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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:EEE:EOET:EO3
PLR-112811-21

Date:
November 18, 2021

X	=	
Month 1	=	
Month 2	=	
Month 3	=	
Month 4	=	
Date 1	=	
Date 2	=	
Date 3	=	

Dear :

This letter responds to a letter from X’s authorized representative, dated June 14, 2021, and subsequent documentation dated August 3, 2021, requesting a ruling permitting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to revoke an election that X made pursuant to section 501(h) of the Internal Revenue Code (Code).

Facts

X is an organization that is exempt from federal income tax pursuant to section 501(a) as an organization described in section 501(c)(3). X is classified as other than a private foundation pursuant to section 509(a).

In Month 1, X filed Form 5768 making an election under section 501(h), relating to expenditures to influence legislation. The election was effective with the tax year beginning Date 1. In Month 2, X sought professional advice regarding whether it should revoke the section 501(h) election. After discussing the advantages and disadvantages of revoking the section 501(h) election with a tax professional, X represents that it misunderstood the rule involving the effective date of a revocation, erroneously thinking that it could revoke the election at any time during a taxable year and have the

revocation be effective at the beginning of the taxable year during which the revocation is made. In an affidavit, the tax professional acknowledges that he may have inadvertently misstated or unclearly stated the timing for the revocation, leading to X's misunderstanding.

In Month 3, X authorized the revocation of the section 501(h) election. In Month 4, X asked a tax professional to prepare Form 5768 to revoke the section 501(h) election. The tax professional promptly prepared the form, specifying that the revocation was to be effective for X's taxable year beginning Date 3, consistent with a note on the form that explains that the revocation must be signed and postmarked before the first day of the tax year to which it applies. Upon reviewing the form that the tax professional prepared, X realized that it had misunderstood the rules regarding the effective date of section 501(h) revocations and that the revocation would not apply to X's current taxable year, as desired. X thereafter sought professional advice for correcting its failure to revoke the section 501(h) election such that the revocation would be effective for X's tax year beginning Date 2.

Ruling Requested

X requests a ruling granting it an extension of time to retroactively revoke its section 501(h) election effective for all tax years beginning on or after Date 2.

Law

Section 501(a) exempts certain organizations from federal income tax, including those described in section 501(c)(3).

Section 501(c)(3) organizations are organized and operated exclusively for certain enumerated purposes, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in section 501(h)).

Section 501(h) sets out an alternative to the "no substantial part" limitation on expenditures made for the purposes of influencing legislation, based on expenditures for lobbying during the taxable year.

Section 501(h)(3) provides that section 501(h) applies to certain organizations that elect (in such manner and at such time as the Secretary may prescribe) to have the provisions of section 501(h) apply.

Section 501(h)(6) provides that an organization's section 501(h) election is effective for all taxable years that end after the date the election is made, and begin before the date the election is revoked by the organization (under regulations prescribed by the Secretary).

Treas. Reg. § 1.501(h)-2(a) provides that a section 501(h) election is made by filing a completed Form 5768 with the appropriate Internal Revenue Service Center, and remains in effect for each succeeding taxable year for which the organization is an eligible organization and which begins before a notice of revocation is filed under § 1.501(h)-2(d).

Treas. Reg. § 1.501(h)-2(d)(1) provides that an organization may voluntarily revoke a section 501(h) lobbying election by filing Form 5768.

Section 301.9100-1(a) provides that § 301.9100-1, -2, and -3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-2 provides automatic extensions of time for making certain regulatory elections when the deadline for making the election is the due date of the return or the due date of the return including extensions. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and -3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner 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)(i) provides generally that the taxpayer will be 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 IRS. In addition, § 301.9100-3(b)(1)(v) provides that the taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer 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)(2) provides that the taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not: (i) competent to render advice on the regulatory election; or (ii) aware of all relevant facts.

Section 301.9100-3(b)(3) provides that 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 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)(i) provides that the interests of the government are prejudiced when 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.

Section 301.9100-3(c)(1)(ii) provides that the interests of the government ordinarily are 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.

Section 301.9100-3(e)(1) provides that requests for relief under § 301.9100-3 must provide evidence that meets the requirements in § 301.9100-3(b) and (c), and must provide additional information as required by § 301.9100-3(e), including certain affidavits.

Rev. Rul. 83-74, 1983-1 CB 112, granted relief under § 1.9100-1 to a homeowner's association seeking to revoke its section 528 election, reasoning that the situation of a taxpayer seeking relief to revoke an election is analogous to one where a taxpayer is seeking relief to make an election.

Analysis

A taxpayer may seek relief under § 301.9100-1 through -3 for an extension of time to file an election. A taxpayer seeking relief to revoke an election is in a position analogous to one seeking relief to make an election, as discussed in Rev. Rul. 83-74.

Under § 301.9100-3(a), requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

X is deemed to have acted reasonably and in good faith as those terms are used in § 301.9100-3, based on representations made by X and affidavits submitted pursuant to § 301.9100-3(e). Specifically, X is deemed to have acted reasonably and in good faith because X requested relief before the failure to revoke the election was discovered by the IRS, and, in fact, before X filed a return for the relevant year. See § 301.9100-3(b)(1)(i). In addition, X relied in good faith on a qualified tax professional in seeking advice relating to the revocation. See § 301.9100-3(b)(1)(v).

Further, X is not seeking to alter a return position for which an accuracy-related penalty could be imposed, as no return for the relevant year had been filed at the time of the ruling request. X also was not informed in all material respects of the required revocation, as it misunderstood the required timing for the election. Finally, X did not use hindsight in requesting relief, as its intention from the onset was to revoke the section 501(h) election for the tax year beginning Date 2, as evidenced by affidavits and board meeting minutes.

The interests of the government will not be prejudiced by granting the requested relief. X's tax liability is the same as if X had filed the revocation to be effective when intended, and the taxable year in which the election should have been made will not be closed by the period of limitations on assessment under section 6501(a) before X's receipt of a ruling granting relief.

Ruling

Based solely on the facts and representations X submitted, we rule that X is granted an extension of time of 30 days from the date of this letter ruling to file a revocation of its section 501(h) lobbying election, to be effective for the tax year beginning Date 2 and all subsequent tax years.

The ruling contained in this letter is based upon information and representations submitted by X and accompanied by penalty of perjury statements executed by an individual with authority to bind X. While this office has not verified any of the material submitted in support of the ruling request, such material is subject to verification on examination.

The Associate Office will revoke or modify a letter ruling and apply the revocation retroactively if: (1) there has been a misstatement or omission of controlling facts; (2) the facts at the time of the transaction are materially different from the controlling facts on which the ruling is based; or (3) the transaction involves a continuing action or series of actions and the controlling facts change during the transaction. See Rev. Proc. 2021-1, 2021-1 IRB 1, § 11.05.

Except as specifically set forth above, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to X. 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 X's authorized representatives.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Kenneth M. Griffin
Branch Chief
Exempt Organizations Branch 3
(Employee Benefits, Exempt
Organizations, and Employment Taxes)

cc: