Internal Revenue Service

Number: **202510006**
Release Date: 3/7/2025

Index Number: 9100.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

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Refer Reply To:
CC:ITA:B02
PLR-111298-24

Attn:

Date:
December 04, 2024

LEGEND

Taxpayer	=
City 1	=
State1	=
Business	=
Date1	=
Date2	=
Date3	=
Date4	
Entity1	=
Entity2	=
Year1	=
Year2	=
$x	=
Accounting Firm	=
Number1	=
Number2	=

Dear :

This letter responds to a letter ruling request dated Date4, submitted on behalf of Taxpayer. Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make late elections concerning: (1) the mortgage servicing rights safe harbor under Rev. Proc. 91-50, 1991-2 C.B. 778, (2) the de minimis safe harbor election under § 1.263(a)-1(f) of the Income Tax Regulations, (3) the election to capitalize repair and maintenance costs under § 1.263(a)-3(n), and (4) the election under § 168(k)(7) of the Internal Revenue Code not to deduct the additional first year depreciation for 3-, 5-, 7-, and 15-year property that are qualified property under § 168(k) and placed in service by Taxpayer during the taxable year ended Date1 (the “Elections”).

FACTS

Taxpayer is a holding company, headquartered in City1, State1, which engages in the trade or business of Business through its subsidiaries. Taxpayer and its subsidiaries operate in several states throughout the country. Taxpayer files a consolidated Form 1120 and is a calendar year taxpayer.

During Taxpayer's taxable year ending Date1, Taxpayer acquired a new entity through a taxable asset acquisition, Entity1, a single-member limited liability company wholly owned by Taxpayer's subsidiary, Entity2. As a result of the acquisition, Taxpayer's tax return filings doubled from Number1 federal and state tax returns to Number2 returns. Taxpayer's acquisition of Entity1 constituted its entry into a new business line – mortgage banking. In the course of its new trade or business, Taxpayer acquires mortgage loans and then sells its mortgage loans to third party investors while retaining mortgage servicing rights for the loans.

Taxpayer represents that to manage the additional filing complexity following its acquisition of Entity1, Taxpayer employed Entity1's former tax director. However, the former tax director resigned less than a month before Taxpayer's extensions for the Year1 tax year were due.

At the end of the Year1 tax year, Taxpayer was in the process of transitioning tax filing software. However, certain functions of the filing software were not fully operational until later in the Year2 tax year, including the ability to electronically file extensions on Form 7004. As a result, Taxpayer had to submit Form 7004 by mail for the Year1 tax year, although it historically filed Form 7004 electronically.

Taxpayer represents that its tax department prepared, reviewed, and printed the Form 7004 extension for its Form 1120 for Year1. Taxpayer represents that its federal income tax returns were prepared under the genuine belief that its tax associate had mailed all required extensions to the Internal Revenue Service (the "Service") via the United States Postal Service. However, Taxpayer inadvertently failed to mail its Form 7004.

Consistent with its preparation of the Form 7004, Taxpayer remitted two extension payments through the Electronic Federal Tax Payment System for Year1 prior to the Date2 due date to reflect the amount of tax due that was reported on its Form 7004.

Taxpayer included the statements regarding the de minimis safe harbor election, the election to capitalize repair and maintenance costs, and the election out of special depreciation allowance in its Form 1120 package, but inadvertently omitted the mortgage servicing rights safe harbor election statement under Rev. Proc. 91-50. Consistent with Taxpayer's belief that the Form 1120 had been filed timely, all related calculations used to report each impacted line item of the Year1 return were completed as if the Elections that are the subject of this request, including the mortgage servicing rights safe harbor election, were all timely made and filed.

On its filed Form 1120 for the Year1 tax year, Taxpayer claimed a refund of $x. Taxpayer states that it first discovered that its Form 7004 and the election statement for the mortgage servicing rights safe harbor election may not have been filed when the Internal Revenue Service approached Taxpayer on Date3 regarding Taxpayer's refund release for the Year1 Tax Year.

Taxpayer engaged Accounting Firm to review its return before filing and to sign the return as the paid preparer. As part of Accounting Firm's review of Taxpayer's return, it reviewed the Elections made for the taxable year and provided comments and revisions before filing. Taxpayer represents that it did not intentionally omit the Elections after being informed in all material respects regarding the Elections and related tax consequences. Taxpayer further represents that no specific facts have changed since the due date for filing the Elections that make them more advantageous to Taxpayer now than they would have been had they been timely filed.

Taxpayer represents that an extension of time to make the Elections will result in Taxpayer maintaining the same aggregate tax liability as if the election were property made, and that because its Elections relate to tax year ended Date1, the affected tax year is not closed by the period of limitations on assessment under §6501(a).

As of the date of the private letter ruling request, Taxpayer is not under examination for the taxable year ended Date1 or for any future tax years.

LAW AND ANALYSIS

I. Procedural Rules for Granting an Extension of Time for a Regulatory Election

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 301.9100-1(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 the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, procedure, notice or announcement published in the Internal Revenue Bulletin.

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.

Section 301.9100-3(b)(1) states 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 (taking into account the taxpayer's experience and the complexity of the return at issue), 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, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed to have not 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 (taking into account any qualified amended return filed within the meaning of § 6664-2(c)(3)) and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects 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.

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, in part, that the interests of the government are prejudiced if granting relief would result in the 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, in part, 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 years 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.

II. Rules for Automatic Extension of Time for Filing Corporate Return

Section 1.6081-3(a) provides that, in general, a corporation or an affiliated group of corporations filing a consolidated return will be allowed an automatic 6-month extension of time to file its income tax return after the date prescribed for filing the return if the following requirements are met: (1) the taxpayer submits an application on Form 7004, "Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns"; (2) Form 7004 is filed on or before the date prescribed for the filing of the return of the corporation (or the consolidated return of the affiliated group of corporations) with the Service; (3) the corporation (or affiliated group of

corporations filing a consolidated return) must remit the amount of the properly estimated unpaid tax liability on or before the date prescribed for payment; (4) the application must include a statement listing the name and address of each member of the affiliated group if the affiliated group will file a consolidated return.

III. Rev. Proc. 91-50 Mortgage Servicing Rights Safe Harbor Election

Section 1286(d)(1) defines the term “bond” to include a note, certificate or other evidence of indebtedness. Section 1286(d)(5) defines the term “coupon” to include any right to receive interest on a bond (whether or not evidenced by a coupon). Section 1286(d)(2) defines the term “stripped bond” as a bond issued with interest coupons where there is a separation in ownership between the bond and any coupon that has not yet become payable. Section 1286(d)(3) defines a “stripped coupon” as any coupon resulting from a stripped bond.

In Rev. Rul. 91-46, 1991-2 C.B. 358, a taxpayer sold mortgage loans and at the same time entered into a contract to service the mortgages for amounts received from interest payments collected on the mortgages. The ruling holds that the mortgages are “stripped bonds” under section 1286 if the contract entitles the taxpayer to receive amounts that exceed reasonable compensation for the services to be performed under the contract. The ruling also holds that the taxpayer's rights to receive amounts under the contract are “stripped coupons” under section 1286 to the extent that they are rights to receive mortgage interest other than as reasonable compensation for the services to be performed.

Rev. Proc. 91-50 provides a safe harbor that taxpayers may elect to use in applying section 1286 and Rev. Rul. 91-46 to certain mortgage servicing contracts. When elected, this safe harbor provides the rates a taxpayer may use as reasonable compensation for servicing specific types of mortgages. To elect the safe harbor under Rev. Proc. 91-50, a taxpayer must attach a statement to its timely filed federal income tax return for the first taxable year for which the safe harbor is elected.

IV. Section 1.263(a)-1(f) De Minimis Safe Harbor Election

Section 1.263(a)-1(f) provides that if a taxpayer elects to apply the de minimis safe harbor, then the taxpayer may not capitalize under §§ 1.263(a)-2(d)(1) or 1.263(a)-3(d) any amount paid in the taxable year for the acquisition or production of a unit of tangible property nor treat as materials or supply under § 1.162-3(a) any amount paid in the taxable year for tangible property if the amount meets certain requirements specified in the regulations. Section 1.263(a)-1(f)(3)(iv) provides that an amount paid for property to which a taxpayer properly applies the de minimis safe harbor may be deducted under § 1.162-1 in the taxable year the amount is paid provided the amount otherwise constitutes an ordinary and necessary expense incurred in carrying on a trade or business.

A taxpayer makes the de minimis safe harbor election under § 1.263(a)-1(f) by attaching a statement to the taxpayer's timely filed original Federal tax return (including extensions) for the taxable year in which the amounts are paid. The statement must be titled "Section 1.263(a)-1(f) de minimis safe harbor election" and include the taxpayer's name, address, taxpayer identification number, and a statement that the taxpayer is making the de minimis safe harbor election under § 1.263(a)-1(f). In the case of a consolidated group filing a consolidated income tax return, the election is made for each member of the consolidated group by the common parent, and the statement must also include the names and taxpayer identification numbers of each member for which the election is made.

V. Section 1.263(a)-3(n) Election to Capitalize Repair and Maintenance Costs

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. A taxpayer that makes this election in a taxable year must apply section 1.263(a)-3(n) to all amounts paid for repair and maintenance to tangible property that it treats as capital expenditures on its books and records in that taxable year. Any amounts for which this election is made shall not be treated as amounts paid for repair or maintenance under §1.162-4.

Section 1.263(a)-3(n)(2) provides, in part, that a taxpayer makes this election by attaching a statement to the taxpayer's timely filed original Federal tax return (including extensions) for the taxable year in which the taxpayer pays amounts described under § 1.263(a)-3(n)(1). The statement must be titled " Section 1.263(a)-3(n) Election" and include the taxpayer's name, address, taxpayer identification number, and a statement that the taxpayer is making the election to capitalize repair and maintenance costs under § 1.263(a)-3(n). In the case of a consolidated group filing a consolidated income tax return, the election is made for each member of the consolidated group by the common parent, and the statement must also include the names and taxpayer identification numbers of each member for which the election is made.

VI. Section 168(k)(7) Election to not Deduct Additional First Year Depreciation

§ 168(k)(1) and (k)(6) allows, in the taxable year that qualified property is placed in service, a 100-percent additional first year depreciation deduction for qualified property acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2023. Section 168(k)(7) allows a taxpayer to elect not to deduct the additional first year depreciation for any class of property placed in service by the taxpayer during the taxable year.

Section 1.168(k)-2(f)(1)(i) provides that the section 168(k)(7) election applies to all qualified property that is in the same class of property and placed in service for the same taxable year. Section 1.168(k)-2(f)(1)(ii) defines "class of property" for purposes of the section 168(k)(7) election as meaning each class of property described in section 1.168(k)-2(f)(1)(ii)(A)-(G).

Section 1.168-(k)-2(f)(1)(iii)(A) provides that the § 168(k)(7) election not to deduct additional first year depreciation must be made by the due date, including extensions, of the Federal tax return for the taxable year in which the qualified property is placed in service by the taxpayer. Section 1.168-(k)-2(f)(1)(iii)(B) provides that the §168(k)(7) election not to deduct additional first year depreciation must be made in the manner prescribed on Form 4562, "Depreciation and Amortization," and its instructions. The Instructions to Form 4562 for the 2021 Taxable Year provided that the election not to deduct the additional first year depreciation is made by attaching a statement to the taxpayer's timely filed tax return (including extensions) indicating the class of property for which the taxpayer is making the election and that, for such class, the taxpayer is not claiming any special depreciation allowance.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that Taxpayer has acted reasonably and in good faith and granting relief will 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 the elections under Rev. Proc. 91-50, § 1.263(a)-1(f), § 1.263(a)-3(n), and § 168(k)(7) for the taxable year ended Date1.

The ruling contained in this letter is based on facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party as well as the supporting affidavits of Taxpayer's senior tax manager and Accounting Firm's tax managing director. 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 information, representations, and other data submitted. If any of the information or representations provided are subsequently determined to be inaccurate and/or incomplete, this ruling and its conclusions are void.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences arising from the facts described above under any other provision of the Code or regulations. In addition, no opinion is expressed regarding Taxpayer's eligibility to make the Elections subject to this ruling.

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.

As a result of the relief, the previously filed elections under § 1.263(a)-1(f), § 1.263(a)-3(n), and § 168(k)(7) are deemed timely filed. Taxpayer is granted an extension of 60 days from the date of this ruling to file the election for the mortgage servicing rights safe harbor under Rev. Proc. 91-50 for its taxable year ended Date1. 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 the letter ruling.

Sincerely,

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Ronald J. Goldstein
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Income Tax and Accounting)

cc: