

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B05  
PLR-104802-22

Date:  
August 09, 2022

TY:

**LEGEND:**

- Taxpayer =
- Accounting Firm =
- Partnership =
- Company X =
- Company Y =
- Company Z =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Year 1 =
- \$A =
- \$B =
- \$C =
- \$D =
- \$E =
- \$F =

Dear :

This is in response to a letter sent on your behalf by your representatives dated March 7, 2022. In the letter, your representatives requested on your behalf an extension of time to file an amended return to make an election under section 1045 of the Internal Revenue Code pursuant to Rev. Proc. 98-48, 1998-2 C.B. 367, for the tax year ending Year 1. The request is based on sections 301.9100-1 and 301.9100-3 of the Procedure and Administrative Regulations.

## FACTS

On Date 1, Taxpayer indirectly, through its interest in Partnership, recognized \$A of long-term capital gain from the sale of \$B of stock in Company X which it represents qualifies as qualified small business stock (QSBS) meeting the requirements described in section 1202. Taxpayer also represents that the partnership interest was held at the time the QSBS was purchased and was held for greater than 6 months prior to the disposition. Taxpayer subsequently reinvested \$C of the proceeds within 60 days in the following transactions: \$D of proceeds reinvested in Company Y on Date 2; \$E of proceeds reinvested in Company Z on Date 3; \$F of proceeds reinvested in Company Y on Date 4. Taxpayer represents that shares in both Company Y and Z are QSBS, meeting the requirements of section 1202.

Taxpayer represents that the preparation of Taxpayer's federal individual income tax return is complex due to numerous interests in partnerships. Each year, Taxpayer receives schedule K-1s reporting Taxpayer's share of partnership activity which are utilized to complete Taxpayer's return. Due to delay in the preparation and receipt of schedule K-1s necessary to accurately complete the tax return for the tax year ending Year 1 beyond Taxpayer's control, Taxpayer filed its tax return electronically on Date 5, past the extended due date. Thus, the election under section 1045(a) was not made on a timely basis with regard to the deferral of the gain from the sale of the QSBS during the tax year ending Year 1. Taxpayer's failure to elect deferral under section 1045(a) for the tax year ending Year 1 was not discovered by the Internal Revenue Service prior to Taxpayer filing its request for an extension of time to file an amended return to make an election under section 1045.

## LAW AND ANALYSIS

Section 1045(a) provides, in part, that in the case of any sale of QSBS held by a taxpayer other than a corporation for more than 6 months and with respect to which such taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds -

- (1) the cost of any qualified small business stock purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by
- (2) any portion of such cost previously taken into account under this section.

The time and manner for making the election allowed by section 1045(a) is prescribed by Rev. Proc. 98-48. Under the revenue procedure, the election must have been made no later than the due date (including extensions) for filing the tax return for the applicable tax year.

Section 1045(b)(1) provides that the term “qualified small business stock” has the meaning given such term by section 1202(c). Section 1202(c)(1)(B) provides as one of the defining characteristics of qualified small business stock that it be acquired by the taxpayer at its original issue (directly or through an underwriter) in exchange for money or other property or in exchange for services provided to such corporation was acquired.

Section 1.1045-1(a) of the Income Tax Regulations provides that a partnership that holds QSBS for more than 6 months, sells such QSBS, and purchases replacement QSBS may elect to apply section 1045. An eligible partner of a partnership that sells QSBS, may elect to apply section 1045 if the eligible partner purchases replacement QSBS directly or through a purchasing partnership.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations provide the standards the Commissioner uses 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 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(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 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad) under all subtitles of the Internal Revenue Code except subtitles E, G, H and I.

Section 301.9100-3 provides extensions of time to make a regulatory election under Code sections other than those for which section 301.9100-2 expressly permits automatic extensions. Requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence (including affidavits described in the regulations) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1) states that a taxpayer will be 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 due 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, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make the election.

Under section 301.9100-3(b)(3), 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 has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account section 1.6664-2(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.

Taxpayer in this case has represented that it requested relief before the failure to make the regulatory election was discovered by the Service and that it failed to make the election because Taxpayer did not receive necessary K-1s to file his Year 1 return by the extended due date for Year 1. Thus, under sections 301.9100-3(b)(1)(i) and (ii), Taxpayer will be deemed to have acted reasonably and in good faith. Taxpayer has also represented that none of the circumstances listed in section 301.9100-3(b)(3) apply.

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 section 6501(a) before the taxpayer's receipt of a ruling granting relief.

Under these criteria, the interests of the government are not prejudiced in this case. Taxpayer has represented that granting relief would not result in a lower tax liability in

the aggregate for all taxable years affected by the election than Taxpayer would have had if the election had been timely made (taking into account the time value of money). Furthermore, Taxpayer has represented that the taxable year in which the regulatory election should have been made and any taxable years that would have been affected had it been timely made, are not closed by the period of assessment.

## CONCLUSION

Taxpayer's election is a regulatory election, as defined under section 301.9100-1(b), because the due date of the election is prescribed in Rev. Proc. 98-48. In the present situation, the requirements of sections 301.9100-1 and 301.9100-3(b)(1)(i) and (ii) have been satisfied. The information and representations made by Taxpayer establish that Taxpayer acted reasonably and in good faith. Furthermore, granting an extension will not prejudice the interests of the Government. Taxpayer represented that it will not have a lower tax liability in the aggregate for all taxable years affected by the election if given permission to make the election than Taxpayer would have if the election were made by the original deadline for making the election. Taxpayer also represented that the period of assessment for Year 1 will not be closed before receipt of a ruling. Accordingly, Taxpayer is granted an extension of time until 60 days following the date of this letter to file an amended return to make a section 1045 election under Rev. Proc. 98-48 for the tax year ending Year 1.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of any aspect of any transaction or item discussed or referenced in this ruling including whether the stock sold by Taxpayer indirectly through Partnership or the stock purchased by Taxpayer constituted QSBS under section 1202 (or was otherwise eligible to be treated as such) or whether the other statutory and regulatory prerequisites for deferral under section 1045 were satisfied.

This ruling is directed only to the taxpayer requesting it. 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 your authorized representative.

A copy of this letter must be attached to any income 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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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.

Sincerely,

Amy Pfalzgraf  
Acting Branch Chief  
(Income Tax & Accounting)

cc: