

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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TIMOTHY C. PIGFORD, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	97-1978 (PLF)
TOM VILSACK, Secretary,)	
United States Department of)	
Agriculture,)	
)	
Defendant.)	
_____)	
CECIL BREWINGTON, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	98-1693 (PLF)
TOM VILSACK, Secretary,)	
United States Department)	
of Agriculture,)	
)	
Defendant.)	
_____)	

MONITOR’S THIRD REPORT ON DEBT RELIEF IMPLEMENTATION

On July 16, 2009, the Court directed the Monitor to continue to work with the parties to ensure that debt relief is properly implemented and to help resolve tax issues that arise in debt relief implementation. The Court ordered the Monitor to report to the Court on or before August 28, 2009, regarding these efforts, and, in particular, on the implementation of a system for managing the tax consequences of debt relief. The Monitor submits this report to comply with the Court’s July 16, 2009 Order.

I. BACKGROUND

Prior Monitor reports described the *Pigford* debt relief process and the issues that have arisen as the United States Department of Agriculture (USDA) implements the debt relief prevailing *Pigford* claimants are entitled to receive.¹ Claimants who receive *Pigford* debt relief receive loan forgiveness in the form of a cancellation of certain farm program loans. As USDA implements debt relief, USDA may also refund to claimants certain payments or offsets applied to the loans that qualify for *Pigford* debt forgiveness.²

Once USDA implements debt relief, USDA has federal income tax reporting obligations regarding the cancelled debt. USDA complies with its federal income tax reporting obligations by sending a certain form to the Internal Revenue Service (IRS) and to the prevailing claimant. This form, an IRS Form 1099-C, reports: (1) the amount of debt cancellation; and (2) the effective date of that cancellation. On March 12, 2009, the IRS Office of Chief Counsel issued a memorandum containing guidance on the federal tax rules for reporting the amount and date of *Pigford* debt cancellation on Forms 1099-C. The IRS recently published this memorandum, which is attached as Appendix 1 to this

¹ The Monitor's most recent report on these issues was filed on June 30, 2009. See Monitor's Second Report on Debt Relief Implementation (June 30, 2009), available on the Monitor's web site at: http://www.pigfordmonitor.org/reports/rpt20090630_dr_impl.pdf.

² In general, USDA has agreed to refund payments that a claimant made between the date the claimant prevailed in the claims process and the date USDA implemented *Pigford* debt relief by cancelling an outstanding farm program loan. USDA has also agreed to refund offsets of payments that were taken on or after January 1, 1999, and applied to loans subject to *Pigford* debt relief. USDA may in some cases, however, re-apply payments and offsets to other farm program debt, if a claimant has outstanding loans that do not qualify for *Pigford* debt relief. For more information about the substantive rules of *Pigford* debt relief, including debt cancellation and refunds of payments or offsets, see Monitor Update No. 10, Debt Relief for Prevailing Class Members (rev. July 11, 2008), available on the Monitor's web site at: <http://www.pigfordmonitor.org/updates/update10.pdf>.

report.³ This report summarizes the IRS memorandum and the steps USDA has undertaken to implement the guidance contained in that memorandum.

II. IMPLEMENTING THE IRS GUIDANCE

The IRS memorandum provides guidance on a number of matters relating to federal income tax law and USDA's federal income tax reporting obligations. After receiving the memorandum, the parties and the Monitor met in person with representatives from the IRS Office of Chief Counsel and the National Taxpayer Advocate Service to clarify the IRS guidance. In implementing the guidance, the parties have focused on two primary questions: (1) what events trigger USDA's obligation to issue Forms 1099-C for debt relief; and (2) what effective date(s) should USDA use in reporting debt cancellation for federal income tax purposes. The steps USDA plans to take to implement the IRS guidance are described below.

A. Debt Cancellation and "Realization" of Income

According to the IRS, *Pigford* claimants realize discharge of indebtedness income as events occur that affect a claimant's right to debt relief. USDA is required to issue a Form 1099-C (also referred to by the IRS as an "information return"), for each tax year in which a claimant realizes discharge of indebtedness income of \$600 or more. To determine when a claimant realizes a discharge of indebtedness income for federal income tax reporting purposes, USDA must determine, for each claimant, when the last event necessary to effectuate a discharge of indebtedness occurred. Once USDA determines the

³ See Office of Chief Counsel, Internal Revenue Service Memorandum, *Pigford v. Schafer: Debt Relief Issues*, dated March 12, 2009. The IRS has published a copy of the memorandum at http://www.irs.gov/pub/iranoa/pmta2009_151.pdf.

date of the last event necessary to effectuate a discharge of indebtedness, USDA must report that date, along with the amount of the debt forgiveness, on an IRS Form 1099-C.

Because of the way debt relief has been implemented in the *Pigford* case, there are a number of events that can potentially constitute the last event necessary to effectuate a discharge of indebtedness in an individual case. According to the IRS guidance, USDA generally must issue Forms 1099-C using one or more of the following dates of “realization” of discharge indebtedness income: (1) the date an Adjudicator or Arbitrator decision becomes a final decision in the claim;⁴ (2) February 7, 2001, the date of a Stipulation and Order regarding debt relief for “forward sweep” loans;⁵ (3) July 11, 2008, the date when certain agreements between the parties regarding debt relief were published in a revised Monitor Update No. 10, “Debt Relief for Prevailing Class Members;”⁶ or (4) the date the parties reach agreement on the appropriate debt relief in an individual case. Although there may be exceptions in certain cases, generally, the IRS has advised

⁴ Because the Consent Decree and other Court Orders include provisions for Monitor review and for decisions to be reexamined by the Adjudicator or Arbitrator, a decision can become final in a number of different ways. If no petition for Monitor review is filed, an Adjudicator or Arbitrator decision granting a claimant relief becomes final when the deadline for filing a petition for Monitor review has passed, generally 120 days after the date of the Adjudicator or Arbitrator decision. If a petition for Monitor review is filed, a decision becomes final either when the Monitor denies the petition or, if the petition for reexamination is granted, when the Adjudicator or Arbitrator issues a decision on reexamination.

⁵ The Consent Decree provides debt relief for loans that were “incurred under, or affected by,” the program(s) that were the subject of the Equal Credit Opportunity Act (ECOA) claim(s) that were resolved in the class member’s favor. Consent Decree, ¶¶ 9(a)(iii)(A), 10(g)(i). On February 7, 2001, a Stipulation and Order was entered that further defines “incurred under, or affected by” debt relief. Paragraph 2 of the Stipulation and Order provides for forgiveness of: (1) loans that were identified by the Adjudicator or Arbitrator as affected by discrimination (“affected by” loans); and (2) loans that were incurred in the same loan program as the loan(s) identified by the Adjudicator or Arbitrator in the prevailing claim, from the date of the initial prevailing claim through the end of the class period (December 31, 1996) (“forward sweep” loans).

⁶ Monitor Update No. 10 is available on the Monitor’s web site at: <http://www.pigfordmonitor.org/updates/update10.pdf>.

that claimants realize a discharge of indebtedness income for *Pigford* debt relief on one or more of the dates identified in Table 1 below.

Table 1. IRS Guidance Regarding Dates for Reporting *Pigford* Debt Cancellation on Forms 1099-C

Event That Results in <i>Pigford</i> Debt Relief	Date of Realization of Debt Cancellation Income For Tax Purposes
A. Claimant Prevailed in Claims Process and Decision Is Final	Date Decision Becomes Final
1. Claimant Prevailed Before Adjudicator or Arbitrator and No Petition for Monitor Review Is Filed	120 Days from Date of Adjudicator or Arbitrator Decision ⁷
2. Claimant Prevailed Before Adjudicator or Arbitrator and Petition for Monitor Review Is Filed and Denied	Date Monitor Denies Petition
3. Petition for Monitor Review Is Filed, Petition Is Granted, and Claimant Prevailed on Reexamination	Date of Adjudicator or Arbitrator Reexamination Decision
B. Claimant Prevailed Before Feb. 7, 2001, and Received “Forward Sweep” Debt Relief After Feb. 7, 2001	Date of Feb. 7, 2001 Stipulation and Order (for portion of debt relief resulting from “forward sweep”) ⁸
C. Claimant Prevailed Before July 11, 2008, and Received Debt Relief as a Result of Agreements in Revised Monitor Update No. 10	Date of July 11, 2008 Revised Monitor Update No. 10 (for portion of debt relief resulting from agreements memorialized in revised Monitor Update No. 10) ⁹
D. Claimant Prevailed but Right to Debt Relief Was Not Clear Until After Parties Discussed and Reached Agreement	Date of Agreement in Individual Case

⁷ The 120-day time period takes into account the deadline for filing a petition for Monitor review. The 120-day deadline was established in a Stipulation and Order dated July 14, 2000. For claims decided prior to July 14, 2000, the Stipulation and Order set a petition deadline of 120 days from the date of the Stipulation and Order. The July 14, 2000 Stipulation and Order is available on the Monitor’s web site at: <http://www.pigfordmonitor.org/orders/20000714order.pdf>.

⁸ A claimant who prevailed after February 7, 2001, would realize debt cancellation income from “forward sweep” debt relief as of the date their decision becomes final.

⁹ A claimant who prevailed after July 11, 2008, would realize debt cancellation income for debt relief resulting from the agreements in revised Monitor Update No. 10 as of the date their decision becomes final.

B. USDA's Obligation To Issue Forms 1099-C

The IRS guidance affects USDA's obligation to issue Forms 1099-C for claimants who have realized or who will realize debt cancellation income. USDA is planning to issue Forms 1099-C on or before January 31, 2010, to report debt cancellation for claimants who received debt relief during calendar year 2009. For each of these claimants, USDA plans to consult the IRS guidance to determine what date(s) should be reported on the Forms 1099-C as the date the claimants realized debt cancellation income. These claimants can be sorted into several categories. The first category includes claimants who realized debt cancellation income in 2009 because agreements were reached in 2009 regarding their individual cases.¹⁰ The second category includes claimants who realized debt cancellation income on July 11, 2008, because their debt relief was a result of USDA's implementation of the agreements between the parties set forth in revised Monitor Update No. 10, which was issued July 11, 2008.¹¹ The third category includes claimants who first prevailed in the claims process on reexamination of their claims.

¹⁰ For example, in one case, the parties reached an agreement in 2009 regarding the cancellation of a loan assumed by a family member after a claimant prevailed in the claims process. In another case, the claimant prevailed early in the claims process, and USDA did not provide any debt relief until the claimant requested a review of his loan records. Initially the parties did not agree that the claimant's Farm Ownership Loan qualified for *Pigford* debt relief. After discussions between the parties, an agreement was reached in 2009 to provide *Pigford* debt relief for the outstanding Farm Ownership Loan. In each of these cases, USDA plans to implement the agreed-upon loan cancellation and will issue a Form 1099-C reporting the amount of the loan cancellation with a realization date that reflects the date the agreements were reached.

¹¹ These cases sometimes involve the additional debt cancellation after the refund of payments made on certain "forward sweep" loans. In some cases, claimants who prevailed in the claims process before the February 7, 2001 Stipulation and Order made payments on loans that were later forgiven under the terms of the February 7, 2001 Stipulation and Order. USDA has recently identified a number of claimants who will receive or who have received refunds of payments made between a prevailing decision in 1999 or 2000 and the February 7, 2001 Stipulation and Order. USDA plans to issue Forms 1099-C for the additional debt cancellation these claimants receive with a date of July 11, 2008, as the date the additional debt cancellation was "realized" for federal income tax reporting purposes.

USDA plans to issue Forms 1099-C for these claimants reporting the “realization” date as the date of the Adjudicator or Arbitrator reexamination decision.¹²

The IRS guidance also affects claimants who have already received Forms 1099-C reporting a discharge of their farm loans. The IRS has advised USDA to file corrected Form 1099-Cs, where corrections are needed, for Forms 1099-Cs filed within the last three calendar years.¹³ Corrections may be required in cases where USDA previously issued a Form 1099-C that reports income in a different year than the year that would be reported based on the March 2009 IRS guidance memorandum. Corrections may also be required in cases where USDA issued a Form 1099-C that reported a different amount of debt cancellation than the final amount implemented as a result of the debt relief review process. Although corrections may be necessary in some cases, USDA has not yet begun to review those cases where corrected Forms 1099-C may be required.

C. Monitor Update For Class Members On Federal Income Tax and Debt Relief

To help explain the federal tax implications of debt relief and the Forms 1099-C that claimants may receive from USDA, the Monitor has prepared a Monitor Update for class members, Monitor Update No. 16, “Federal Income Tax and Debt Relief.” The parties had the opportunity to review drafts of this Update and provided input as it was

¹² For at least some of these claimants, there may be a difference of several years between the date USDA actually implements their debt cancellation and the date reported on the Form 1099-C as the date the cancellation income was realized. For example, a claimant who received a reexamination decision in 2005, but whose debt relief was not actually implemented by USDA until 2009, will receive a Form 1099-C reporting the amount of loan forgiveness with a date of 2005.

¹³ The IRS calculates the three-year period based on when the Form 1099-C was filed. For example, if USDA filed a Form 1099-C in 2006 reporting debt cancellation income for calendar year 2005, the IRS has advised USDA to issue a corrected Form 1099-C if USDA determines that the amount or date of debt cancellation was not reported in accordance with the guidance provided in the IRS March 2009 memorandum. According to the IRS, no corrected Forms 1099-C are needed for Forms 1099-C that were filed prior to 2006.

being developed. USDA and Class Counsel have agreed that the information in Monitor Update No. 16 accurately sets forth the parties' understanding of the obligations described in the IRS memorandum. Monitor Update No. 16 describes the IRS guidance on the rules USDA must consider in reporting debt cancellation income. Because the rules are complicated and there are special tax rules that apply for farm income, the Update encourages class members to seek advice from a tax expert if they have questions about the Form(s) 1099-C they receive. Monitor Update No. 16 is attached as Appendix 2 to this report.

D. Remaining Steps in Implementation Work

Several important steps remain in the implementation process for debt relief. USDA has begun to implement the guidance for claimants who will receive debt relief in 2009 and who will, as a result, receive Forms 1099-C reporting debt cancellation income. USDA must also review the Forms 1099-C for claimants who received Forms 1099-C from 2006 through 2009 to determine whether corrected Forms 1099-C are needed. USDA must then develop a plan for implementing the IRS guidance regarding any corrected Forms 1099-C that may be required.

In addition, the substantive debt relief review process must be completed for all prevailing claimants who had outstanding farm program loan debt during the class period. As of August 1, 2009, approximately 2,700 Track A and Track B claimants whose loan records must be reviewed have been identified. USDA is proceeding in good faith and has continued to provide records and information as needed in the review process, and individual claimants continue to be identified who are entitled to receive additional debt relief.

III. CONCLUSION AND RECOMMENDATIONS

The IRS guidance has assisted the parties in understanding the tax implications of debt relief, and USDA has made important progress in implementing that guidance for claimants whose debt relief has been implemented over the past year. Continued effort will be needed to identify those class members who must receive corrected Forms 1099-C. Continued effort will also be needed to ensure the substantive debt relief review process is completed for all prevailing claimants who may be entitled to *Pigford* debt relief.

The Monitor recommends that the Court order the Monitor to report to the Court on or before January 15, 2010, regarding: (1) the status of the debt relief review process for prevailing claimants who are entitled to *Pigford* debt relief; and (2) USDA's implementation of the IRS guidance, including the guidance concerning corrected Forms 1099-C.

Dated: August 27, 2009.

Respectfully submitted,

s/Randi Ilyse Roth
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Monitor
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Appendix 1

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:ITA:B05:JMAramburu

date: March 12, 2009

to: Special Counsel to the National Taxpayer Advocate

from: John M. Aramburu
Senior Counsel, Branch 5
(Income Tax & Accounting)

subject: Pigford v. Schafer: Debt Relief Issues

Issues

This memorandum addresses certain federal income tax issues raised by the settlement of Pigford v. Schafer, a class action lawsuit brought on behalf of African-American farmers against the United States Department of Agriculture (USDA). The claimants alleged discriminatory treatment, and the settlement provides, in part, for the forgiveness of certain USDA loans made to the claimants. This memorandum addresses the following issues:

- (1) The years in which claimants realize discharge of indebtedness income as a result of debt forgiveness;
- (2) The years for which the USDA is required to issue information returns to report the claimants' discharge of indebtedness income;
- (3) Whether there could be reporting of "net" amounts on Forms 1099-C in cases where a decision resulted in a "switch" of the specific loan or loans forgiven, so that one loan is reinstated and another forgiven; and
- (4) What obligation does USDA have to issue corrected forms for past years?¹

Conclusions

¹ This memorandum does not address whether an individual claimant can exclude any realized discharge of indebtedness income from gross income under section 108 of the Internal Revenue Code. That provision permits the exclusion of discharge of indebtedness income under various circumstances, including insolvency and when the forgiven debt is "qualified farm indebtedness," as defined by the statute. Nor do we address a claimant's duty to report as income amounts paid by USDA to compensate the claimant for tax liability arising from a cash award or debt forgiveness.

(1) Pigford claimants may realize discharge of indebtedness income in a number of tax years, as events occur that affect the amount of debt forgiven. In some cases, claimants may have deductible losses if debt previously considered forgiven and reported as income is reinstated.

(2) The years for which the USDA is required to issue information returns to report the claimants' discharge of indebtedness income depends on the year in which the last event necessary to effectuate a discharge occurred. In this case, the events necessary to effectuate discharges of indebtedness occurred in a number of years, thus requiring information returns for a number of years.

(3) There should not be reporting of "net" amounts on Forms 1099-C. Where a decision resulted in a "switch" of the specific loan or loans forgiven, so that one loan is reinstated and another forgiven, the full amount of the loan that is forgiven must be reported on Form 1099-C in the year in which the last event necessary to effectuate the discharge occurred. In cases where a loan is reinstated, there is no further reporting required for discharged debt that was reported on a Form 1099-C for a prior year.

(4) If Forms 1099-C reporting the discharges of indebtedness were filed incorrectly by the USDA, corrections should be submitted for returns filed within the last three calendar years.

Facts

A Consent Decree dated April 14, 1999, sets forth the terms of the settlement. It establishes two "tracks" for resolving claims. Section 9 describes "Track A." A claimant proceeding under Track A must demonstrate to an "adjudicator" that:

- (A) The claimant owned or leased, or attempted to own or lease, farm land;
- (B) The claimant applied for a specific credit transaction at a USDA county office during the period [1981-1996];
- (C) The loan was denied, provided late, approved for a lesser amount than requested, encumbered by restrictive conditions, or USDA failed to provide appropriate loan service, and such treatment was less favorable than that accorded specifically identified, similarly situated white farmers; and
- (D) USDA's treatment of the loan application led to economic damage.

If the adjudicator determines that a claimant has made the required showing, the Consent Decree provides for various forms of relief. The debt forgiveness component is described as follows: "USDA shall discharge all of the class member's outstanding debt to USDA that was incurred under, or affected by, the program(s) that was/were the

subject of the ECOA [Equal Credit Opportunity Act] claim(s) resolved in the class member's favor by the adjudicator.”²

A court-appointed “Monitor” is charged with monitoring implementation of the Consent Decree and making reports to the Court. The Monitor also has the authority to “[d]irect the facilitator, adjudicator, or arbitrator to reexamine a claim where the Monitor determines that a clear and manifest error has occurred in the screening, adjudication, or arbitration of the claim and has resulted or is likely to result in a fundamental miscarriage of justice.” Sec. 12(b)(iii) of the Consent Decree. Pursuant to an April 4, 2000, “Order of Reference,” a 120-day period was instituted for the filing of petitions seeking Monitor review of decisions. The parties were given until July 2000 to petition for the review of decisions already issued.

Disputes arose among the parties regarding interpretation of the Consent Decree provision for debt relief for successful claimants. A February 7, 2001, Stipulation and Order resolved one such dispute. The parties agreed that claimants were entitled to forgiveness of not only that debt that was the subject of a discrimination claim decided in the claimant’s favor, but also any subsequent debt incurred under the same loan “program”³ administered by the USDA. The agreement that such subsequent debt also should be forgiven has been referred to as the “forward sweep.”

In 2008, the parties resolved another issue concerning the scope of debt relief. They agreed that the subsequent debt forgiven pursuant to the forward sweep should be considered forgiven as of the date the adjudicator or arbitrator’s decision in favor of the claimant became final (rather than on the date of the agreement for a forward sweep). Thus, if a decision in favor of a claimant became final in February 2000, the amount of the subsequent debt forgiven should be its balance as of February 2000. This agreement necessitated the refund of certain payments made on the subsequent debt, as well as the refund of certain amounts collected through offset, e.g., by withholding government benefits. See Monitor Update No. 10.

Finally, the Monitor’s office is currently engaged in a review of most or all decisions involving credit discrimination claims to ensure that the proper amount of debt relief has been awarded.

² Other relief awarded to qualifying Track A claimants includes a cash award of \$50,000 and tax deposits equal to 25% of the cash award and principal amount of the forgiven debt, respectively.

“Track B” is described in Section 10 of the Consent Decree. Decisions are made by an “arbitrator,” rather than an adjudicator, and only after an evidentiary hearing. A Track B claimant is required to demonstrate the required discrimination by a preponderance of the evidence. The benefit to a claimant of pursuing this more rigorous process is the potential recovery of actual monetary damages under the ECOA, rather than the prescribed \$50,000 award provided to successful Track A claimants.

³ The USDA made loans under various programs, e.g., Operating Loans, Farm Ownership Loans, and Emergency Loans.

Law– Issue (1)

Section 61(a)(12) of the Internal Revenue Code provides that gross income includes income from the discharge of indebtedness.

In United States v. Kirby Lumber Co., 284 U.S. 1 (1931), a corporation repurchased its bonds for an amount less than their par value. The Court held that this resulted in an accession to wealth because, to the extent of the difference, the corporation's assets had been released from a liability.

Regarding when a taxpayer realizes discharge of indebtedness income, the Tax Court stated in Cozzi v. Commissioner, 88 T.C. 435, 445 (1987):

The moment it becomes clear that a debt will never have to be paid, such debt must be viewed as having been discharged. The test for determining such moment requires a practical assessment of the facts and circumstances relating to the likelihood of payment. Brountas v. Commissioner, 74 T.C. 1062, 1074 (1980), supplemental opinion to 73 T.C. 491 (1979), vacated and remanded on other grounds 692 F.2d 152 (1st Cir. 1982), affd. in part and revd. in part on other grounds sub nom. CRC Corp. v. Commissioner, 693 F.2d 281 (3d Cir. 1982); see Bickerstaff v. Commissioner, 128 F.2d 366, 367 (5th Cir. 1942); Kent Homes Inc. v. Commissioner, 55 T.C. 820, 828-831 (1971), revd. on other grounds 455 F.2d 316 (10th Cir. 1972); Cotton v. Commissioner, 25 B.T.A. 1158 (1932). Any "identifiable event" which fixes the loss with certainty may be taken into consideration. United States v. S.S. White Dental Mfg. Co., 274 U.S. 398 (1927).

In Exchange Security Bank v. United States, 492 F.2d 1096 (5th Cir. 1974), a settlement agreement between the taxpayer and his creditor received judicial approval but was the subject of an appeal. The court held that the taxpayer realized discharge of indebtedness income in the year the settlement received judicial approval, notwithstanding the appeal, and that any reversal of the debt forgiveness would entitle the taxpayer to a loss deduction:

The right to receive cancellation of the debt accrued to appellants in March, 1959, and it was reaffirmed by the judicial order in August, 1959, Texas Trailercoach, Inc. v. C.I.R., 5 Cir., 1958, 251 F.2d 395. At that point it was determined with certainty that the debt could never be enforced, Koehring v. United States, 421 F.2d 715, 190 Ct. Cl. 898 (1970); Helvering v. Jane Holding Corp., 8 Cir., 1940, 109 F.2d 933, cert. denied, 310 U.S. 653, 60 S. Ct. 1102, 84 L. Ed. 1418 (1940). The faint possibility of required revival as a consequence of a future appeal to this Court did not change the actual realization of the gain, James v. United States, 366 U.S. 213, 81 S. Ct. 1052, 6 L. Ed. 2d 246 (1961); North American Oil Consolidated

v. Burnet, supra; Buder v. United States, 8 Cir., 1966, 354 F.2d 941. Indeed, it is clear that if the debt had been revived, appellants would still have been required to report the realized income and subsequently claim the loss, United States v. Lewis, 340 U.S. 590, 71 S. Ct. 522, 95 L. Ed. 560 (1951).

Id. at 1099-1100.

Analysis – Issue (1)

Applying the foregoing principles to the instant situation, we conclude that Pigford claimants may realize discharge of indebtedness income in a number of tax years, as events occur that result in the forgiveness of debt. A discussion of those events follows.

Final Decision of Adjudicator/Arbitrator

Claimants realize discharge of indebtedness income when the adjudicator's or arbitrator's decision awarding debt relief becomes final, so long as there is some basis for identifying the loan(s) forgiven. If there has been no petition for Monitor review, a decision generally will be final after expiration of the 120-day period for filing a petition (or in July 2000 in the case of the earliest decisions). If a petition has been filed regarding a decision favorable to a claimant, the decision becomes final either when the petition has been denied by the Monitor or when the original decision to forgive debt has been upheld upon reexamination by the adjudicator or arbitrator.⁴ If a petition is filed regarding a decision denying relief to a claimant and the decision is reversed, discharge of indebtedness income is realized when the revised decision is rendered.⁵

While in Exchange Security Bank v. United States, 492 F.2d 1096, the court found there to be discharge of indebtedness income prior to final judicial affirmance of a court-approved settlement, the case is distinguishable in that there the parties had mutually agreed that debt would be forgiven. Here, pending Monitor review, there has been no agreement regarding the debt relief in an individual case.

On the other hand, any administrative delay in "implementing" a decision does not affect the year in which a claimant realizes discharge of indebtedness income. Once a decision becomes final, debt has legally been forgiven. The USDA would be under an obligation to return any amounts collected improperly due to administrative error, and,

⁴ Exceptions to this general rule would include instances in which the USDA demonstrates, prior to expiration of the 120-day period, that it will not contest a claimant-favorable decision.

⁵ Note that the date a decision becomes final for purposes of determining when a claimant realizes discharge of indebtedness income can differ from the date used for purposes of determining the amount of debt forgiven and whether payments subsequent to such date are to be refunded. The latter issue is addressed in Monitor Update No. 10.

therefore, irrespective of the delay in implementing the decision, a claimant has an accession to wealth within the meaning of United States v. Kirby Lumber Co., 284 U.S. 1 (1931).⁶

Additional Debt Relief Under “Forward Sweep”

Claimants realized additional discharge of indebtedness income as the result of the February 7, 2001, Stipulation and Order, which provides for the forgiveness of subsequent loans made under the same program as the loan that is the subject of a discrimination finding. Prior to the order, there was neither an agreement nor an order that such debt be forgiven. Thus, it was reasonable to assume that this debt would be enforced. The additional debt relief was realized in tax year 2001.

Additional Debt Relief Under Agreement to Make “Forward Sweep” Retroactive

Claimants realized additional discharge of indebtedness income in 2008 as a result of the 2008 agreement to make the forward sweep retroactive to the date the adjudicator’s or arbitrator’s decision became final so that a refund of payments or offsets is required. Prior to this agreement, it was reasonable to assume that the additional balance of the subsequent debt on this earlier date would be enforced. The refund of payments and offsets pursuant to this agreement should be distinguished from the refund of payments and offsets necessitated by delays in implementing debt relief, *i.e.*, those necessitated by administrative error. As explained earlier, administrative delays in implementing debt relief are not relevant to the timing of discharge of indebtedness income.

Miscellaneous Realization Events

The modification of a decision (either as the result of a petition for Monitor review, a *sua sponte* review, or the current “global” review) can result in additional discharge of indebtedness income if additional debt is forgiven. Conversely, modification of a decision may result in a deductible loss if there is a reversal of previously awarded debt relief that has been included in gross income. See Exchange Security Bank v. United States, 492 F.2d at 1100.

Similarly, where review of a decision results in a “switch” of the specific loan or loans forgiven, so that one loan is reinstated and another forgiven to reflect the true intent of the arbitrator or adjudicator, a claimant may deduct as a loss the amount of debt previously included in income under the discharge of indebtedness doctrine and should report as income the amount of the newly-forgiven debt. This assumes that no amount of the debt initially discharged qualified for exclusion from gross income in the year it

⁶ In certain cases, the amount of debt forgiven will include, in addition to the balance owed on the date of the decision, an additional amount representing amounts collected by offset but which the USDA will refund to the successful claimant. A USDA Notice FLP-145, dated July 31, 2000, states the agency’s policy that where a claimant prevails on a credit claim, offsets made after January 1, 1999, will be refunded.

was discharged and that no amount of the reinstated debt would qualify for exclusion from gross income.

Law – Issues (2), (3), and (4)

Section 6050P of the Internal Revenue Code requires that an applicable entity report any discharges (in whole or in part) of indebtedness of any person in excess of \$600.

Section 1.6050P-1(a)(1) of the Income Tax Regulations provides that solely for purposes of the reporting requirements of section 6050P, a discharge of indebtedness is deemed to occur, except as otherwise provided in paragraph (b)(3) of this section, if and only if an identifiable event has occurred, whether or not an actual discharge of indebtedness has occurred on or before the date of the identifiable event.

Section 1.6050P-1(b)(2) provides that solely for purposes of section 6050P, with certain exceptions, a discharge of indebtedness occurs if one of the following eight identifiable events takes place:

- (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) The expiration of the non-payment testing period, as described in paragraph (b)(2)(iv) of this section. See § 1.6050P-1T.

Treas. Reg. § 1.6050P-1(e)(9) provides that if discharged indebtedness is reported under this section, no additional reporting is required for the amount reported, notwithstanding that a subsequent identifiable event occurs. Further, no additional reporting or Form 1099-C correction is required if a creditor receives a payment of all or a portion of a discharged indebtedness reported under this section for a prior calendar year.

Section 8.09 of Rev. Prov. 2008-30, 2008-23 I.R.B. 1056, provides that, in general, filers should submit corrections for Form 1099-Cs filed within the last three calendar years.

Analysis – Issues (2), (3) and (4)

(2) Years for which the USDA is required to issue information returns to report the claimants' discharge of indebtedness income.

Final Decision of Adjudicator/Arbitrator

The identifiable event that applies in this case is described in 1.6050P-1(b)(2)(F), an agreement between an applicable entity and the debtor to discharge the indebtedness at less than full consideration. This identifiable event will not occur until the last event necessary to effectuate the discharge has occurred. See T.D. 8654, 61 FR 262 (January 4, 1996). In 1999, the USDA (an applicable financial entity) and the claimants (the debtors) agreed to the settlement of Pigford v. Schafer, which has resulted in the forgiveness of certain USDA loans made to the claimants. Consequently, the USDA must file information returns under section 6050P for any amounts of discharged indebtedness for which the last event to effectuate the discharge has occurred. In general, the last event to effectuate the discharge occurs upon the adjudicator's or arbitrator's final decision awarding debt relief.⁷

However, because section 6050P requires reporting of discharges "in whole or in part," there can be a series of amounts that require reporting on Forms 1099-C. The additional amounts of discharged indebtedness occurring subsequent to a final adjudicator or arbitrator decision are discussed below.

Additional Debt Relief Under "Forward Sweep"

⁷ As discussed earlier, a final decision awarding relief occurs in various circumstances. Generally, a claimant-favorable initial decision will become final when the period for petitioning the Monitor expires, unless a petition has been filed, in which case the decision will become final when the petition is denied or the initial decision is reaffirmed upon reexamination. In the case of initial decisions adverse to a claimant that are appealed, discharge of indebtedness will occur when, after reexamination, a decision favorable to the claimant is rendered.

Under the forward sweep, claimants realized additional discharge of indebtedness income as a result of the February 7, 2001, Stipulation and Order. Prior to the order, there was neither agreement nor an order that such debt be forgiven. Although the debt relief to the claimants originated with the settlement agreement between the USDA and the claimants, in the case of the forward sweep, the Stipulation and Order dated February 7, 2001, was the last event necessary to fix the claimant's right to receive this additional amount of debt relief. Accordingly, the identifiable event triggering the information reporting requirement for debt relief under the forward sweep occurred on February 7, 2001. Thus, calendar year 2001 is the year for which Forms 1099-C are required to report the debt relief under the forward sweep.

Additional Debt Relief Under Agreement to Make "Forward Sweep" Retroactive

The claimants realized additional discharge of indebtedness income as a result of the 2008 agreement to make the forward sweep retroactive to the date the adjudicator's or arbitrator's decision became final so that a refund of payments or offsets was required. Prior to this agreement, it was not clear that the additional balance of the subsequent debt on this earlier date was forgiven. Thus, in the case of additional debt relief under the agreement to make the forward sweep retroactive, the last event to effectuate the debt relief under such agreement did not occur until 2008. Accordingly, the identifiable event triggering the information reporting requirement under section 6050P for such additional debt relief occurred in 2008, and that is the year for which the USDA is required to issue Form 1099-C.

Miscellaneous Realization Events

There are also miscellaneous realization events that result in discharge of indebtedness income. Modifications, either as a result of a petition for Monitor review, a *sua sponte* review, or the current "global" review, can result in either additional discharge of indebtedness or a reversal of previously awarded debt relief. Similarly, a review of a decision can result in a "switch" of the specific loan or loans forgiven, so that one loan is reinstated and another forgiven to reflect the true intent of the arbitrator or adjudicator. If a switch or modification results in a reversal of previous debt relief, a claimant may deduct a loss for the amount of debt previously included in income.

When a loan is reinstated as a result of a modification or switch, we conclude that no additional reporting is required. Section 6050P only requires reporting of discharges of indebtedness, not the incurrence or reinstatement of indebtedness. In addition, reporting under section 6050P is required only upon the occurrence of an identifiable event. Reinstatement of a loan is not one of the eight identifiable events. Further, section 1.6050P-1(e)(9) provides that if discharged indebtedness is reported under this section, no further reporting is required for the amount reported, notwithstanding that a subsequent identifiable event occurs. Likewise, there is no additional reporting by the USDA under section 6050P, or Form 1099-C correction required, if a creditor receives payment of all or a portion of the amount discharged. Thus, if the USDA reports debt

canceled for a claimant on Form 1099-C and subsequently that debt is reinstated, no additional reporting is required for that loan amount. The claimant nonetheless may be entitled to a loss in such situations if they have previously included the discharge of debt in income.

However, in the case of a modification or switch that results in additional discharge of indebtedness income, or if additional debt is forgiven where another loan is discharged, Form 1099-C is required for the year in which the identifiable event occurred for that additional or new discharge, i.e. the year in which the last event to effectuate the modification or switch occurs. The amount reported on the Form 1099-C in such cases is the total amount of debt canceled as a result of the modification or switch for each claimant.

(3) Whether there could be reporting of a “net” amount on Form 1099-C.

We conclude that there should not be a “net” reporting on Form 1099. As discussed above under “Miscellaneous Realization Events,” in the case of modifications or switches that result in both additional discharge of debt and a reinstatement of a loan, each event should be treated separately. The additional debt discharged must be reported on a Form 1099-C in the year in which the last event to effectuate the modification or switch occurs. There is no further reporting required where cancelled indebtedness that has previously been reported on Form 1099-C is reinstated.

(4) What obligation does USDA have to issue corrected forms for past years?

The general rule is that corrections should be submitted for Forms 1099-C filed within the last three calendar years. See Rev. Proc. 2008-30. If Forms 1099-C reporting the discharges of indebtedness were filed incorrectly by the USDA, corrections should be submitted for returns filed within the last three calendar years.

Please call (202) 622-4960 if you have any further questions.

Appendix 2

Monitor Update: Federal Income Tax and Debt Relief

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Federal Income Tax and Debt Relief

A. Introduction

This Monitor Update discusses briefly the intersection between *Pigford* debt relief and federal income tax rules.¹

This intersection occurs because the *Pigford* Consent Decree grants prevailing claimants forgiveness of some USDA loans, and also requires the government to make payments to the Internal Revenue Service (IRS) on behalf of those claimants. *Pigford* claimants are subject to federal income tax rules. According to those rules, *Pigford* debt relief may result in taxable income for the claimant.

This Update focuses on a handful of topics.

- First, it describes the most basic rules for *Pigford* debt forgiveness and for federal income tax that affect claimants receiving *Pigford* debt forgiveness.
- Second, it discusses how the interaction between *Pigford* debt forgiveness and federal income tax rules should work.
- Third, it explains why the timing of debt forgiveness is both complicated and important for claimant income taxes.
- Fourth, it describes the purpose of the IRS Form 1099-C that many claimants will receive in the mail.
- Finally, and perhaps most important, it directs claimants to additional resources that can be of help to them.

¹ Information in this Update is drawn primarily from the Consent Decree and other *Pigford* documents, especially *Pigford* court orders and other Monitor Updates, and an official memorandum from the Office of Chief Counsel at the IRS. All of these documents are available at the Monitor website. The *Pigford* Consent Decree is available at <http://www.pigfordmonitor.org/orders/19990414consent.pdf>; a February 7, 2001, Stipulation and Order, at <http://www.pigfordmonitor.org/orders/20010207order.pdf>; Monitor Update No. 10, "Debt Relief for Prevailing Class Members" (July 10, 2008), at <http://www.pigfordmonitor.org/updates/>; and Memorandum, Office of Chief Counsel, Internal Revenue Service, to Special Counsel to the National Taxpayer Advocate, *Pigford v. Schafer: Debt Relief Issues* (March 12, 2009), at http://www.irs.gov/pub/lanoa/pmta2009_151.pdf.

Understanding the intersection between *Pigford* debt relief and federal income taxes is essential if a claimant's federal income taxes are to be filed correctly.

B. Get Expert Income Tax Help

The topics covered in this Update are complicated. Therefore, claimants facing the issues described in the Update should consult with a federal income tax expert.

In addition, help for claimants on tax issues is available from the National Taxpayer Advocate and from Class Counsel. Contact information for both is available at the end of this Update.

C. Pigford Debt Relief in Brief

The *Pigford* Consent Decree provides for debt relief for some prevailing claimants. For the purpose of this Update, two aspects of debt relief are central: the forgiveness of some USDA loans and, for Track A claimants, payment(s) to the IRS on behalf of the claimant.

1. Forgiveness of Claimant Debt

As part of debt relief, the *Pigford* Consent Decree provides for the forgiveness of some USDA claimant debt. Not all prevailing claimants receive debt forgiveness, and in some cases prevailing claimants receive forgiveness for only a part of their USDA debt.

The *Pigford* debt relief process—the sorting out of which claimant debts are to be forgiven, and which are not to be forgiven—has now stretched out over several years. Some claimants received debt forgiveness as early as 1999, and others are receiving debt forgiveness as this Update is written, in 2009. In addition, some claimants have received debt forgiveness on more than one occasion.

2. USDA Tax Payments to the IRS

The *Pigford* Consent Decree requires USDA to make payments to the IRS on behalf of Track A claimants who receive debt forgiveness. The payment to the IRS is equal to 25 percent of the principal debt forgiven by USDA.

The IRS treats the payment as if it were made by the claimant toward his or her federal income tax.

3. For More Information on Debt Relief: See Monitor Update No. 10

The above explanation only touches on the most basic aspects of *Pigford* debt relief. For detail about how debt relief works, see Monitor Update No. 10, "Debt Relief for Prevailing Class Members."²

See, as well, the contact information at the end of this Update for further assistance regarding *Pigford* debt relief.

² Available at <http://www.pigfordmonitor.org/updates/>.

D. Federal Income Tax Law in Brief

Pigford debt forgiveness can affect the federal income tax a claimant may owe.

1. Debt Forgiveness Can Mean “Debt Cancellation” Income

The IRS sees *Pigford* debt forgiveness as a form of what federal income tax law calls “debt cancellation.”³ The IRS considers debt cancellation a form of income, much like the salary from a job, or proceeds from the sale of crops, are considered income.

The extent to which *Pigford* debt forgiveness turns out to be taxable income can vary greatly from person to person. For example, *Pigford* debt forgiveness will almost always include both principal and interest. Because *Pigford* debts were made for farming purposes, it is possible that only forgiveness of the principal part of the debt is considered income by the IRS.

There are other complicated rules regarding how debt cancellation affects taxes owed by a claimant. For example, some or all of the cancelled debt may be excluded from income if the debt was incurred for the claimant’s farming business or if the claimant is financially insolvent.

2. IRS Form 1099-C and *Pigford* Debt Forgiveness

Federal income tax law requires USDA to use what is known as IRS Form 1099-C to report the amount of *Pigford* debt forgiveness if the forgiveness is for \$600 or more. The purpose of IRS Form 1099-C is to let the *Pigford* claimant and the IRS know exactly what debts are forgiven and in what tax year the forgiveness took place. Both of these pieces of information—how much debt is forgiven, and in what year—are essential if the claimant is to file his or her federal income taxes correctly.

IRS Form 1099-C reports the total amount of debt cancelled—both principal and interest. It also gives the date of debt cancellation for tax reporting purposes. It is sent to both the claimant and the IRS.

3. Consult an Income Tax Expert

Although the IRS says that debt cancellation—including *Pigford* debt forgiveness—can be taxable income, figuring out how debt cancellation affects a person’s taxes can be very complicated.

To make sure federal income tax filings are correct, and to deal with the IRS, the agency that administers tax law, claimants should consult a tax expert.

In addition to a tax expert, claimants may want to contact the National Taxpayer Advocate or Class Counsel. Contact information for both is at the end of this Update.

³ IRS Form 1099-C refers to “Cancellation of Debt.” IRS rules also sometimes call debt forgiveness “discharge of indebtedness.” See, for example, IRS Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment) (revised March 2009).

E. *Pigford* Debt Relief and Federal Income Taxes—How It Should Work in Theory

Several basic steps that should occur every time a *Pigford* claimant is eligible for debt forgiveness are described below.

1. *Pigford* Debt Identified and Forgiven

The Consent Decree and other *Pigford* documents set out how *Pigford* debt relief works.

Some prevailing *Pigford* claimants with outstanding USDA farm loan debt will have at least part of that debt forgiven. The rules governing *Pigford* debt forgiveness are described generally in Monitor Update No. 10, "Debt Relief for Prevailing Class Members."⁴

2. USDA Makes Payments to the IRS

The Consent Decree orders USDA to make payments to the IRS on behalf of Track A claimants who receive debt relief. The payments are equal to 25 percent of the principal forgiven under *Pigford* debt relief.

For example:

Suppose debt relief for a Track A claimant is \$5,000. One thousand dollars of this total is interest that had accumulated over time, and \$4,000 is the remaining principal on a loan. USDA forgives the entire \$5,000. Since 25 percent of \$4,000 is \$1,000, USDA contributes \$1,000 to the IRS on behalf of the claimant to be applied to any taxes the claimant might owe.

Track B claimants are not entitled to a tax payment for debt relief.

3. USDA Sends IRS Form 1099-C to *Pigford* Claimants and the IRS

After the debt to be forgiven is identified, USDA sends claimants an IRS Form 1099-C. The same form is sent to the IRS. This is the way both the claimant and the IRS learn how much claimant debt was forgiven and when the forgiveness—for income tax purposes—took place. It is therefore an important tax document.

The year after USDA makes a payment to the IRS on behalf of a claimant receiving debt forgiveness, an additional IRS Form 1099-C is sent to the claimant and the IRS to report the tax payment. The IRS considers the tax payment income.

4. Claimants File Federal Income Taxes

Using IRS Form 1099-C and other documents, the claimant files his or her federal income tax forms. The extent to which *Pigford* debt forgiveness turns out to affect the federal income taxes of a claimant varies greatly from person to person and circumstance to circumstance. Even in the simplest case, farm taxes and debt cancellation tax law is complicated. As noted above, therefore, *Pigford* claimants should consult an expert on federal income taxes.

⁴ Available at <http://www.pigfordmonitor.org/updates/>.

F. Timing of Debt Relief—a Central Problem for Federal Income Tax

For *Pigford* claimants, the timing of debt forgiveness is both important and complicated.

1. Timing of Debt Forgiveness “Realization”

From the viewpoint of the IRS, an important question for *Pigford* debt forgiveness is when the cancellation of *Pigford* debt is “realized.” Realization of debt forgiveness essentially means that the claimant’s right to debt forgiveness is final and cannot be taken away.

One might think that it would be easy to identify the year in which *Pigford* debt forgiveness for a particular claimant is realized. Unfortunately, settling on a date on which *Pigford* debt forgiveness is realized is more difficult than it may seem at first.

2. When *Pigford* Debt Forgiveness Is Realized for Income Tax Purposes

The question to be answered for each *Pigford* claimant who receives debt forgiveness is: when is *Pigford* debt cancellation realized for federal income tax purposes? The IRS has provided legal guidance on how to answer this question.

In general, the date when *Pigford* debt forgiveness is realized can be based on one of four possible events:

- a. the date of a final decision on the claimant’s individual case;
- b. the date of a specific order issued by the Court;
- c. the date of an agreement on a general rule regarding how *Pigford* debt relief works; or
- d. the date of an agreement in an individual claimant’s case.

A claimant’s right to debt forgiveness is made final by one of these dates, which means that debt forgiveness is realized on that date.

It is also the case that a claimant can have a number of different realization dates because part of the forgiveness was realized on a certain date, and another part of the forgiveness was realized on a different date.

Each of the four realization possibilities is discussed briefly below.

a. Adjudicator or Arbitrator Decision Is Final

For many *Pigford* claimants, the realization of debt cancellation occurs when a decision by the Adjudicator or Arbitrator that resulted in debt forgiveness becomes final.

The question of when a *Pigford* decision becomes final is itself sometimes challenging to answer. In general, if the claimant prevails with the Adjudicator or Arbitrator, and no petition to the Monitor is filed, the IRS concludes that the decision is final, and the debt cancellation is realized 120 days after the decision is issued.

For example:

Suppose the Track A decision by the Adjudicator approving the claim is issued on October 1, 2007. The 120-day period for USDA to file a petition to the Monitor

expires on January 29, 2008. USDA does not file a petition. The decision is final on January 29, 2008, and the debt cancellation income is realized in 2008.

In many cases, however, a petition is filed by either the claimant or the government with the Monitor in an effort to have the decision changed. The finality of an Adjudicator or Arbitrator decision therefore depends on whether a petition to the Monitor is filed.

For example, when the claimant prevails on an Adjudicator or Arbitrator decision, a petition to the Monitor is filed, and the Monitor denies the petition, the decision is final and debt cancellation is realized when the Monitor issues a decision.

If the claimant receives a decision from the Adjudicator or Arbitrator, a petition to the Monitor is filed, and the Monitor grants the petition, the Adjudicator or Arbitrator will issue a decision on reexamination. In such a case, the decision is final, and the debt cancellation is realized when the Adjudicator or Arbitrator issues a reexamination decision.

b. Pigford Court Order Regarding Debt Forgiveness

A number of court orders issued by the Judge in the *Pigford* case address debt forgiveness. As a result, for some claimants, the IRS considers the date of a *Pigford* court order as the date a claimant realizes cancellation of indebtedness income.

In general, *Pigford* rules say that debt relief is provided for loans that were directly affected by discrimination. A Stipulation and Order issued by the Court on February 7, 2001, clarifies debt relief further. The February 7, 2001, Stipulation and Order stated that if the claimant received loans through the same loan program after the loan that was directly affected by discrimination, those loans are also eligible for debt forgiveness. Forgiveness of these loans is sometimes called "forward sweep" debt forgiveness.⁵ The IRS has concluded that, for federal income tax purposes, forward sweep debt relief resulted from the February 7, 2001, Stipulation and Order. As a result, for many claimants, forward sweep debt relief is realized in 2001.

So, for example:

Suppose a claimant prevailed on a claim concerning the denial of a 1981 Operating Loan and that the Adjudicator issued a decision on January 10, 2000. Suppose also that the claimant has an outstanding Operating Loan that originated in 1985. As a result of "forward sweep," the claimant is entitled to debt forgiveness of the 1985 Operating Loan. The date on which the claimant realized cancellation of indebtedness income is February 7, 2001.

c. Agreement on a General Rule Regarding Debt Forgiveness

After the *Pigford* Consent Decree was signed, lawyers for the class and the government ironed out some agreements as to how *Pigford* debt forgiveness should work. These agreements could be said to have filled in some of the gaps of the Consent Decree as far

⁵ For details, see Update No. 10 at <http://www.pigfordmonitor.org/updates/>.

as debt forgiveness is concerned. They apply to the whole class in general, and not just to a certain claimant. The IRS considers the date of this type of agreement as the date some claimants realize cancellation of indebtedness income.

For example, a revised version of Monitor Update No. 10, "Debt Relief for Prevailing Class Members," was released on July 11, 2008.⁶ It set forth a number of general agreements reached by the lawyers for the class and the government as to how debt forgiveness should work, and discusses which claimant loans should be forgiven in certain situations.

According to the IRS, claimants who receive debt forgiveness based on some of the rules agreed to and described in Monitor Update No. 10 realize a cancellation of indebtedness in 2008, the year the agreement was reached and the revised Update was issued.

d. Agreement on a Case-by-Case Basis

In still other cases, lawyers for the class and the government do not at first agree on the debt forgiveness that a particular claimant should receive. If there is a disagreement on how *Pigford* debt relief rules should be applied to an individual claimant, but lawyers for the class and the government later reach agreement on the debt relief that should be provided to that claimant, the IRS considers the date of the agreement as the date the claimant realizes a cancellation of indebtedness income.

3. IRS Form 1099-C Should Tell Claimants When Forgiveness Realized

The above sections discuss in some detail when *Pigford* debt forgiveness is realized for income tax purposes. As noted above, the date on which *Pigford* debt forgiveness is realized is important when a *Pigford* claimant files his or her taxes. An IRS Form 1099-C sent to the claimant by USDA should take into account all of the factors described above, and should give the claimant the correct date for when his or her debt forgiveness is realized.

Claimants who believe their IRS Form 1099-C is in error should talk with an income tax expert and should consider contacting Class Counsel. Contact information for Class Counsel is at the end of this Update.

4. Administrative Delay—No Effect on Realization Date

In some cases, the claimant's decision is final, and under the rules that apply for *Pigford* the claimant should receive debt forgiveness. Instead of getting debt forgiveness right away, however, there is a delay in the implementation of the debt forgiveness. If the reason debt

⁶ Available at <http://www.pigfordmonitor.org/updates/>.

forgiveness is not implemented right away is what the IRS calls “administrative delay,” the delay in implementation does not change the date of realization.

For example, debt cancellation realization often takes place when an Adjudicator decision that triggered debt forgiveness is final. If after an Adjudicator’s decision some form of administrative delay slows the actual cancellation of the claimant’s debt, this delay does not affect the year in which a claimant realizes cancellation of indebtedness income. The date of realization is still the date when the Adjudicator decision was final.

G. IRS Form 1099-C Information Returns

If debt is forgiven under *Pigford*, federal tax law requires USDA to send to the claimant an IRS Form 1099-C if the debt forgiven is \$600 or more.

1. IRS Form 1099-C and the Year Debt Cancellation Is Realized

The purpose of an IRS Form 1099-C, as noted above, is to let the *Pigford* claimant and the IRS know exactly what debt is forgiven, and in what year the debt cancellation is realized. With this information a claimant can properly file his or her federal income tax return.

2. IRS Form 1099-C and a New Round of Debt Cancellation

Beginning in 2008, USDA, Class Counsel, and the Monitor started reviewing the loan records and debt forgiveness provided to prevailing *Pigford* claimants. As a result of this review, some claimants may receive additional debt cancellation or may receive debt cancellation for the first time. If, as a result of the review, USDA cancels claimant debt, USDA must send the claimant and the IRS an IRS Form 1099-C.

3. Correcting an Already-Issued IRS Form 1099-C

In some cases, a claimant may receive additional debt relief on a loan for which the claimant already received an IRS Form 1099-C. If the additional debt relief makes an earlier IRS Form 1099-C incorrect, USDA may correct the previously issued IRS Form 1099-C rather than issue a new IRS Form 1099-C. USDA will only issue corrected IRS Forms 1099-C if the previously issued form was filed within the last three calendar years.

Legal guidance issued by the IRS suggests that USDA incorrectly identified the tax year in some previously issued IRS Forms 1099-C.⁷ According to the IRS legal guidance, a corrected IRS Form 1099-C with the correct tax year should be issued if the previously issued form was filed within the last three calendar years.

⁷ See Memorandum, Office of Chief Counsel, Internal Revenue Service, to Special Counsel to the National Taxpayer Advocate, *Pigford v. Schafer*: Debt Relief Issues (March 12, 2009), available at http://www.irs.gov/pub/lanoa/pmta2009_151.pdf.

H. For More Information

Claimants interested in more information on the interaction between *Pigford* debt relief and federal income tax should ask for additional help. The following resources are available.

1. Income Tax Experts

As noted above, *Pigford* claimants with debt relief should consult a tax expert. Tax experts may include, for example, certified public accountants (CPAs) who assist people with their taxes.

2. Class Counsel

Claimants in *Pigford* are represented by Class Counsel. Class Counsel can be contacted at 1-866-492-6200.

3. National Taxpayer Advocate

The Taxpayer Advocate Service is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should. Each state, the District of Columbia, and Puerto Rico has at least one Local Taxpayer Advocate, who is independent of the local IRS office and reports directly to the National Taxpayer Advocate. If a claimant has difficulties resolving a tax issue with the IRS, the claimant should contact the Taxpayer Advocate Service at 1-877-777-4778 or TTY/TTD 1-800-829-4059. Their website is <http://www.irs.gov/advocate/>. Either the claimant or the claimant's tax adviser should feel free to contact the Taxpayer Advocate Service.

4. Monitor

The Monitor's office is unable to provide tax advice to claimants. For questions about *Pigford* debt relief or other matters related to *Pigford*, feel free to contact the Monitor's office at 1-877-924-7483.