

A Carnival of Information



27th
annual
ACCOUNTING SHOW

September 19-21, 2012

Broward County Convention Center / Ft. Lauderdale



**27th Annual Accounting Show
September 20, 2012
Ft. Lauderdale**

1:40pm-3:55pm	<u>Tax Consequences of Bankruptcy/Insolvency.....1</u> R Lawrence Heinkel, JD, LL.M., EA, BSBA Tax Problem & Bankruptcy Attorney/Heinkel Law Group, PL
3:55pm-4:45pm	<u>Issues w/ P/S & Scorp Basis (at risk, susp losses)..... 28</u> Vicki H. Meyer, CPA Director/Thomas Howell Ferguson, PA

2011 - 2012 Accounting Shows Committee

Gary Fracassi - Chair		
Paulette Holder - Vice Chair		

Randee Abramson	Lucinda Gallagher	Christine Moreno
Jaime Angarita	Wendy Johnson	Mario Nowogrodzki
Alan Campbell	Thomas Longman	Pat Patterson
Bethany Carr	James Luffman	Robert Rankin
Lynn Clements	William Maloney	Richard Shapiro
Richard Dotson	Roger Michels	Poornima Srinivasan

Tax Consequences of Bankruptcy/Insolvency

R. Lawrence Heinkel, Esq., JD, LL.M., EA

R. Lawrence Heinkel, Esq., JD, LL.M
Tax and Bankruptcy Attorney
Heinkel Law Group, P.L.

Larry Heinkel is an attorney practicing throughout the State of Florida helping businesses and individuals resolve their state and federal tax problems. Mr. Heinkel has a bachelor's in Accounting (B.S.), a law degree (J.D.) and a master's in tax law (LL.M), all with honors and all from the University of Florida in Gainesville, Florida. While in the undergraduate program, Mr. Heinkel was an officer in Beta Alpha Psi, and was elected to both Omicron Delta Kappa and Florida Blue Key honoraries. During his law school career, Mr. Heinkel served as treasurer of the John Marshall Bar Association and was a member of the Law Review. His law review paper, "The Impact of the Installment Sales Revision Act of 1982 on Starker-type Exchanges" was published in the Journal of Real Estate Taxation. While pursuing his LL.M., Mr. Heinkel was a research assistant for Professor Oberst and published his article, "Section 338 – An Analysis and Proposals for Reform" in the Notre Dame Law Journal.

After spending about a dozen years dealing with corporate transactions and estate planning, Mr. Heinkel focused his career on resolving tax problems including the use of the bankruptcy laws to discharge older income taxes. Mr. Heinkel is a frequent lecturer for the Florida Institute of Certified Public Accountants (FICPA) at its various conferences around the state, and for various local chapters of the FICPA, the FSEA, and The Florida Bar.

In addition to this, Larry Heinkel has been an adjunct professor of business law and taxation at the graduate level at the University of Central Florida and Rollins College. He also has served on various boards of government entities, private schools, churches and other non-profit organizations.

Larry takes great pride in being able to bring a high-level of service and quality representation to individuals and small business owners who might not otherwise be able to afford help from the "big boys". And he enjoys being able to spread the word about some of the techniques he uses so more professionals can help more taxpayers with these major problems in these trying times.

Outline:

§108 Cancellation of Debt Income

Contents	<u>Page</u>
I. GROSS INCOME INCLUDES	2
A. Definition	2
B. Policies	3
II. §108 GENERALLY	4
A. Definitions	4
B. §108(a) Exclusions from Income.....	5
C. Other Exclusions from Income found in §108.....	5
III. A CLOSER LOOK AT §108 EXCLUSIONS:.....	5
A. Bankruptcy Exclusion (Title 11) (§108(a)(1)(A)).....	5
B. Insolvency Exclusion (§108(a)(1)(B))	6
IV. REPORTING CONSIDERATIONS:.....	9
A. Creditor’s Reporting Obligation (1099-C)	9
B. Taxpayer Filing Obligations (Form 982).....	12
V. CORPORATE ISSUES WITH COD INCOME:.....	15
A. S-Corp:.....	15
B. Partnerships	18
C. Disregarded Entities (i.e. Single Member LLC’s, Qualified REIT Sub, and Qualified Sub-S Subsidiary (Q-sub)) and Grantor Trusts	19

Exhibit A (Insolvency Worksheet)

Exhibit B (Form 1099-C)

Exhibit C (Form 982)

I. GROSS INCOME INCLUDES:

A. Definition:

1. § 61(a) defines gross income as “all income from whatever source derived”.
2. Specifically gross income includes “income from the discharge of indebtedness” under §61(a)(12).

§1.61-12(a) Income from the discharge of indebtedness.

The discharge of indebtedness, in whole or in part, may result in the realization of income. If, for example, an individual performs services for a creditor, who in consideration thereof cancels the debt, the debtor realizes income in the amount of the debt as compensation for his services. A taxpayer may realize income by the payment or purchase of his obligations at less than their face value. In general, if a shareholder in a corporation which is indebted to him gratuitously forgives the debt, the transaction amounts to a contribution to the capital of the corporation to the extent of the principal of the debt.

3. What is a Discharge?

a) The taxpayer has a discharged debt the moment the debt is repurchased or satisfied for less than what is owed. This determination may be highly factual and certainly is dependent on state law. Even without a cancellation of debt, there are eight identifiable events listed in the regulations that define when a debt is “deemed” discharged. These deemed discharges trigger a creditor’s reporting obligation under 26 U.S.C. §6050P. (These 8 identifiable events are discussed later in the outline).

b) One example of the importance of state law influence involves the running of the statute of limitations. In fact, the expiration of the statute of limitations is one of the 8 triggers for a deemed discharge of debt. However, some states may allow a debtor to revive a time-barred debt. Therefore, state law would be relevant in determining if a time-barred debt was actually discharged. (Tax Management Portfolio No. 540 §II (BNA)); See also Long v. Turner, 134 F.3d 312 (5th Cir. 1998) (finding that under state law, the debtors remained liable even though the creditors had issued a 1099-A and written off the debt on their accounting records).

c) §108(e) contains additional statutory language that defines “discharge of indebtedness” for certain factual situations.

B. Policies:

1. Income = 1) accession to wealth, (2) clearly realized, (3) TP has complete dominion. (See Comm’r v. Glenshaw Glass Co., 348 U.S. 426 (1955)).

2. One policy behind the inclusion of COD income relates to the *freeing of the assets* rationale. When debt is cancelled, assets are now free to use in other ways. This *freeing of assets* occurs when a debt is cancelled, and it is an *accession to wealth*. There is a positive impact on the taxpayer’s net worth. (See United States v. Kirby Lumber, 284 U.S. 1 (1931)).

3. However, this *freeing of the asset* policy may be limited in cases where that taxpayer did not receive an economic gain from a multi-year perspective. (See Comm’r v. Rail Joint, 61 F.2d 751 (2d Cir. 1932) (finding that “it is not universally true that by discharging a liability for less than its face the debtor necessarily receives a taxable gain”); (See also Lawrence Zelenak, Cancellation of Indebtedness Income and Transactional Accounting, 29 Va. Tax Rev. 277, 328+ (2009) (discussing situations when COD income should not be recognized based on the no economic gain theory)).

II. §108 GENERALLY:

A. Definitions

§ 108(d) provides useful introductory definitions:

Indebtedness of the taxpayer means any indebtedness: (A) for which the taxpayer is liable, OR (B) subject to which the taxpayer holds property.

Title 11 case means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

Insolvent means the excess of liabilities over the fair market value of the assets. With respect to any discharge, whether or not the taxpayer is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer's assets and liabilities immediately before the discharge

B. 108(a) Exclusions from Income

(1) In general. Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if—

- (A) The discharge occurs in a title 11 case,
- (B) The discharge occurs when the taxpayer is insolvent,
- (C) The indebtedness discharged is qualified farm indebtedness,
- (D) In the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or
- (E) The indebtedness discharged is qualified principal residence indebtedness which is discharged before January 1, 2013. (emphasis added).

C. Other Exclusions from Income found in §108

- 1. Purchase Price Reductions (§108(e)(5)).
- 2. Student Loan Forgiveness (§108(f)(1)).

III. A CLOSER LOOK AT §108 EXCLUSIONS:

A. Bankruptcy Exclusion (Title 11) (§108(a)(1)(A))

- 1. If consumer qualifies for both the bankruptcy and the insolvency exclusion, then the bankruptcy exclusion takes precedence. (§108(2)(a)).
- 2. Timing:
 - a) To qualify for this exclusion, the COD must occur in the context of the bankruptcy.

- b) This means that at the time of the cancellation of debt, the taxpayer must already be subject to the jurisdiction of the bankruptcy court.
 - c) If the cancellation of debt happens before filing the bankruptcy, then the bankruptcy exclusion does not apply. If the taxpayer is unable to satisfy any of the other exclusions, then the COD income will be subject to tax.
 - d) Further, the court must grant the discharge or the discharge must be pursuant to a court-approved plan.
3. Planning Tip: Taxpayers with high valued exempt assets may consider a timely filed bankruptcy as a method for COD exclusion.

B. Insolvency Exclusion (§108(a)(1)(B))

- 1. The 5th Circuit expressed the policy behind the insolvency exclusion long before the insolvency exclusion was codified.

Dallas Transfer & Terminal Warehouse Co. v. Comm’r, 70 F.2d 95, 96 (5th Cir. 1934):

This [relief from indebtedness] does not result in the debtor acquiring something of exchangeable value in addition to what he had before. There is a reduction or extinguishment of liabilities without any increase in assets. There is an absence of such a gain or profit as is required to come within the accepted definition of income. (String cite omitted). It hardly would be contended that a discharged insolvent or bankrupt receives taxable income in the amount by which his provable debts exceed the value of his surrendered assets. The income tax statute does not purport to treat as income what did not come within the meaning of that word before the statute was enacted.

2. Timing:
 - a) The taxpayer tests his/her insolvency “immediately before the cancellation”.
 - b) The creditor will provide information about this “cancellation date” in box 1 on Form 1099-C. (See Exhibit B for a sample 1099-C).

3. How to Calculate a Debtor’s Insolvency (Publication 4681)
 - a) 108(d) defines insolvent as the “excess of liabilities over the fair market value of the assets.”
 - b) See Exhibit B for Insolvency Worksheet found in Pub. 4681.
 - c) LIABILITIES:
 - (1) Liabilities include bona fide debts of the taxpayer.
 - (2) Publication 4681 defines various includible liabilities as follows:
 - (a) The entire amount of recourse debt,
 - (b) The amount of Nonrecourse debt that is not in excess of FMV of the property that is security for the debt, and
 - (c) The amount of nonrecourse debt in excess of the FMV of the property subject to the nonrecourse debt to the extent the nonrecourse debt in excess of the FMV of the property subject to the debt is forgiven.
 - (3) Liabilities do not include contested or contingent liabilities of the taxpayer.

d) ASSETS:

- (1) Publication 4681 indicates that assets include the value of everything you own (including assets that serve as collateral for debt and exempt assets that are beyond the reach of your creditors under the law).
- (2) Historically, exempt assets were not included in the definition of insolvency. Starting in 1999, the IRS issued private letter rulings and technical advisory memoranda stating that exempt assets should be included in the definition of assets when determining insolvency. The issue was tried before the Tax Court in 2001, and the Commissioner was victorious. (See Carlson v. Comm'r, 116 T.C. 87 (2001)).
- (3) Examples of exempt assets that have been included in an insolvency calculation:
 - (a) Fishing Permit (Carlson v. Comm'r, 116 T.C. 87 (2001)).
 - (b) Personal Residence (Private Lt. R. 199932013; Quartemont v. Comm'r, T.C. Summ.Op. 2007-19 (2007)).
 - (c) Real and Personal Property held as tenants by the entirety (Field Service Advice 199932019).
 - (d) Interest in Pension Plan (Service Center Advice 1998-039).

- (4) Planning Tip: Consider getting appraisals to confirm values of assets if relying on the insolvency exclusion.

IV. REPORTING CONSIDERATIONS:

A. Creditor's Reporting Obligation (1099-C)

1. General Rule:

- a) A lender must report the discharged debt on a 1099-C; in fact, "discharged indebtedness must be reported regardless of whether the debtor is subject to tax on the discharged debt under sections 61 and 108 or otherwise by applicable law." 26 CFR § 1.6050P(1)(a)(3).

2. Exceptions to Creditor's Reporting:

- a) Generally, lending must be a significant part of a creditor's trade or business to fall under the reporting requirements of §1.6050P. (§ 1.6050P-(2)(e) includes a business that purchases debt in this definition).
- b) COD income < \$600
- c) It is not mandatory to disclose discharged interest and fees. (§1.6050P-(1)(d)(2)).
- d) If the event is not listed as an identifiable event
- e) If the debt is discharged "by operation of law"
 - (1) Truth in Lending rescission may sometimes fall under this category.
- f) There are certain exceptions for the reporting of debts discharged under Federal Relief Acts from natural disasters and terrorists attacks.

3. Identifiable Events that Trigger Reporting Obligations:

a) There are 8 “identifiable events” that trigger the creditor’s responsibility to report the COD income on Form 1099-C. These events are contained in 26 CFR §1.6050P(1)(b)(2)(ii):

- (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 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) In the case of an entity described in section 6050P(c)(2)(A) through (C)[including, a financial institution, credit union, or certain government agencies], the expiration of the non-payment testing period, as described in § 1.6050P-1-(b)(2)(iv).

4. Fair Debt Collection Activities:

- a) Grounds for claims based on unfair debt collection practices include: intentionally false 1099-C, misleading 1099-C, or threatening the filing of a 1099-C.
- b) The creditor may file an amended 1099-C and resume debt collection activities, even if the taxpayer has already paid the tax on the discharged debt. (See generally In re Crosby, 261B.R. 470, 474 (Bankr. D. Kan. 2001)) (finding it inequitable for a credit union to resume collection activity until an amended 1099-C was filed or the incorrect 1099-C was withdrawn).
- c) In I.R.S. Private Letter Ruling 2005-0208 (Dec. 30, 2005), a debt collector expressed concern about the negative impact 1099-Cs would have on their efforts to collect debts. The I.R.S responded to this concern by stating:

The Internal Revenue Service does not view a Form 1099-C as an admission by the creditor that it has discharged the debt and can no longer pursue collection. Section 1.6050P-1(a) of the regulations provides that, solely for purposes of reporting cancellation of indebtedness, a discharge of indebtedness is deemed to occur when an identifiable event occurs whether or not an actual discharge of indebtedness has occurred on or before the date of the identifiable event.

5. Planning Tips:

- a) Always check 1099-C's for accuracy. These forms may have incorrect numbers. For example, the lender may have overlooked an exclusion, mistakenly thought a debt was discharged, or incorrectly included interest and fees into the discharged amount.
- b) If there is a mistake, the taxpayer should write a letter to the lender and request an amended 1099-C. If the lender is unwilling to amend, attach your letter to your return as support for your calculations.
- c) A taxpayer should carefully consider the facts and circumstances surrounding the discharge of debt. State law will be relevant in this analysis.
- d) A timely amended return should generate a refund if a taxpayer has previously paid income tax on COD income, and then subsequently repays the canceled debt.

B. Taxpayer Filing Obligations: (Form 982)

- 1. Form 982 "Reduction of Tax Attributes Due to Discharge of Indebtedness"
 - a) Publication 4681 provides instructions for the completion of Form 982.
 - b) Form 982 must be attached to Taxpayer's return.
 - c) See Treas. Reg. §301.9100(3) if an extension of time is necessary.
 - d) See Exhibit C for a sample of Form 982.
- 2. Even if TP did not receive a 1099-C, taxpayers still have obligation to report COD income on Form 982.

3. There are 3 different components of Form 982:
 - a) Part I includes a “check the box” component for the appropriate exclusion for the COD income.
 - b) Part II of Form 982 is used to reduce tax attributes resulting from the cancellation of the debt. (This outline will include more details on the reduction of tax attributes).
 - c) Part III of Form 982 is only for corporate taxpayers.

4. Tax Attribute Reduction §108(b)
 - a) As noted above, Part II of the form is dedicated the taxpayer’s reduction of tax attributes.
 - b) Tax attribute reduction is the tax consequence for the use of one of the 108(a) exclusions. These attribute reducing rules defer the recognition of gross income to a future tax year.
 - c) 108(b)(1) mandates the reduction of tax attributes and 108(b)(2) provides the ordering rules for those reductions (see chart on next page).
 - d) Rate of Reduction: Credits are reduced at the rate of 33 1/3 cents of credit per dollar of COD income. All others are reduced dollar for dollar.

ORDERING RULES:

- (a) Net operating losses (NOLs) for the year of the discharge, and then NOL carryovers from prior years;
- (b) General business tax credits (including any carryovers) under IRC § 38; (c) Minimum tax credits under IRC § 53(b) available as of the beginning of the taxable year immediately following the taxable year of the discharge;
- (d) Capital loss for the year of discharge, and then capital loss carryovers from prior years under § 1212;
- (e) Basis of the debtor's property under §1017;
- (f) Passive activity loss from year of discharge, and also credit carryovers under IRC § 469; and
- (g) Foreign tax credit carryovers to or from the year of discharge.

- e) **Election:** There is an election in § 108(b)(5) that allows a taxpayer to first reduce the basis of depreciable property using the basis-reducing rules found in §1017. (See also 26 C.F.R § 1.1017(1) for examples of how to reduce basis).
- f) **Planning Tip:** Use this election when the “debtor holds depreciable property with a substantial remaining recovery period, because the election has the effect of accelerating future depreciation deductions into the year of discharge. NOLs and other tax attributes are still available to shield income, thus creating the potential for increased cash flow in the future. Although the subsequent disposition of the property may generate greater taxable income than would otherwise have been the case, the timing is still beneficial if the taxpayer does not anticipate a sale of the property in the near future. A debtor should not make the election if other tax attributes subject to

reduction (e.g., expiring loss carryovers) have a limited remaining useful life.” Tax Management Portfolio, No. 541 §II (BNA).

Example

(adapted from an example in Tax Portfolio Management, No. 541 §2, (BNA)):

A debtor in bankruptcy has the following tax attributes:

- Net Operating Loss carryover: \$1,000
- Capital Loss Carryover: \$600
- Property with adjusted basis of \$2,000

The debtor has liabilities of \$4,000. \$2,000 of those liabilities were discharged in bankruptcy. The debtor does not elect to reduce basis first (under §108(b)(5)).

- First reduce the NOL's to \$0 (dollar for dollar)
- Then reduce Capital loss carryover to \$0 (dollar for dollar)
- There is \$400 left to reduce the basis of property. However, D's basis cannot be reduced below the amount of undischarged liabilities (\$2000).
- Therefore, no basis adjustment is necessary, and the \$400 of COD income disappears.

V. CORPORATE ISSUES WITH COD INCOME:

A. S-Corp:

1. The Exclusions listed in 108(a) are applied at the Entity Level. (§1363(c)).
2. In other words, the S Corp must be in bankruptcy, insolvent, or satisfy the elements of the Qualified Real Property Business Indebtedness (QRPBI) Exclusion. (§108(d)(7)(a)).

3. Special Rules for Reduction of Tax Attributes for S-corps is found in §108(d)(7) and §1.108-7(d).
 - a) Basically, S-corps do not have Net Operating Losses, so the “NOL” concept is applied at the shareholder level.
 - b) If there is a loss/deduction that exceeds that shareholder’s stock/debt basis, then it will be treated as a suspended loss under §1366(d).
 - (1) Current year NOL = shareholder’s *current year disallowed loss*.
 - (2) NOL carryovers = disallowed loss carryovers.
 - c) This does not change the basic rule that §108 exclusions for COD income are tested at the entity level for S-corps.

§ 1.108(7), Example 5:

Facts:

During the entire calendar year 2009, A, B, and C each own equal shares of stock in X, a calendar year S corporation. As of 12/31/2009, A, B, and C each have zero stock basis and X does not have any indebtedness to A, B, or C. For the 2009 taxable year, X excludes from gross income, \$45,000 of COD income under section 108(a)(1)(A). The COD income (had it not been excluded) would have been allocated \$15,000 to A, \$15,000 to B, and \$15,000 to C under section 1366(a). For the 2009 taxable year, X has \$30,000 of losses and deductions that pass through pro rata to A, B, and C in the amount of \$10,000 each. The losses and deductions that pass through to A, B, and C are disallowed under section 1366(d)(1). In addition, B has \$10,000 of section 1366(d) losses from prior years and C has \$20,000 of section 1366(d) losses from prior years. A’s (\$10,000), B’s (\$20,000), and C’s (\$30,000) combined \$60,000 of disallowed losses and deductions for the taxable year of the discharge are treated as a current year net operating loss tax attribute of X under section 108(d)(7)(B) (Deemed NOL) for purposes of the section 108(b) reduction of tax attributes.

Example 5 (cont)

Allocation:

Under section 108(b)(2)(A), X's \$45,000 of excluded COD income reduces the \$60,000 deemed NOL to \$15,000. Therefore, X has a \$15,000 excess net operating loss (excess deemed NOL) to allocate to its shareholders. Under paragraph (d)(2)(ii)(C) of this section, none of the \$15,000 excess deemed NOL is allocated to A because A's section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction (\$10,000) do not exceed A's share of the excluded COD income for 2008 (\$15,000). Thus, A has no shareholder excess amount. Each of B's and C's respective 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction exceed each of B's and C's respective shares of excluded COD income for 2008. B's excess amount is \$5,000 (\$20,000-\$15,000) and C's excess amount is \$15,000 (\$30,000-\$15,000). Therefore, the total of all shareholders' excess amounts is \$20,000.

Under paragraph (d)(2) of this section, X will allocate \$3,750 of the \$15,000 excess deemed NOL to B ($\$15,000 \times \$5,000/\$20,000$) and \$11,250 of the \$15,000 excess deemed NOL to C ($\$15,000 \times \$15,000/\$20,000$). These amounts are treated as losses and deductions disallowed under 1366(d)(1) for the taxable year of the discharge. Accordingly, at the beginning of 2010, A has no section 1366(d)(2) carryovers, B has \$3,750 of carryovers, and C has \$11,250 of carryovers.

Example 5 (cont.):

Character:

Immediately prior to the section 108(b)(2)(A) reduction, B's \$20,000 of section 1366(d) losses and deductions consisted of \$8000 of long-term capital losses, and \$7,000 of section 1231 losses, and \$5,000 of ordinary losses. After the section 108(b)(2)(A) tax attribute reduction, X will allocate \$3,750 of the excess deemed NOL to B. Under paragraph (d)(3) of this section, the \$3750 excess deemed NOL allocated to B consists of

\$1500 of Long-Term Capital Loss ($(\$8000/\$20,000) \times \$3750$),
\$1312.50 of Section 1231 losses ($(\$7,000/\$20,000) \times \$3750$), and
\$937.50 of ordinary losses ($(\$5,000/\$20,000) \times \$3750$).

As a result at the beginning of 2010, B's \$3,750 of section 1366(d)(2) carryovers consist of \$1500 of Long-Term Capital losses, \$1,312.50 of section 1231 losses, and \$937.50 of ordinary losses.

B. Partnerships

1. The exclusions listed in 108(a) are applied at the partner/member level.
2. In contrast to S-Corps, it is the individual member/partner that must be insolvent or bankrupt.
 - a) Generally, a partner would not qualify based on the partnership's bankruptcy.
 - b) However, in at least one case, a solvent partner was able to qualify for the bankruptcy exclusion based on the partnership's bankruptcy under a very specific set of factual circumstances. See Gracia v. Comm'r, T.C. Memo. 2004-147 (2004).
3. Look to the partnership agreement to see how COD income is split between the partners.
4. Although there are definitional aspects of the QRPBI election that must be determined at the partnership level,

the individual partner/member would make the election to reduce the basis of depreciable property per this exclusion.

5. §1017 Rules for Partnership:

- a) IRC §1017 provides that the partner's interest in the partnership is treated as depreciable real property, to the extent of the partner's proportionate interest in the partnership's depreciable real property
- b) A partner's election to treat the partnership interest as depreciable real property will result in both the partner's basis in the partnership and the partnership's basis in the depreciable real property allocable to such partner as reduced
- c) Generally, the partnership may grant or withhold consent, unless the taxpayer owns more than 50% partnership interest.

C. Disregarded Entities (i.e. Single Member LLC's, qualified REIT Sub, and qualified Sub-S subsidiary (Q-sub)) and Grantor Trusts

- 1. Treasury issued proposed regulations during 2011 that clarify issues related to these entities. (Final Reg's will be published as 26 CFR §1.108(9)).
- 2. According to these proposed regs: "Taxpayer" (as used in § 08(a)) refers to the owner of the grantor trust or the owner of the disregarded entity.
- 3. So, the owner must be in bankruptcy and/or insolvent to qualify for a COD exclusion.
- 4. If a partnership is the "owner" of a disregarded entity, then you will follow the chain of ownership until you get to the partner. Then you will test that partner against the COD exclusions.

5. Proposed Regulations:

http://www.taxlawroundup.com/files/2011/04/Prop-regs-108-COD-for-disregarded-entities-2011-08758_PI1.pdf

Exhibit A

Insolvency Worksheet

Insolvency Worksheet

Keep for Your Records

Date debt was canceled (mm/dd/yy)	
Part I. Total liabilities immediately before the cancellation (do not include the same liability in more than one category)	
<u>Liabilities (debts)</u>	<u>Amount Owed Immediately Before the Cancellation</u>
1. Credit card debt	\$
2. Mortgage(s) on real property (including first and second mortgages and home equity loans) (mortgage(s) can be on personal residence, any additional residence, or property held for investment or used in a trade or business)	\$
3. Car and other vehicle loans	\$
4. Medical bills owed	\$
5. Student loans	\$
6. Accrued or past-due mortgage interest	\$
7. Accrued or past-due real estate taxes	\$
8. Accrued or past-due utilities (water, gas, electric)	\$
9. Accrued or past-due child care costs	\$
10. Federal or state income taxes remaining due (for prior tax years)	\$
11. Judgments	\$
12. Business debts (including those owed as a sole proprietor or partner)	\$
13. Margin debt on stocks and other debt to purchase or secured by investment assets other than real property	\$
14. Other liabilities (debts) not included above	\$
15. Total liabilities immediately before the cancellation. Add lines 1 through 14.	\$

Part II. Fair market value (FMV) of assets owned immediately before the cancellation (do not include the FMV of the same asset in more than one category)	
<u>Assets</u>	<u>FMV Immediately Before the Cancellation</u>
16. Cash and bank account balances	\$
17. Homes (including the value of land) (can be main home, any additional home, or property held for investment or used in a trade or business)	\$
18. Cars and other vehicles	\$
19. Computers	\$
20. Household goods and furnishings (for example, appliances, electronics, furniture, etc.)	\$
21. Tools	\$
22. Jewelry	\$
23. Clothing	\$
24. Books	\$
25. Stocks and bonds	\$
26. Investments in coins, stamps, paintings, or other collectibles	\$
27. Firearms, sports, photographic, and other hobby equipment	\$
28. Interest in retirement accounts (IRA accounts, 401(k) accounts, and other retirement accounts)	\$
29. Interest in a pension plan	\$
30. Interest in education accounts	\$
31. Cash value of life insurance	\$
32. Security deposits with landlords, utilities, and others	\$
33. Interests in partnerships	\$
34. Value of investment in a business	\$
35. Other investments (for example, annuity contracts, guaranteed investment contracts, mutual funds, commodity accounts, interests in hedge funds, and options)	\$
36. Other assets not included above	\$
37. FMV of total assets immediately before the cancellation. Add lines 16 through 36.	\$
Part III. Insolvency	
38. Amount of insolvency. Subtract line 37 from line 15. If zero or less, you are not insolvent.	\$

Exhibit B:

1099-C

CORRECTED (if checked)

CREDITOR'S name, street address, city, state, ZIP code, and telephone no. <i>Goodold Bank 54 Happy Street Anytown, FL 00000</i>		1 Date canceled <i>8-31-2010</i>	OMB No. 1545-1424	2010	Cancellation of Debt
		2 Amount of debt canceled <i>\$40,000.00</i>	Form 1099-C		
		3 Interest if included in box 2 <i>\$</i>			
CREDITOR'S federal identification number <i>10-6543210</i>	DEBTOR'S identification number <i>123-00-6789</i>	4 Debt description <i>Home mortgage loan</i>			Copy B For Debtor <small>This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported.</small>
DEBTOR'S name <i>Nancy Oak</i>		5 Was borrower personally liable for repayment of the debt? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Street address (including apt. no.) <i>360 Degree Circle</i>		6 Bankruptcy (if checked) <input type="checkbox"/>			
City, state, and ZIP code <i>Anyplace, FL 00000</i>		7 Fair market value of property <i>\$</i>			
Account number (see instructions)					

Exhibit C

Taxpayer Form 982

Form 982 (Rev. February 2011) Department of the Treasury Internal Revenue Service	Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)	OMB No. 1545-0046 Attachment Sequence No. 94
▶ Attach this form to your income tax return.		
Name shown on return		Identifying number

Part I General Information (see instructions)

1 Amount excluded is due to (check applicable box(es)):	
a Discharge of indebtedness in a title 11 case	<input type="checkbox"/>
b Discharge of indebtedness to the extent insolvent (not in a title 11 case)	<input type="checkbox"/>
c Discharge of qualified farm indebtedness	<input type="checkbox"/>
d Discharge of qualified real property business indebtedness	<input type="checkbox"/>
e Discharge of qualified principal residence indebtedness	<input type="checkbox"/>
2 Total amount of discharged indebtedness excluded from gross income	2
3 Do you elect to treat all real property described in section 1221(a)(1), relating to property held for sale to customers in the ordinary course of a trade or business, as if it were depreciable property? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Part II **Reduction of Tax Attributes.** You must attach a description of any transactions resulting in the reduction in basis under section 1017. See Regulations section 1.1017-1 for basis reduction ordering rules, and, if applicable, required partnership consent statements. (For additional information, see the instructions for Part II.)

Enter amount excluded from gross income:	
4 For a discharge of qualified real property business indebtedness applied to reduce the basis of depreciable real property	4
5 That you elect under section 108(b)(5) to apply first to reduce the basis (under section 1017) of depreciable property	5
6 Applied to reduce any net operating loss that occurred in the tax year of the discharge or carried over to the tax year of the discharge	6
7 Applied to reduce any general business credit carryover to or from the tax year of the discharge	7
8 Applied to reduce any minimum tax credit as of the beginning of the tax year immediately after the tax year of the discharge	8
9 Applied to reduce any net capital loss for the tax year of the discharge, including any capital loss carryovers to the tax year of the discharge	9
10a Applied to reduce the basis of nondepreciable and depreciable property if not reduced on line 5. <i>DO NOT use in the case of discharge of qualified farm indebtedness</i>	10a
b Applied to reduce the basis of your principal residence. <i>Enter amount here ONLY if line 1e is checked</i>	10b
11 For a discharge of qualified farm indebtedness applied to reduce the basis of:	
a Depreciable property used or held for use in a trade or business or for the production of income if not reduced on line 5	11a
b Land used or held for use in a trade or business of farming	11b
c Other property used or held for use in a trade or business or for the production of income	11c
12 Applied to reduce any passive activity loss and credit carryovers from the tax year of the discharge	12
13 Applied to reduce any foreign tax credit carryover to or from the tax year of the discharge	13

Part III Consent of Corporation to Adjustment of Basis of Its Property Under Section 1082(a)(2)

Under section 1081(b), the corporation named above has excluded \$ _____ from its gross income for the tax year beginning _____ and ending _____ . Under that section, the corporation consents to have the basis of its property adjusted in accordance with the regulations prescribed under section 1082(a)(2) in effect at the time of filing its income tax return for that year. The corporation is organized under the laws of _____ .
(State of Incorporation)

Note. You must attach a description of the transactions resulting in the nonrecognition of gain under section 1081.

For Paperwork Reduction Act Notice, see page 5 of this form.

Cat. No. 17066E

Form **982** (Rev. 2-2011)

***Basis/At Risk: Differences Between
Subchapter K and S***

Vicki H. Meyer, CPA

Vicki H. Meyer, CPA
Of Counsel
Thomas Howell Ferguson, PA

Vicki is Of Counsel with Thomas Howell Ferguson, PA in Tallahassee, Florida where she brings over 30 years of experience in tax consulting, transactional analysis, and compliance as it pertains to corporations, partnerships and high net-worth individuals in a variety of industries.

Vicki is also the owner of Meyer Consulting, PLLC, which provides technical support and tax quality control for publicly traded corporations as well as other CPA firms throughout the state.

Vicki has authored several articles relating to tax practice and technical issues and frequently instructs continuing education courses.

Vicki is a Certified Public Accountant licensed in the State of Florida. She is a current member of the American Institute of Certified Public Accountants' Partnership Technical Resource Panel, as well as a member of the Florida Institute's Federal Taxation Committee, where she serves as the Chair of the Legislative Response Committee. She is also an AICPA ambassador for Financial Literacy.

Presentation Will Be Available
On-line After the Conference

FICPA Membership: Connect, Learn and Thrive

Proud to be a Member

"I renew because of the invaluable networking opportunities that being a member of the FICPA provides. From being involved with your local chapter to attending networking events, the FICPA is an organization that is known and respected across many industries."

Monica Ospina, CPA, ABV, CFF
Cherry, Bekaert & Holland, LLP
Coral Gables
Member since 2007



"I renew my FICPA membership because of the significant access to education, current events, and the networking it provides."

Ray Monteleone, CPA
President, Paladin Global Partners
Fort Lauderdale
Member since 1979



"I'm renewing my FICPA membership because it keeps me professionally and socially connected to my fellow peers in the profession."

David White, CPA
Carr Riggs & Ingram LLC
Tallahassee
Member since 2010



Learn more about membership. | msc@ficpa.org | www.ficpa.org
(800) 342-3197 (in Florida) | (850) 224-2727

Keep Your Organization *Moving Forward*

The FICPA has partnered with the AICPA and other providers to address the changing needs of business professionals. This partnership now enables us to provide a wide range of courses, instructors, and educational solutions in a variety of formats, including on-site training, seminars, and webcasts.

Topic areas including:

- **Technical**
- **Strategic and Business Management**
- **Leadership Development**
- **Communication skills**
- **Ethics**

Using FICPA on-site training benefits your staff by offering:

- Team building opportunities while enhancing their skill set
- Smaller class sizes and more interaction with the instructors
- Professional development opportunities without the hassle of travel

Meanwhile, employers gain by:

- Saving money by eliminating travel expenses
- Saving time by scheduling training when it is convenient for you and your staff
- Customized, flexible training designed to fit your company's specific needs

Call or e-mail us today to find out how FICPA has the right training solutions for you!



For more information, please contact the FICPA at onsite@ficpa.org
or call (800) 342-3197 (in Florida) or (850) 224-2727 extension 412.