies with this revenue procedure. A partnership or S corporation must also attach Section 108(i) Schedule K-1 Election Statements that comply with this revenue procedure and provide a copy of each partner's or shareholder's Section 108(i) Schedule K-1 Election Statement to the partner or shareholder. If the taxpayer has filed an election with a timely filed income tax return (including extensions) on or before **[insert date that is 30 days after the date of release],** and there is an inconsistency between that election and an amended federal income tax return filed for that taxable year before **[insert date that is 90 days after the date of release]**, the amended federal income tax return governs. A taxpayer that files the amended return on paper must write "Section 108(i) Election" on the top of the first page. A taxpayer that files the amended return electronically should indicate "Section 108(i) Election" on the return. See Publication 4163, Modernized e-File (MeF) Information for Authorized IRS e-file Providers for Business Returns, for more details.

SECTION 8. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2147.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB

control number.

The collection of information in this revenue procedure is in sections 4 and 5. This information is required to determine the amount of income and deductions a taxpayer elects to defer and to track those amounts until the taxpayer has reported all deferred income and deductions on the taxpayer's tax return. This information will be used during examination to verify that a taxpayer has correctly deferred income and deductions. The collection of information is required to obtain a benefit. The likely respondents are C corporations, shareholders of S corporations, partners of partnerships, and other individuals engaged in a trade or business, that reacquire applicable debt instruments in 2009 or 2010.

The estimated total annual reporting burden is ~~1,000 to 20,000~~ 12,000 to 300,000 hours. The estimated annual burden per respondent varies from 1 to ~~3~~ 8 hours, depending on individual circumstances, with an estimated average of ~~2~~6 hours. The estimated number of respondents is 1,000 to ~~10,000~~50,000.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by § 6103.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Craig Wojay of the Office of Associate Chief Counsel (Income Tax & Accounting) and Megan A. Stoner of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Craig Wojay at (202) 622-4920 or Megan

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