**Q. 8047. How is the amount of discharge of debt income allocated between taxpayers who are jointly and severally liable with respect to the discharged debt?**

The Form 1099-C regulations can be confusing on this point. In the case of multiple debtors (who are subject to joint and several liability) with respect to the discharge of $10,000 or more of indebtedness, the regulations require the creditor to issue a Form 1099-C to each debtor. With respect to spouses (who are co-obligors), only one Form 1099-C is required to be sent.[[1]](#endnote-1) Moreover, on each Form 1099-C (if more than one is sent to multiple debtors), the full amount of the discharged debt is reported on each Form 1099-C. So in the case of multiple creditors each receiving a Form 1099-C, there may be confusion as to how much of the discharged debt each debtor must report.

 *Example*: Asher, Ashley and Joel are jointly and severally liable with respect to a $120,000 bank loan. In 2015, the bank forgives the loan and issues each co-obligor a Form 1099-C reporting the discharge of the entire $120,000. Must each co-obligor report $120,000 as discharge of debt income? If so, the discharge of debt income would be triple counted.

 Although there are no cases that address this issue, in a chief counsel advice memorandum, the IRS stated that the full amount of discharge of debt should be allocated among the co-obligors (including co-obligor spouses) based on all the facts and circumstances.[[2]](#endnote-2) Thus, in the above example, if Asher, Ashley and Joel were equal partners, the $120,000 of discharged debt should be allocated equally among them.

**Q. 8048. Is the discharge of a guaranteed debt income to the discharged guarantor?**

 No. The rationale for taxing discharge of debt income is the debtor’s tax-free enjoyment of the borrowed funds during the period he or she was obligated to repay the lender. Once the obligation is discharged, it is appropriate to then tax the previously enjoyed economic benefit. Conversely, a guarantor who has a contingent obligation to repay the debt (i.e., the primary obligor defaults) never enjoyed the benefit of the borrowing. Therefore, the discharge of a guaranteed debt does not trigger discharge of debt income to the guarantor.[[3]](#endnote-3)

1. Treas. Reg. § 1.6050P-1(e)(1)(i). [↑](#endnote-ref-1)
2. Chief Counsel Advise 200023001 (June 9, 2000). [↑](#endnote-ref-2)
3. *Landreth v. Commissioner*, 50 T.C. 803 (1968); *Mylander v. Commissioner*, T.C. Memo 2014-191 (September 17, 2014). [↑](#endnote-ref-3)