

Internal Revenue Service

Number: **202044006**

Release Date: 10/30/2020

Index Number: 9100.00-00; 165.00-00

In Re:

TY:

Legend

Taxpayers:

Taxpayer Husband:

Tract One:

Limited Liability Company:

Tract Two:

Tract Three:

X=

Y=

Z=

A County=

Month 1=

Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:2

PLR-129360-19

Date: August 4, 2020

Hurricane A=

Date 1=

Appraiser=

Appraisal Report=

Date 2=

Amount A=

Accounting Firm=

Year 1=

Year 2=

Date 3=

Date 4=

Dear _____ :

This responds to a letter ruling request dated Date 4, submitted on behalf of Taxpayers requesting an extension under section 301.9100-3 of the Income Tax Regulations to make a late election under section 165(i) of the Internal Revenue Code to claim a disaster loss in Year 1.

FACTS

Taxpayers represent the following facts. Taxpayers own several tracts of land on which they operate timber farms. Three tracts, in particular, are relevant here. Tract One is held by Limited Liability Company. Limited Liability Company is treated as a disregarded entity for federal tax purposes and its activity is reported on Schedule F of the Forms 1040 filed by Taxpayers. Tract One consists of approximately X acres located in A County. Tract Two is owned by Taxpayer Husband individually. Tract Two consists of approximately Y acres located in A County. Tract Three is also owned by Taxpayer Husband individually. Tract Three consists of approximately Z acres located in A County.

In Month 1, all three tracts were damaged by Hurricane A. On Date 1, many affected counties, including A County, were declared federal disaster areas. Taxpayers' losses, as discussed herein, were attributable to this federally declared disaster.

Soon after Hurricane A damaged Tract One, Tract Two, and Tract Three, Taxpayers retained Appraiser to prepare an appraisal of the timber damage to the three tracts caused by Hurricane A. However, Appraiser did not complete and issue Appraisal Report until Date 2. This was shortly before the extended deadline for filing Taxpayers' Year 2 Form 1040. Appraisal Report concluded that the total loss, covering all three tracts, was Amount A.

Taxpayers do not have any tax-related training, education, or skills. Therefore, Taxpayers have worked with and relied on the services of Accounting Firm for over 20 years. Accounting Firm was fully aware of Tract One, Tract Two, and Tract Three, the damage to Tract One, Tract Two, and Tract Three caused by Hurricane A, and the Appraisal Report.

Accounting Firm advised Taxpayers that they had the right to make an election under section 165(i) to claim the disaster loss caused by Hurricane A on their individual income tax return (Form 1040) for Year 1, rather than on their Form 1040 for Year 2, when Hurricane A actually occurred. Taxpayers decided to follow Accounting Firm's advice and to elect to claim the disaster loss on their Form 1040 for Year 1 and advised Accounting Firm of their intent to claim the section 165(i) election for their disaster loss.

In order to claim the disaster loss on their Year 1 return, Taxpayers were required to make the section 165(i) election by Date 3. Accounting Firm mistakenly believed that it could file the Year 1 Form 1040X to claim the disaster loss at any time during the period of limitations set forth in section 6511. Therefore, Accounting Firm failed to file the Year 1 Form 1040X, making the section 165(i) election, by Date 3.

Approximately one week after Date 3, Accounting Firm discovered that it had missed the deadline of Date 3 to make an election under section 165(i). Accounting Firm then took all reasonable actions to resolve the issue, including informing Taxpayers of the missed election deadline, assisting Taxpayers in retaining a tax law firm, gathering all necessary information and documentation, and collaborating in the preparation of this private letter ruling request for relief to file a late election under section 301.9100-3.

LAW AND ANALYSIS

Generally, section 165(a) allows a deduction for any loss sustained during a taxable year that is not compensated by insurance or otherwise. Under section 165(i)(1), any loss occurring in a disaster area and attributable to a federally declared disaster may, at the election of the taxpayer, be taken into account for the taxable year immediately preceding the taxable year in which the disaster occurred. Under section 165(i)(2), if such an election is made, the casualty resulting in the loss shall be treated as having occurred in the taxable year for which the deduction is claimed.

Under section 165(i)(5), the term “federally declared disaster” means any disaster subsequently determined by the President of the United States to warrant assistance by the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Under section 165(i)(5), the term “disaster area” means the area so determined to warrant such assistance.

Section 1.165-11 of the Income Tax Regulations provides rules and procedures for making and revoking an election to claim a disaster loss in the preceding year. Under section 1.165-11(b)(3), a disaster loss is a loss occurring in a federally declared disaster area that is attributable to a federally declared disaster and that is otherwise allowable as a deduction under section 165(a) and sections 1.165-1 through 1.165-10. Under section 1.165-11(h), section 1.165-11 is effective for elections and revocations made after October 16, 2019.

Under section 1.165-11(e), an election to deduct a loss for the preceding year is made either on an original Federal income tax return for the preceding year or an amended Federal income tax return for the preceding year. Under section 1.165-11(b)(5), the preceding year is the taxable year immediately prior to the disaster year. Under section 1.165-11(f), the due date for making the section 165(i) election is six months after the due date for filing the taxpayer’s Federal income tax return for the disaster year (determined without regard to any extension of time to file).

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 section 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 sections 301.9100-2 and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections under section 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) provides that, in general, 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 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 section 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 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.

Section 301.9100-3(c)(1) provides 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. 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Taxpayers' election is a regulatory election as defined in section 301.9100-1(b) because the due date of the election is prescribed in section 1.165-11(f) of the Income Tax Regulations. The Commissioner has the authority under sections 301.9100-1 and 301.9100-3 to grant an extension of time to file a late regulatory election.

CONCLUSION

Based upon our analysis of the facts and representations provided, Taxpayers acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Therefore, the requirements of sections 301.9100-1 and 301.9100-3 have been met.

Taxpayers are granted an extension of 60 days from the date of this ruling to make the election available under section 165(i) with respect to the above-described disaster loss.

CAVEATS

The rulings contained in this letter are based on information and representations submitted by Taxpayers and accompanied by a penalty of perjury statement executed by appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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. In particular, no opinion is expressed as to: whether Taxpayers qualify for the disaster loss at issue; whether Taxpayers' loss was attributable to Hurricane A; or whether Taxpayers have reported the proper amount of any qualifying loss.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its return that provides the date and control number of the letter ruling.

In accordance with the provisions of the power of attorney currently on file with this office, a copy of this letter is being sent to your authorized representatives. We are also sending a copy of this letter to the appropriate operating division director. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under section 6110.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to Taxpayers.

Sincerely yours,

Norma Rotunno
Chief, Branch 1
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure:

Copy for § 6110 purposes

cc: