

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.**

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.
 - b Discharge of indebtedness to the extent insolvent (not in a title 11 case)
 - c Discharge of qualified farm indebtedness
 - d Discharge of qualified real property business indebtedness.
- 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? Yes 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.)

| | |
|---|-------------------|
| 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 |
| 10 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> | 10 |
| 11 For a discharge of qualified farm indebtedness, applied to reduce the basis of: <ul style="list-style-type: none"> 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. b Land used or held for use in a trade or business of farming c Other property used or held for use in a trade or business, or for the production of income | 11a 11b 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.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of form. Generally, the amount by which you benefit from the discharge of indebtedness is included in your gross income. However, under certain circumstances described in section 108, you may exclude the amount of discharged indebtedness from your gross income. Unless you check the box on line 1d or make the election on line 5, the amount excluded from gross income reduces certain tax attributes either dollar for dollar or 33 1/3 cents per dollar (see below).

Use **Part I** of Form 982 to indicate why any amount received from the discharge of

indebtedness should be excluded from gross income.

Use **Part II** to report your reduction of tax attributes. The reduction must be made in the following order:

- Any net operating loss (NOL) for the tax year of the discharge (and any NOL carryover to that year) (dollar for dollar);
- Any general business credit carryover to or from the tax year of the discharge (33 1/3 cents per dollar);
- Any minimum tax credit as of the beginning of the tax year immediately after the tax year of the discharge (33 1/3 cents per dollar);
- Any net capital loss for the tax year of the discharge (and any capital loss carryover to that tax year) (dollar for dollar);

- Basis of property (dollar for dollar);
- Any passive activity loss (dollar for dollar) and credit (33 1/3 cents per dollar) carryovers from the tax year of the discharge; and
- Any foreign tax credit carryover to or from the tax year of the discharge (33 1/3 cents per dollar).

Use **Part III** to exclude from gross income under section 1081(b) any amounts of income attributable to the transfer of property described in that section.

Definitions. A "title 11 case" is a case under title 11 of the United States Code (relating to bankruptcy), but only if you are under the jurisdiction of the court in the case and the discharge of indebtedness is granted by the court or is under a plan approved by the court.

The term "discharge of indebtedness" conveys forgiveness of, or release from, an obligation to repay.

You are "insolvent" to the extent your liabilities exceed the fair market value (FMV) of your assets immediately before the discharge.

For details, get **Pub. 908**, Bankruptcy Tax Guide.

When to file. File Form 982 with your timely filed Federal income tax return (including extensions) in a year a discharge of indebtedness is excluded from your income under section 108(a). Also file this form if you elect to reduce the basis of depreciable property under section 108(b)(5) or if you are making the election on line 1d of Part I regarding the discharge of qualified real property indebtedness.

These elections may be revoked only with the consent of the IRS.

Note: *If you timely filed your tax return without making the election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Write "Filed pursuant to section 301.9100-2" on the amended return and file it at the same place you filed the original return.*

Specific Instructions

Part I

Lines 1a through 1c. If you check any of these boxes, you may elect, by completing line 5, to apply all or a part of the debt discharge amount to first reduce the basis of depreciable property (including property you elected on line 3 to treat as depreciable property). Any balance of the debt discharge amount will then be applied to reduce the tax attributes in the order listed on lines 6 through 13. You must attach a statement describing the transactions that resulted in the reduction in basis and identifying the property for which you reduced the basis. If you do not make the election on line 5, complete lines 6 through 13 to reduce your attributes. See section 1017(b)(2) and (c) for limitations of reductions in basis on line 10.

The exclusion relating to insolvency does not apply to a discharge that occurs in a title 11 case. Also, the exclusions relating to qualified farm indebtedness and qualified real property business indebtedness do not apply to a discharge that occurs in a title 11 case or to the extent the taxpayer is insolvent.

"Qualified farm indebtedness" is the amount of indebtedness incurred directly in connection with the trade or business of farming. In addition, 50% or more of your aggregate gross receipts for the 3 tax years preceding the tax year in which the discharge of such indebtedness occurs must be from the trade or business of farming. For more information, see sections 108(g) and 1017(b)(4).

The discharge must have been made by a "qualified person." Generally, a qualified person is an individual, organization, etc., who is actively and regularly engaged in the business of lending money. This person cannot be related to you, be the person from whom you acquired the property, or be a person who receives a fee with respect to your investment in the property. Also, a qualified person includes any Federal, state, or local government or agency or instrumentality thereof.

If you checked line 1c and did not make the election on line 5, the debt discharge amount will be applied to reduce the tax attributes in the order listed on lines 6 through 9. Any remaining amount will be applied to reduce the tax attributes in the order listed on lines 11a through 13.

You cannot exclude more than the total of your: (a) tax attributes (determined under section 108(g)(3)(B)); and (b) basis of property used or held for use in a trade or business or for the production of income. Any excess is included in income.

Line 1d. If you check this box, the discharge of qualified real property business indebtedness is applied to reduce the basis of depreciable real property on line 4.

"Qualified real property business indebtedness" is indebtedness (other than qualified farm indebtedness) that: (a) is incurred or assumed in connection with real property used in a trade or business; (b) is secured by that real property; and (c) with respect to which you have made an election under this provision. This provision does not apply to a corporation (other than an S corporation).

Indebtedness incurred or assumed after 1992 is **not** qualified real property business indebtedness unless it is either: (a) debt incurred to refinance qualified real property business indebtedness incurred or assumed before 1993 (but only to the extent the amount of such debt does not exceed the amount of debt being refinanced) or (b) qualified acquisition indebtedness.

"Qualified acquisition indebtedness" is: (a) debt incurred or assumed to acquire, construct, reconstruct, or substantially improve real property that is secured by such debt; and (b) debt resulting from the refinancing of qualified acquisition indebtedness, to the extent the amount of such debt does not exceed the amount of debt being refinanced.

You cannot exclude more than the excess of the outstanding principal amount of the debt (immediately before the discharge) over the net FMV (as of that time) of the property securing the debt, reduced by the outstanding principal amount of other qualified real property business indebtedness secured by that property (as of that time). See Regulations section 1.108-6(a) for definitions of net FMV and outstanding principal amount. The amount excluded is further limited to the aggregate adjusted bases (as of the first day of the next tax year or, if earlier, the date of disposition) of depreciable real property (determined after any reductions under sections 108(b) and (g)) you held immediately before the discharge (other than property acquired in contemplation of the discharge). Any excess is included in income.

Line 2. Enter the total amount excluded from your gross income due to discharge of indebtedness under section 108. If you checked line 1a, 1b, and/or 1c, this amount will not necessarily equal the total reductions on lines 5 through 13 because the debt discharge amount may exceed the total tax attributes.

See section 382(l)(5) for a special rule regarding a reduction of a corporation's tax attributes after certain ownership changes.

Line 3. You may elect under section 1017(b)(3)(E) to treat all real property held primarily for sale to customers in the ordinary course of a trade or business as if it were depreciable property. This election does not apply to the discharge of qualified real property business indebtedness. To make the election, check the "Yes" box.

Part II

Line 7. If you have a general business credit carryover to or from the tax year of the discharge, you must reduce that carryover by 33 $\frac{1}{3}$ cents for each dollar excluded from gross income. See **Form 3800**, General Business Credit, for more details on the general business credit, including rules for figuring any carryforward or carryback.

Line 10. In the case of a title 11 case or insolvency (except when an election under section 108(b)(5) is made), the reduction in basis is limited to the aggregate of the bases of your property immediately after the discharge over the aggregate of your liabilities immediately after the discharge.

Part III

Adjustment to basis. Unless it specifically states otherwise, the corporation, by filing this form, agrees to apply the general rule for adjusting the basis of property (as described in Regulations section 1.1082-3(b)).

If the corporation desires to have the basis of its property adjusted in a manner different from the general rule, it must attach a request for variation from the general rule. The request must show the precise method used and the allocation of amounts.

Consent to the request for variation from the general rule will be effective only if it is incorporated in a closing agreement entered into by the corporation and the Commissioner of Internal Revenue under the rules of section 7121. If no agreement is entered into, then the general rule will apply in determining the basis of the corporation's property.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions 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 section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 5 hr., 44 min.; **Learning about the law or the form**, 2 hr., 11 min.; **Preparing and sending the form to the IRS**, 2 hr., 22 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

