

Sec. 108. Income from discharge of indebtedness

TITLE 26, Subtitle A, CHAPTER 1, Subchapter B, PART III, Sec. 108.

STATUTE

- (a) Exclusion from gross 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, or
 - (D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness.
 - (2) Coordination of exclusions
 - (A) Title 11 exclusion takes precedence

Subparagraphs (B), (C), and (D) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.
 - ~~(B) Insolvency exclusion takes precedence over qualified farm exclusion and qualified real property business exclusion~~

Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.
 - ~~(3) Insolvency exclusion limited to amount of insolvency~~

In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.
- (b) Reduction of tax attributes
 - (1) In general

The amount excluded from gross income under subparagraph (A), (B), or (C) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).
 - (2) Tax attributes affected; order of reduction

Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

- (A) NOL**
Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.
- (B) General business credit**
Any carryover to or from the taxable year of a discharge of an amount for purposes for determining the amount allowable as a credit under section 38 (relating to general business credit).
- (C) Minimum tax credit**
The amount of the minimum tax credit available under section 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge.
- (D) Capital loss carryovers**
Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year under section 1212.
- (E) Basis reduction**
 - (i) In general**
The basis of the property of the taxpayer.
 - (ii) Cross reference**
For provisions for making the reduction described in clause (i), see section 1017.
- (F) Passive activity loss and credit carryovers**
Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge.
- (G) Foreign tax credit carryovers**
Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 27.
- (3) Amount of reduction**
 - (A) In general**
Except as provided in subparagraph (B), the reductions described in paragraph (2) shall be one dollar for each dollar excluded by subsection (a).
 - (B) Credit carryover reduction**
The reductions described in subparagraphs (B), (C), and (G) shall be 33 1/3 cents for each dollar excluded by subsection (a). The reduction described in subparagraph (F) in any passive activity credit carryover shall be 33 1/3 cents for each dollar excluded by subsection (a).
- (4) Ordering rules**
 - (A) Reductions made after determination of tax for year**
The reductions described in paragraph (2) shall be made after the determination of the tax imposed by this chapter for the taxable year of the discharge.

- (B) Reductions under subparagraph (A) or (D) of paragraph (2)**
The reductions described in subparagraph (A) or (D) of paragraph (2) (as the case may be) shall be made first in the loss for the taxable year of the discharge and then in the carryovers to such taxable year in the order of the taxable years from which each such carryover arose.
- (C) Reductions under subparagraphs (B) and (G) of paragraph (2)**
The reductions described in subparagraphs (B) and (G) of paragraph (2) shall be made in the order in which carryovers are taken into account under this chapter for the taxable year of the discharge.
- (5) Election to apply reduction first against depreciable property**
- (A) In general**
The taxpayer may elect to apply any portion of the reduction referred to in paragraph (1) to the reduction under section 1017 of the basis of the depreciable property of the taxpayer.
- (B) Limitation**
The amount to which an election under subparagraph (A) applies shall not exceed the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.
- (C) Other tax attributes not reduced**
Paragraph (2) shall not apply to any amount to which an election under this paragraph applies.
- (c) Treatment of discharge of qualified real property business indebtedness**
- (1) Basis reduction**
- (A) In general**
The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.
- (B) Cross reference**
For provisions making the reduction described in subparagraph (A), see section 1017.
- (2) Limitations**
- (A) Indebtedness in excess of value**
The amount excluded under subparagraph (D) of subsection (a)(1) with respect to any qualified real property business indebtedness shall not exceed the excess (if any) of -
 - (i) the outstanding principal amount of such indebtedness (immediately before the discharge), over**

- (ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).
- (B) Overall limitation

The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (determined after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).
- (3) Qualified real property business indebtedness

The term "qualified real property business indebtedness" means indebtedness which -

 - (A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property,
 - (B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and
 - (C) with respect to which such taxpayer makes an election to have this paragraph apply. Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.
- (4) Qualified acquisition indebtedness

For purposes of paragraph (3)(B), the term "qualified acquisition indebtedness" means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.
- (5) Regulations

The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means.
- (d) Meaning of terms; special rules relating to certain provisions
 - (1) Indebtedness of taxpayer

For purposes of this section, the term "indebtedness of the taxpayer" means any indebtedness -

 - (A) for which the taxpayer is liable, or
 - (B) subject to which the taxpayer holds property.
 - (2) Title 11 case

For purposes of this section, the term "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.

(3) Insolvent

For purposes of this section, the term "insolvent" means the excess of liabilities over the fair market value of 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. [(4) Repealed. Pub. L. 99-514, title VIII, Sec. 822(b)(3)(A), Oct. 22, 1986, 100 Stat. 2373]