

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201442007**
Release Date: 10/17/2014
Index Number: 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-104229-14

Date:
July 21, 2014

Re: Request for an Extension of Time to Make an Election under § 448(d)(4)(C) to Treat All Members of the Parent’s Affiliated Group as a Single Taxpayer for Purposes of the Ownership Test in § 448(d)(2)(B)

Legend

P =

S1 =

S2 =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Dear :

This letter responds to a letter dated January 31, 2014, and supplemental correspondence, submitted by P on behalf of itself and its subsidiaries S1 and S2 requesting an extension of time under § 301.9100-3 of the of the Procedure and Administration Regulations to make an election under § 448(d)(4)(C) of the Internal Revenue Code to treat all members of P’s affiliated group as a single taxpayer for purposes of the ownership test in § 448(d)(2)(B), effective for the taxable year ended Date1.

FACTS

Parent represents that the facts are as follows:

P is the common parent of an affiliated group of corporations that is comprised of P and its wholly-owned subsidiaries S1 and S2. The affiliated group of corporations files a consolidated federal income tax return on a calendar-year basis.

P, S1, and S2 are engaged in the business of providing advice and counsel (“sales and marketing consulting services”) to businesses to improve their sales and marketing capabilities. P, S1, and S2 are compensated on a fixed fee or time and material basis. The compensation is not contingent upon the purchase of advertisements or other media placement by clients.

Prior to Date2, a date before Date1, P, S1 and S2 were S corporations, and had used the overall cash receipts and disbursements method of accounting (the “cash method of accounting”) at all times since their formation.

P timely filed its consolidated federal income tax return for the taxable year ended Date1. On this return, P indicated that P, S1, and S2 were qualified personal service corporations under § 448(d)(2). P, S1, and S2 continued to use the overall cash method of accounting for the taxable years ended Date1, Date3, and Date4. However, in Date5, P learned that it had inadvertently failed to attach the election statement required by § 301.9100-7T(a) to P’s consolidated federal income tax return for the taxable year ended Date1.

The period of limitation on assessment under § 6501(a) for the taxable year ended Date1 has not expired. P executed a Form 872, *Consent to Extend the Time to Assess Tax*, with the Internal Revenue Service extending the period of limitation on assessment under § 6501(a) for the taxable year ended Date1 until Date6.

RULING REQUESTED

P requests an extension of time pursuant to § 301.9100-3 to make an election under § 448(d)(4)(C) to treat all members of its affiliated group as a single taxpayer for purposes of the ownership test in § 448(d)(2)(B).

LAW AND ANALYSIS

Section 448(a)(1) generally provides that, in the case of a C corporation, taxable income shall not be computed under the cash method of accounting.

Section 448(b) provides exceptions to the limitation on the use of the cash method of accounting by a C corporation. For instance, § 448(b)(2) provides that § 448(a)(1) shall not apply to qualified personal service corporations.

Section 448(d)(2) defines the term “qualified personal service corporation” to mean any corporation (A) substantially all the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, and (B) substantially all the stock of which (by value) meets certain employee-ownership requirements.

Section 1.448-1T(e)(3) of the Income Tax Regulations provides that the term “qualified personal service corporation” means any corporation that meets the function test of § 1.448-1T(e)(4), and the ownership test of § 1.448-1T(e)(5).

Section 1.448-1T(e)(4)(i) provides that a corporation meets the function test if substantially all the corporation’s activities for a taxable year involve the performance of services in health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting. Substantially all of the activities of a corporation are involved in the performance of services in a qualifying field only if 95 percent or more of the time spent by employees of the corporation, serving in their capacity as such, is devoted to the performance of services in a qualifying field.

Section 1.448-1T(e)(5)(i) provides that a corporation meets the ownership test if at all times during the taxable year, substantially all the corporation’s stock, by value, is held, directly or indirectly, by (A) employees performing services for such corporation in connection with activities involving a field described in § 1.448-1T(e)(4); (B) retired employees who had performed such services for such corporation; (C) the estate of any individual described in § 1.448-1T(e)(5)(i)(A) or (B); or (D) any other person who acquired such stock by reason of the death of an individual described in § 1.448-1T(e)(5)(i)(A) or (B), but only for the 2-year period beginning on the date of the death of such individual. For purposes of the ownership test, “substantially all” means an amount equal to or greater than 95 percent.

Section 448(d)(4)(C) provides that at the election of the common parent of an affiliated group (within the meaning of § 1504(a)), all members of such group may be treated as 1 taxpayer for purposes of § 448(d)(2)(B) if 90 percent or more of the activities of such group involve the performance of services in the same field described in § 448(d)(2)(A).

Section 301.9100-7T(a)(2)(i)(A) provides, in relevant part, that the election under § 448(d)(4)(C) must be made by the due date (taking extensions into account) of the tax return for the first taxable year for which the election is to be effective.

Section 301.9100-7T(a)(3) provides that the election under § 448(d)(4)(C) shall be made by attaching a statement to the tax return for the taxable year for which the election is to be effective. The statement shall (A) contain the name, address and taxpayer identification number of the electing taxpayer, (B) identify the election, (C) indicate the section of the Code under which the election is made, (D) specify, as applicable, the period for which the election is being made and/or the property or other items to which the election is to apply, and (E) provide any information required by the relevant statutory provisions and any information necessary to show that the taxpayer is entitled to make the election.

Under section 301.9100-1, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 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.

CONCLUSION

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Parent is granted 60 calendar days from the date of this letter to make the election under § 448(d)(4)(C) to treat all members of its affiliated group as a single taxpayer for purposes of the ownership test in § 448(d)(2)(B), effective for the taxable year ended Date1. This election must be made by P filing an amended consolidated federal income tax return for the taxable year ended Date1, with the written election statement required by § 301.9100-7T(a)(3). P should attach a copy of this letter to the amended consolidated federal income tax return.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provisions of the Code (including other subsections of § 448). Specifically, no opinion is expressed or implied as to whether P, S1 or S2 are qualified personal service corporations under § 448(d)(2) and the regulations thereunder, or whether P, S1 or S2 qualify to make the election under § 448(d)(4)(C). Moreover, no opinion is expressed or implied as to

whether P, S1 or S2 are prohibited from using the cash method of accounting under § 448 or any other section of the Code or regulations.

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

In accordance with the power of attorney, we are sending a copy of this letter to Parent's authorized representative. We are also sending a copy of this letter to the appropriate operating division director.

Sincerely,

Karla M. Meola

KARLA M. MEOLA
Assistant to the Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes