

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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PLR-165129-04

Date: June 13, 2005

TY:

X	=
Taxpayer	=
Tax Year	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Accounting Firm	=

Dear X:

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This letter is in response to a letter of Date 4, submitted by the taxpayer, requesting a ruling under section 301.9100-3 of the Procedure and Administrative Regulations requesting relief to make a timely election under section 461(c) of the Internal Revenue Code. The facts are as follows:

Taxpayer is an accrual basis limited liability company. The taxpayer was formed in Date 1 and filed its first tax returns on Date 3. The taxpayer intended to elect under section 461(c) of the Internal Revenue Code to ratably accrue real estate taxes. This election may be made without the consent of the secretary of the Treasury provided it is

made no later than the due date (including extensions) of the return for the first taxable year in which the taxpayer incurs real property taxes.

The Accounting Firm was hired to prepare the tax returns for taxpayer's first tax year. The Accounting Firm properly filed Form 8736 to automatically extend the section 461(c) election deadline until Date 2. They filed Form 8800 to again extend their filing date to Date 5. They failed to include an explanation of the need for a second extension in preparation of Form 8800. As a result, the Internal Revenue Service denied the taxpayer's request for an extension. The failure to include an explanation of the need for a second extension has made the election to ratably accrue real estate taxes unavailable to the taxpayer. The taxpayer's first tax return for the taxpayer's first tax year was filed on Date 3.

Sections 301.9100-1 through 301.9100-3 of the regulations provide extensions of time to make a regulatory election. Section 301.9100-2 provides an automatic 6 month extension of time to make a regulatory election, predicated upon the taxpayer's timely filing of their tax return for the relevant tax year. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(a) provides that a request for relief under section 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) of the regulations provides in part that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer relied on a qualified tax professional, and the tax professional failed to make the election. Section 301.9100-3(b)(2) of the regulations provides that there is no reasonable reliance if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

Section 301.9100-3(b)(3) of the regulations provides in part that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer:

- i) Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief;
- ii) Was informed in all material respects of the required election and related tax consequences but chose not to file the election; or
- iii) Uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section 301.9100-3(c) of the regulations provides in part that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower

tax liability in the aggregate, for all taxable years affected by the election, than the taxpayer would have had if the election had been timely made (taking into account the time value of money). This section also provides that the interests of the government are prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessments under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based upon our analysis of the facts, the taxpayer in the instant case acted reasonably and in good faith, and granting relief will not prejudice the interests of the government, and therefore the requirements of section 301.9100 have been met.

Under the facts represented, the taxpayer's failure to include an explanation for the need for a second extension on the Form 8800 was not due to the intentional disregard of the tax rules, but due to a reasonable reliance upon a qualified tax professional. Thus, the failure to include an explanation was an inadvertent error on the part of the taxpayer, and the taxpayer did not affirmatively choose not to file the return. The taxpayer is not seeking to alter a return position or to use hindsight to request relief. Finally, the taxpayer acted promptly in filing its request for relief, before the IRS discovered the failure to make a regulatory election. Therefore, the taxpayer did not act unreasonably or in bad faith.

Furthermore, granting relief will not result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made, nor will any closed years be affected, as the taxpayer has filed its return as if the election had been timely made. Therefore, the interests of the government will not be prejudiced by granting the request for relief.

Because the taxpayer acted reasonably and in good faith, and because the interests of the government will not be prejudiced if the request for relief is granted, taxpayer is granted an extension of 45 days from the date of this ruling to file the forms necessary to ratably accrue real estate property taxes under section 461(c) of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Christopher F. Kane
Chief, Branch 3
Associate Chief Counsel
(Income Tax & Accounting)

cc: