Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
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PLR-104399-15

Date:
May 20, 2015

TY:

Legend

Taxpayer=
X=

Date 1=
Date 2=
Subsidiary 1=
Year=
Date 3=
Date 4=
Firm=

Dear :

This letter responds to your letter dated January 26, 2015, submitted on behalf of Taxpayer requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make the election described in section 4 of Rev. Proc. 2011-29, 2011-18 I.R.B. 746, which includes attaching statements to Taxpayer's original federal income tax return for Year.

FACTS

Taxpayer is a corporation that conducts its operations through wholly owned subsidiaries and is engaged in X. Taxpayer is a calendar year taxpayer and follows the accrual method of accounting.

On Date 1, Taxpayer entered into a Stock Purchase Agreement pursuant to which, effective as of the closing on Date 2, it acquired 100% of the issued and outstanding stock of Subsidiary 1. In connection with the acquisition, Taxpayer incurred transaction costs, including success-based fees. The success-based fees were paid upon the closing of the transaction on Date 2. Taxpayer capitalized the costs in accordance with § 263 of the Internal Revenue Code and § 1.263(a)-2(a) and § 1.263(a)-5 of the Income Tax Regulations. Specifically, Taxpayer capitalized 30 percent of the success-based fees, and treated the remaining 70 percent as an amount which did not facilitate the transaction on its corporate income tax return for Year consistent with the safe harbor election provided in Rev. Proc. 2011-29. Taxpayer timely filed its tax return on Date 3, which was prepared by Firm.

On or about Date 4, Firm discovered that the election statement, required by § 4.01(3) of Rev. Proc. 2011-29, was not attached to the filed return. This oversight was uncovered prior to any discovery by the Service.

Accordingly, Taxpayer requests an extension of time be granted for the purpose of allowing Taxpayer to attach to its Year return, the mandatory statement regarding the election to use the safe harbor method of allocating success-based fees.

LAW

Section 263(a)(1) and § 1.263(a)-2(a) provide that no deduction shall be allowed for any amount paid out for property having a useful life substantially beyond the taxable year. In the case of an acquisition or reorganization of a business entity, costs that are incurred in the process of acquisition and that produce significant long-term benefits must be capitalized. INDOPCO v. Commissioner, 503 U.S. 79, 89-90 (1992); Woodward v. Commissioner, 397 U.S. 572, 575-576 (1970).

Under § 1.263(a)-5 of the regulations, a taxpayer must capitalize an amount paid to facilitate a business acquisition or reorganization transaction described in § 1.263(a)-5(a). An amount is paid to facilitate a transaction described in § 1.263(a)-5(a) if the amount is paid in the process of investigating or otherwise pursuing the transaction.

Section 1.263(a)-5(f) provides that an amount that is contingent on the successful closing of a transaction described in § 1.263(a)-5(a) (“success- based fee”) is presumed to facilitate the transaction, and thus must be capitalized. A taxpayer may rebut the presumption by maintaining sufficient documentation to establish that a portion of the fee is allocable to activities that do not facilitate the transaction, and thus may be deductible.

A taxpayer’s method for determining the portion of the success-based fee that facilitates a transaction and the portion that does not facilitate the transaction is a method of accounting under § 446.

Section 4.01 of Rev. Proc. 2011-29 provides a safe-harbor method of accounting for allocating success-based fees paid in business acquisitions or reorganizations described in regulations § 1.263(a)-5(e)(3). In lieu of maintaining the documentation required by § 1.263(a)-5(f), a taxpayer may elect to allocate a success-based fee between activities that facilitate the transaction and activities that do not facilitate the transaction. Section 4.01 allows a taxpayer to treat 70 percent of the amount of the success-based fee as an amount that does not facilitate the transaction and to capitalize the remaining 30 percent as an amount that does facilitate the transaction. In addition, the taxpayer must attach a statement to its original federal income tax return for the taxable year the success-based fee is paid or incurred, stating that the taxpayer is electing the safe harbor, identifying the transaction, and stating the success-based fee amounts that are deducted and capitalized.

It is this last requirement that Taxpayer requests permission to accomplish with this ruling request. Taxpayer requests permission with this ruling request to attach the statement required by § 4.01 of Rev. Proc. 2011-29 to its return, by filing an amended return with the proper election statement completed and attached.

Section 301.9100-1(c) provides that 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 certain regulatory elections. Section 301.9100-1(b) defines a "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

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 that granting relief will not prejudice the interests of the government. See also § 301.9100-3(b) and (c).

CONCLUSION

Based solely on the facts and representations submitted, we conclude that Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Accordingly, the requirements of §§ 301.9100-1 and 301.9100-3 have been met.

Taxpayer is granted an extension of 45 days from the date of this ruling to file its mandatory statements as required by §4.01 of Rev. Proc. 2011-29, stating that it is electing the safe harbor for success-based fees, identifying the transaction, and stating the success-based fee amounts that are deducted and capitalized.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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 ruling should be attached to Taxpayer's federal tax returns for the tax years affected. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

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.

Sincerely,

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

cc: