

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202215009**
Release Date: 4/15/2022

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 9100.00-00

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B02
PLR-115159-21

Date:
January 18, 2022

LEGEND

Taxpayer =

VP Tax =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to Taxpayer’s submission dated July 21, 2021, and subsequent correspondence dated October 20, 2021, requesting a private letter ruling granting relief to make a late regulatory election pursuant to Treas. Reg. §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to make an election under § 1.263(a)-3(n) to capitalize for tax purposes any amounts paid to repair and maintain tangible property that is capitalized for book purposes, for the taxable year ending on Date 1 (the “Election”).

This letter ruling is being issued electronically in accordance with section 7.02(5) of Rev. Proc. 2021-1, 2021-1 I.R.B. 1, 35. A paper copy will not be mailed to Taxpayer.

FACTS

Based on Taxpayer's representations and the affidavit of VP Tax the facts are as follows:

Taxpayer, a domestic corporation, was the common parent of an affiliated group of corporations, set forth in Appendix A, for the taxable year ending on Date 1. Taxpayer is on a calendar year basis and uses an accrual method as its overall method of accounting.

Taxpayer's consolidated Federal tax return for the taxable year ending on Date 1 was due on Date 3 (without extensions). Taxpayer planned to file Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, before Date 3, as it had done in previous years. Taxpayer's tax department prepared and completed Form 7004 and Taxpayer's senior accountant was instructed to file the form electronically, along with a draft of Form 851, Affiliations Schedule. The senior accountant verbally told VP Tax that the extension had been filed on or about Date 2, which was before Date 3. However, due to extenuating circumstances related to COVID-19, the extension was not filed.

Taxpayer proceeded as if its federal income tax returns were due on Date 5 (the extended deadline) and was unaware that Form 7004 was not filed. Taxpayer filed its consolidated Federal income tax return on or about Date 4 (after Date 3). Taxpayer made the Election on this return and, as common parent, made the Election for Taxpayer's subsidiaries (listed in Appendix A) as all were covered by a common capitalization policy and the applicable financial statement.

Sometime after the Date 4 filing, Taxpayer discovered that the Form 7004 was not filed and determined that its return for the taxable year ending on Date 1 was not timely filed (and thus no valid Election was made). Shortly thereafter, Taxpayer submitted this request seeking relief under Treas. Reg. §§ 301.9100-1 and 301.9100-3. Taxpayer was not under examination for the taxable year ending on Date 1 at the time this request was submitted.

LAW AND ANALYSIS

Section 1.263(a)-3(n) provides that a taxpayer may elect to treat amounts paid during the taxable year for repair and maintenance (as defined under § 1.162-4) to tangible property as amounts paid to improve that property and as an asset subject to the allowance for depreciation if the taxpayer incurs these amounts in carrying on the taxpayer's trade or business and if the taxpayer treats these amounts as capital expenditures on its books and records regularly used in computing income.

An annual election for Taxpayer and members of its affiliated group to make the Election for the taxable year ending on Date 1 was due on the last day prescribed by law for the filing of Taxpayer's return.

The election to treat amounts paid for repair and maintenance to tangible property as amounts paid to improve property is a regulatory election as the time for filing is provided in § 1.263(a)-3(n). As a result, the Commissioner has discretionary authority under § 301.9100-3 to grant extensions of time for Taxpayer and its members to file the Election.

Treas. Reg. §§ 301.9100-1 through 301.9100-3 provide the standards that the Service will use to determine whether to grant an extension of time to make a regulatory election. Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in Treas. Reg. § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer—

- (i) Requests relief before the failure to make the regulatory election is discovered by the Service;
- (ii) Failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) Failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;
- (iv) Reasonably relied on the written advice of the Service; or
- (v) Reasonably relied on a qualified tax professional, and the professional failed to make, or advise the taxpayer to make, the election.

Under Treas. Reg. § 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer—

- (i) Seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;
- (ii) Was fully informed 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 original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Treas. Reg. § 301.9100-3(c) provides that the Service will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. The interests of the Government are prejudiced if granting relief would result in a 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.

CONCLUSION

Based on the facts and information submitted and the representations made, we conclude that Taxpayer has acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the Government. Accordingly, Taxpayer has satisfied the requirements for the granting of relief, and Taxpayer is granted an extension of time to make an election under § 1.263(a)-3(n) to make the Election for the taxable year ending on Date 1. Having made the Election on Taxpayer's late filed consolidated Federal income tax return for the taxable year ending on Date 1, this election is hereby deemed to be timely made for Taxpayer and its subsidiaries (listed in Appendix A).

This ruling is based upon facts and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party as well as the supporting affidavit of VP Tax. This office has not verified any of the material submitted in support of the request for a ruling. However, as part of an examination process, the Service may verify the factual information, representations, and other data submitted.

This ruling addresses the granting of Treas. Reg. § 301.9100-3 relief as applied to the election under § 1.263(a)-3(n) to make the Election for the taxable year ending on Date 1. Specifically, we have no opinion, either express or implied, concerning whether Taxpayer meets the substantive requirements of § 1.263(a)-3(n). We express no opinion regarding the tax treatment of the instant transaction under the provisions of any other sections of the Code or regulations that may be applicable, or regarding the tax treatment of any conditions existing at the time of, or effects resulting from, the instant transaction.

This 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 on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Ronald J. Goldstein
Senior Technician Reviewer, Branch 2
(Income Tax & Accounting)

cc.

Appendix A