

Issues in Partnership Discharge of Indebtedness – IRC § 108

William H. Wilson
Pass Through Entities Practice Area
Internal Revenue Service



Introduction



Basic Principles

- ❖ IRC § 61(a)(12) provides that “income from discharge of indebtedness” is includable in gross income.
- ❖ IRC § 108(a)(1) provides generally that gross income does not include COD income if:
 - the discharge occurs in a bankruptcy case, or
 - the discharge occurs when taxpayer is insolvent.

General Types of Liabilities

- ❖ Recourse liability:
 - The taxpayer is personally liable for repayment of the debt.
 - The lender may pursue collection on all or part of the outstanding balance in the event of default.
- ❖ Nonrecourse liability:
 - The taxpayer is not personally liable.
 - The lender cannot pursue the taxpayer for any outstanding balance in the event of default.

Partner or Partnership Bankruptcy Example

- ❖ XYZ Partnership files for Chapter 11 bankruptcy on December 4, 2012. At the time of filing, XYZ is insolvent. As part of the final bankruptcy order \$100,000 of XYZ's debts are discharged
- ❖ This result in \$100,000 of COD income to XYZ.
- ❖ Any available exclusion is determined at the partner level.
 - This may result in one partner excluding all or part of the COD income while another partner may pay tax on his allocable share of the COD income.

Insolvency Exclusion

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Issues in Partnership Discharge of Indebtedness - IRC § 108

Also available as part of the eCourse

[2017 Biennial Parker C. Fielder Oil and Gas Tax eConference](#)

First appeared as part of the conference materials for the
14th Biennial Parker C. Fielder Oil and Gas Tax Conference session
"Select Tax Issues for Distressed Companies"