

Internal Revenue Service

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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:EEE:EOET:EO3
PLR-123555-21

Date:
May 10, 2022

Taxpayer	=	
X	=	
Firm 1	=	
Firm 2	=	
Year 1	=	
Year 2	=	
Year 3	=	

Dear _____ :

This letter responds to a letter from Taxpayer’s authorized representative, dated November 12, 2021, and subsequent documentation dated February 4, 2022, and May 4, 2022, requesting a ruling permitting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make elections under Treas. Reg. § 53.4942(a)-3(c)(2)(iv).

Facts

Each of Taxpayer and 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). Each is classified as a private foundation pursuant to section 509(a) and is not an operating foundation as defined in section 4942(j)(3).

Taxpayer regularly receives contributions from X pursuant to grant agreements that require Taxpayer to distribute the contributions it receives from X within 12 months of the year-end of the year in which the contributions are made. From Year 1 to Year 2, the grant agreements required Taxpayer to make elections under Treas. Reg. § 53.4942(a)-3(c)(2)(iv), treating amounts received from X as distributions out of corpus. Taxpayer represents that it relied on its tax service provider to make the elections in accordance with the grant agreements. Taxpayer and X each continuously operated in

a manner consistent with Taxpayer having made the elections during Year 1 through Year 2.

During Year 3, Taxpayer changed its tax service provider, selecting Firm 1 to replace Firm 2. During Firm 1's review of Taxpayer's Forms 990-PF for Year 1 through Year 2, Firm 1 discovered that Firm 2 had failed to make the elections to treat amounts Taxpayer received from X as distributions out of corpus in order to satisfy redistribution rules under Treas. Reg. § 53.4942(a)-3(c). In an affidavit, the prior return preparer from Firm 2 attested to the facts as presented by Taxpayer, including that Taxpayer relied on Firm 2 to file its returns and make the elections. After Firm 1 informed Taxpayer that elections were not made under Treas. Reg. § 53.4942(a)-3(c)(2)(iv), Taxpayer promptly sought professional advice for correcting the oversight for tax years Year 1 through Year 2.

Ruling Requested

Taxpayer requests a ruling granting it an extension of time to make elections under Treas. Reg. § 53.4942(a)-3(c)(2)(iv) for tax years Year 1 through Year 2.

Law

Section 4942(a) provides for the imposition on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 30 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year.

Section 4942(c) provides that the term "undistributed income" means, with respect to any private foundation for any taxable year as of any time, the amount by which (1) the distributable amount for such taxable year, exceeds (2) the qualifying distributions made before such time out of such distributable amount.

Section 4942(d) provides that the term "distributable amount" means, with respect to any foundation for any taxable year, an amount equal to (1) the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by (2) the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

Section 4942(g)(1)(A)(ii) excludes from the definition of "qualifying distribution" amounts paid to accomplish one or more purposes described in section 170(c)(2)(B) to a private foundation which is not an operating foundation, except as provided in section 4942(g)(3).

Section 4942(g)(3) provides that the term “qualifying distribution” includes a contribution to a private foundation which is not an operating foundation if (A) not later than the close of the first taxable year after its taxable year in which such contribution is received, such organization makes a distribution equal to the amount of such contribution and such distribution is a qualifying distribution which is treated under subsection (h) as a distribution out of corpus (or would be so treated if such organization were a private foundation which is not an operating foundation), and (B) the private foundation making the contribution obtains adequate records or other sufficient evidence from such organization showing that the qualifying distribution described in subparagraph (A) has been made by such organization.

Section 4942(h)(1) provides that any qualifying distribution made during a taxable year shall be treated as made (A) first out of the undistributed income of the immediately preceding taxable year (if the private foundation was subject to tax imposed by this section for the preceding year) to the extent thereof, (B) second out of undistributed income for the taxable year to the extent thereof, and (C) then out of corpus.

Section 53.4942(a)-3(c)(2)(iv) provides that a donee organization may elect to treat as a current distribution out of corpus any amount distributed in a prior taxable year which was treated as a distribution out of corpus under paragraph (d)(1)(iii) of this section provided that (a) such amount has not been availed of for any other purpose, (b) such corpus distribution occurred within the preceding 5 years, and (c) such amount is not later availed of for any other purpose. Such election must be made by attaching a statement to the return the foundation is required to file under section 6033 with respect to the taxable year for which such election is to apply.

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 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(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.

Analysis

A taxpayer may seek relief under § 301.9100-1 through -3 for an extension of time to file an election. 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.

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

the election, expecting that Firm 2 would make the elections consistent with the grant agreements. See § 301.9100-3(b)(1)(v). Further, the interests of the government will not be prejudiced by granting the requested relief as the tax liability is the same as a result of granting the relief as it would be if Taxpayer had filed the elections to be effective when intended.

Ruling

Based solely on the facts and representations Taxpayer submitted, Taxpayer is granted an extension of time to make an election under § 53.4942(a)-3(c)(2)(iv) for tax years Year 1 through Year 2, consistent with the grant agreements. The election shall be made by filing an amended Form 990-PF for these years and attaching a statement making the election to each amended return. Taxpayer shall have 60 days from the date of this letter ruling to file the amended returns. The amended returns and subsequent returns must reflect carryover amounts consistent with making the elections.

In addition, a copy of this letter must be attached to the relevant returns. If Taxpayer files electronically, it may satisfy this requirement by attached a statement to the return that provides the date and control number of this letter ruling.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by penalty of perjury statements executed by an individual with authority to bind Taxpayer. 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. 2022-1, 2022-1 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 Taxpayer. 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 Taxpayer'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: