Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:ITA:B4
PLR-105007-22

Date:
August 17, 2022

Taxpayer	=
Year1	=
Year2	=
State	=
Date1	=
Date2	=
Date3	=
Date4	=
Date5	=
Company1	=
Company2	=
Company3	=
j	=
$k	=
$m	=
n	=
$o	=
$p	=
q	=
$r	=
s	=
$t	=
Accountant	=
Accounting Firm	=
Managing Partner	=

Dear :

This letter ruling is in reply to your letter of March 3, 2022, and subsequent correspondence, requesting an extension of time, under the authority contained in § 301.9100-1 and -3 of the Regulations on Procedure and Administration, to make an election pursuant to § 1045 of the Internal Revenue Code. Taxpayer, for Year2, failed to make an election under § 1045 for gain on the sale of certain qualified small business stock.

FACTS:

Taxpayer is a general partnership organized under the laws of State in Year1. On Date1, Taxpayer purchased j shares of stock of Company1 for $k. On Date2, Taxpayer sold j shares of Company1 for $m. Taxpayer reinvested $p in n shares of Company2 on Date3; $t in s shares of Company3 on Date4; and $r in q shares of Company2 on Date5.

Taxpayer represents that during the relevant periods j shares of Company1 constituted qualified small business ("QSB") stock within the meaning of § 1.1045-1(g)(1), and the n and q shares of Company2, and the s shares of Company3 each constituted replacement QSB stock within the meaning of § 1.1045-1(g)(2).

Managing Partner employed Accounting Firm to prepare and file Taxpayer's U.S. Return of Partnership Income, for Year2. Accountant, a Senior Tax Manager with Accounting Firm, was responsible for overseeing the preparation of the return.

Accountant was aware of Taxpayer's intent to make the § 1045 election for Taxpayer's partnership § 1045 gain. Under Accountant's supervision, Accounting Firm prepared Taxpayer's return as if a timely § 1045 election was made in accordance with the applicable forms and instructions as directed by § 1.1045-1(h). Accountant and Managing Partner both failed to notice that Taxpayer's timely filed return did not include the § 1045 election.

Taxpayer represents that: (1) Neither Taxpayer nor its partners are currently under examination by the Internal Revenue Service ("IRS") for Year2; and (2) the IRS had not, as of the time of Taxpayer's request, contacted either Taxpayer or any of its partners concerning Taxpayer's failure to make the § 1045 election.

After becoming aware of the failure to make a timely election, Taxpayer, through Managing Partner, directed Accounting Firm to promptly submit this request for relief under § 301.9100-1 and § 301.9100-3.

APPLICABLE LAW AND ANALYSIS

Section 1045(a) provides, in part, that in the case of any sale of qualified small business stock 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.

Section 1.1045-1(b)(1) of the Treasury Regulations provides that a partnership that holds QSB stock for more than 6 months at the time of the sale and purchases replacement QSB stock may elect in accordance with § 1.1045-1(h) to apply § 1045. For this purpose, a partnership § 1045 gain equals the partnership's gain from the sale of the QSB stock reduced by the greater of— (i) The amount of the gain from the sale of the QSB stock that is treated as ordinary income; or (ii) The excess of the amount realized by the partnership on the sale over the total cost of all replacement QSB stock purchased by the partnership (excluding the cost of any replacement QSB stock purchased by the partnership that is otherwise taken into account under § 1045).

Under § 1.1045-1(g)(1), the term, QSB stock, has the meaning provided in § 1202(c) but does not include an interest in a partnership that purchases or holds QSB stock. Section 1.1045-1(g)(2) defines the term replacement QSB stock as any QSB stock purchased within 60 days beginning on the date of a sale of QSB stock.

Section 1.1045-1(h) provides that a partnership making an election under §1045, as described in § 1.1045-1(b)(1), must do so on the partnership's timely filed (including extensions) Federal income tax return for the taxable year during which the sale of QSB stock occurs, and that a partnership making the election under §1045 must make such election in accordance with the applicable forms and instructions.

Sections 301.9100-2 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. An extension of time is available for elections that a taxpayer is otherwise eligible to make. However, the granting of an extension of time to make elections is not a determination that the taxpayer is otherwise eligible to make one.

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 301.9100-1(c) provides that the Commissioner, in exercising his discretion, may grant a reasonable extension of time under the rules set forth in § 301.9100-3 to make a

regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 sets forth extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides, in part, that requests for relief under this section 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) provides that except as provided in 301.9100(b)(3)(i) through (iii) 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.

Under § 301.9100-3(b)(3), 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 § 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.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make the 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 that the interests of the Government are prejudiced if 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 (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.

In addition, § 301.9100-3(e)(3) provides that the taxpayer must provide a detailed affidavit from the individuals having knowledge or information about the events leading to the failure to make a valid regulatory election. The affidavit must describe the engagement and responsibilities of the individual as well as the advice that the individual provided to the taxpayer.

Taxpayer has requested relief in the form of a grant of an extension of time to make a regulatory election pursuant to the provisions of § 301.9100-3. Taxpayer also represents that none of the circumstances listed in § 301.9100-3(b)(3) apply.

Based on the facts and information submitted and the representations made, we conclude that Taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. Therefore, we grant Taxpayer an extension of 90 days from the date of this letter ruling to either file an amended return or an Administrative Adjustment Request (whichever is appropriate) to make the election under § 1045 for Taxpayer's partnership § 1045 gain from Year2 in accordance with the applicable forms and instructions as directed by § 1.1045-1(h).

The ruling is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by appropriate parties. This office has not verified any of the material submitted in support of the request for a ruling. However, as part of the examination process, the IRS may verify the information, representations, and other data submitted.

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. Specifically, no opinion is expressed or implied concerning: (1) whether the Company1 shares sold by Taxpayer constituted QSB stock within the meaning of § 1.1045-1(g)(1); or (2) whether the Company2 shares and Company3 shares constituted replacement QSB stock within the meaning of § 1.1045-1(g)(2).

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. In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Alexa T. Dubert
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: