

Internal Revenue Service

Department of the Treasury
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Person To Contact:

Telephone Number:

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Date:
June 18, 2024

LEGEND

Taxpayer =
Firm =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Year =

Dear :

This letter responds to Taxpayer's request dated Date 1, seeking a private letter ruling granting relief to make a late election pursuant to §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to file Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, to change to a taxable year ending on Date 3, effective for Date 6.

FACTS

Taxpayer is an insurance company regulated under the laws of a foreign country. Taxpayer filed Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*, on a protective basis for all taxable years before Year, using a year end of Date 2. Taxpayer requests to change to a taxable year ending on Date 3, consistent with its election under section 953(d) to be a foreign insurance company treated as a domestic corporation for U.S. Federal income tax purposes.

Taxpayer represents that it intended to change to a taxable year ending Date 3 by filing a timely Form 1128. Taxpayer represents that if timely filed, the request to change the taxable year end from Date 2 to Date 3 would have qualified under the automatic procedures found in Rev. Proc. 2006-45, 2006-2 C.B. 851. Taxpayer engaged Firm to obtain an extension of time for filing Taxpayer's Year tax return, and to prepare and file the Year tax return, including Form 1128, by the extended due date. Firm filed an extension for Taxpayer's tax return for Year on Date 4 and filed Taxpayer's tax return for Year on Date 5. However, Firm inadvertently failed to attach Form 1128 to Taxpayer's Year tax return.

The discovery of the failure to file the Form 1128 was discovered after the extended deadline for the Year tax return.

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 annual accounting period, if it is a calendar or fiscal year, or, if applicable, the taxpayer's required taxable year.

An insurance company that makes an election under section 953(d) is required to use a calendar year end pursuant to §§ 441(a), 1.441-1(b)(2)(i)(H), and 843.

Section 442 provides that if a taxpayer changes its annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Secretary.

Section 1 of Rev. Proc. 2006-45 provides that a change in taxable year may be an automatic accounting period change, provided the requirements of Rev. Proc. 2006-45 are met. Section 7.02(2) of Rev. Proc. 2006-45 provides that a taxpayer must file a Form 1128 no earlier than the day following the first effective year (generally, the short period required to make the change), and no later than the due date (including extensions) for filing the tax return for the first effective year. Section 7.02(1)(a) of Rev. Proc. 2006-45 provides that to change its accounting period, the taxpayer must file a

Form 1128 with the Service Center where it files its tax return. Also, the taxpayer should attach a copy of the Form 1128 to the tax return filed for the first effective year.

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.

Rev. Proc. 2006-45 provides the time and manner for a taxpayer within its scope to change its accounting period. Therefore, such a change is a regulatory election as defined § 301.9100-1(b).

Under section 301.9100-3(b), a taxpayer is deemed 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 regulatory election or was not aware of all relevant facts.

In addition, section 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 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)(i) states that the interests of the Government are prejudiced if granting relief will 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 made on a timely basis.

Section 301.9100-3(c)(1)(ii) provides that relief ordinarily will not be granted 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, is closed by the statute of limitations on assessment before the taxpayer's receipt of the ruling granting 9100 relief.

Section 301.9100-3(c)(3) provides that a change with respect to an accounting period regulatory election prejudices the interests of the government if the request for relief is made more than 90 days after the due date for filing the Form 1128.

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. Taxpayer reasonably relied on a qualified tax professional and that professional failed to make the election. Further, Taxpayer's request for relief was filed less than 90 days after the due date of Taxpayer's 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. Consequently, Taxpayer is granted 60 days from the date of this letter to file Form 1128, requesting a change to a taxable year ending Date 3, and such Form 1128 will be considered timely filed for Year.

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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.

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, including Taxpayer's eligibility to elect under section 953(d) to be treated as a domestic insurance company. 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, this letter expresses no opinion as to whether Taxpayer qualifies to make an automatic change under Rev. Proc. 2006-45.

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, a copy of this letter is being faxed to your authorized representative.

A copy of this letter must be attached to any tax return to which it is relevant. 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.

Sincerely,

Amy J. Pfalzgraf
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: