

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:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B08
PLR-124318-23

Date:
April 12, 2024

Legend

Accounting Firm =
Corporation X =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
State Z =
Taxpayer =
Year 1 =

Dear :

This letter responds to Taxpayer's request for a letter ruling dated Date 1. Specifically, Taxpayer requests relief under section 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, for an extension of time to file a Form 1128, *Application to Adopt, Change or Retain a Tax Year*.

FACTS

Taxpayer is a partnership, formed under the laws of State Z, and taxed as a partnership for Federal income tax purposes. Taxpayer currently files its Form 1065, *U.S. Return of Partnership Income*, using a taxable year ending Date 2.

Taxpayer's partners consist of five individuals and Corporation X; the latter of which has a 51% interest in Taxpayer's profit, loss, and capital. Prior to Date 3, Corporation X had a taxable year ending Date 2. Effective Date 3, Corporation X changed its taxable year to a calendar year. Taxpayer represents that if timely filed, the request to change its

taxable year end to a calendar year would have qualified under the automatic procedures found in Rev. Proc. 2006-46, 2006-2 C.B. 859.

Accounting Firm has prepared Taxpayer's returns for years prior to Year 1. Taxpayer engaged Accounting Firm to prepare an extension of time to file its Year 1 Federal income tax return, to file its return, and to file an accompanying Form 1128 to change Taxpayer's year end from Date 2 to a calendar year.

Accounting Firm timely filed Taxpayer's extension of time to file the return, resulting in an extended return due date of Date 4. However, Accounting Firm failed to file the return by Date 4. Because Accounting Firm failed to timely file the return, Accounting Firm also failed to timely file an accompanying Form 1128. According to Taxpayer's representations, Accounting Firm's failure was due to Accounting Firm's oversight and Accounting Firm informed Taxpayer of its failure shortly after Date 4. Accounting Firm then advised Taxpayer to apply for this requested relief.

LAW AND ANALYSIS

Section 441(a) of the Internal Revenue Code provides that taxable income is computed on the basis of the taxpayer's taxable year. Section 441(b) and § 1.441-1(b)(1) of the Income Tax Regulations provide that the term "taxable year" generally means the taxpayer's required taxable year.

Section 442 and § 1.442-1(a) provides that if a taxpayer wants to change its annual accounting period and use a new taxable year, it generally must obtain the approval of the Commissioner. Section 1.442-1(b)(1) provides that to secure approval of the Commissioner to change an annual accounting period, a taxpayer must file an application, generally on Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, with the Commissioner within such time and in such manner as provided in administrative procedures published by the Commissioner.

Rev. Proc. 2006-46, 2006-2 C.B. 859, provides the exclusive procedures for a partnership to obtain automatic approval to change its annual accounting period under § 442. A partnership complying with all the applicable provisions of Rev. Proc. 2006-46 will be deemed to have established a business purpose and obtained the approval of the Commissioner to change its annual accounting period.

Section 7.02(2) of Rev. Proc. 2006-46 provides that a Form 1128 filed pursuant to the revenue procedure will be considered timely filed for purposes of § 1.422-1(b)(1) only if it filed on or before the time (including extensions) for filing the Federal income tax return for the first effective year.

Section 5.10 of Rev. Proc. 2006-46 provides that the "first effective year" is the first taxable year for which a change in annual accounting period is effective. The first effective year is generally the short period required to effect the change. Section 5.11 of

Rev. Proc. 2006-46 provides that a “short period” is the period beginning with the day following the close of the old taxable year and ending with the day preceding the first day of the new taxable year.

Under § 301.9100-1(b), a “regulatory election” is defined as an election whose due date is prescribed by regulations published in the Federal Registrar, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Because Rev. Proc. 2006-46 sets forth the manner and timing for an entity to file a Form 1128 to change its taxable year, these elections are regulatory elections.

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 that do not meet the requirements of § 301.9100-2 (automatic extensions), such as the instant case, must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

Under § 301.9100-3(b), a taxpayer is determined to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election. However, a taxpayer 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 regulator election or was not aware of all relevant facts.

In addition, § 301.9100-3(b)(3) provides that a taxpayer is deemed not 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 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 aspects 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 ordinarily not grant relief.

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 will not prejudice the interests of the government. Taxpayer relied on a qualified

tax professional and that professional failed to make or advise Taxpayer to make the election. Further, Taxpayer's request for relief was filed less than 90 days after the due date of the Taxpayer's first effective year tax return.

Accordingly, based solely on the facts and information submitted and the representations made in the ruling request, Taxpayer has satisfied the requirements for the granting of relief. Taxpayer's Form 1128, requesting permission to change to a calendar year end, effective Year 1, must be filed under the provisions of Rev. Proc. 2006-46 within 60 days of this letter.

Taxpayer must attach a copy of this letter to the Form 1128 that is filed with the appropriate Service Center. 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 the letter ruling. Any further communication regarding this matter should be directed to the Service Center.

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by all appropriate parties. 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 § 301.9100-3 relief only. 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. Specifically, we express no opinion as to whether the taxpayer is permitted under the Code and applicable regulations to change to the tax year requested in the Form 1128, or whether the change may be affected under Rev. Proc. 2006-46.

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.

Sincerely,

ERIKA C. REIGLE
Senior Technician Reviewer, Branch 8
(Income Tax & Accounting)

cc: