

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **202424006**  
Release Date: 6/14/2024  
Index Number: 9100.00-00, 9100.09-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B04  
PLR-118141-23

Date:  
March 19, 2024

Taxpayer =  
Accounting Firm =  
Year End A =  
Year End B =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Year 1 =

Dear :

This responds to Taxpayer’s request, dated Date 3, for a private letter ruling. Specifically, Taxpayer requests relief, under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations,<sup>1</sup> for an extension of time to file Taxpayer’s Form 1128, *Application To Adopt, Change, or Retain a Tax Year*, for purposes of changing Taxpayer’s tax year end from Year End A to Year End B, effective as of Date 1.

**Facts**

Based on the provided information and representations, Taxpayer is a domestic corporation for Federal income tax purposes. Taxpayer uses an accrual method of accounting and has had a tax year end of Year End A.

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<sup>1</sup> Unless otherwise specified, all “section” or “§” references are to sections of the Internal Revenue Code (“Code”) or the Treasury Regulations (26 CFR Part 1) or (26 CFR Part 301) as applicable.

In Year 1, Taxpayer notified Accounting Firm of Taxpayer's intent to change its tax year end from Year End A to Year End B, effective as of Date 1. Due to a series of internal miscommunications, Accounting Firm did not prepare, and Taxpayer did not file, the Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*. As such, Taxpayer did not timely file its Form 1128 for the short year ending Date 1, which was due on Date 2.

On or around Date 3, approximately 90 days after Date 2, Accounting Firm discovered it had not prepared the Form 7004 for Taxpayer. After discovering the error, Taxpayer and Accounting Firm began preparing this request, which was submitted on or around Date 4, which was more than 90 days after the missed deadline to file Taxpayer's Form 1128.

### Law and Analysis

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic extensions covered in § 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 the grant of relief will not prejudice the interests of the Government.

Section 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 § 301.9100-3(b)(2), a taxpayer, however, is not considered to have reasonably relied on a qualified tax professional 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.

Under § 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 has been or could be imposed under § 6662 at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was fully informed in all material respects of the required election and related tax consequences but chose not to make 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.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides that 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 (taking into account the time value of money). Section 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable year that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Section 301.9100-3(c)(3), a special rule for accounting period regulatory elections, provides that the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if the election is an accounting period regulatory election (other than the election to use other than the required taxable year under Section 444) and the request for relief is filed more than 90 days after the due date for filing the Form 1128.

### Conclusion

Based on the facts and information submitted and the representations made, we conclude that Taxpayer did not demonstrate unusual and compelling circumstances for filing the application more than 90 days after its due date on Date 2. Therefore, Taxpayer's request for an extension of time to file Form 1128 is denied.

Caveats

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. Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under § 6110.

In accordance with the Form 2848, *Power of Attorney and Declaration of Representative* on file with this office, we are sending a copy of this letter to Taxpayer's authorized representative.

Sincerely,

James Yu  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: