

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:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B01

PLR-112920-22

Date:

January 03, 2023

In Re: Request for an Extension of Time
To Make Elections

LEGEND

| | |
|---------------|---|
| Taxpayer | = |
| VP Global Tax | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| Date 4 | = |
| Date 5 | = |
| Date 6 | = |
| Date 7 | = |
| X | = |
| Subsidiaries | = |

Dear

This letter responds to Taxpayer's submission dated June 29, 2022, and subsequent correspondence dated October 31, 2022, requesting a private letter ruling granting relief to make late regulatory elections pursuant to Treas. Reg. §§ 301.9100-1 and 301.9100-

3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to make elections under § 1.263(a)-3(n) of the Income Tax Regulations to capitalize for tax purposes any amounts paid to repair and maintain tangible property that is capitalized for book purposes, and an extension of time to make elections under § 1.263(a)-1(f) to apply the de minimis safe harbor for capital expenditures for the taxable year ending on Date 1 (the “Elections”) for Taxpayer and Subsidiaries (the “Electing Entities”).

FACTS

Taxpayer, a domestic corporation, was the common parent of an affiliated group of corporations, including Subsidiaries, for the taxable year ending on Date 1. Taxpayer files its returns on a calendar year basis and uses an accrual method as its overall method of accounting.

Taxpayer's consolidated Federal income tax return for the taxable year ending on Date 1 was originally due on Date 3. However, in response to the COVID-19 pandemic, then-President Donald Trump issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. No. 100-707. Pursuant to the emergency declaration, the IRS issued Notice 2020-23, which postponed the filing date for Forms 1120 with due dates between April 1, 2020, and July 15, 2020, until July 15, 2020. Taxpayer had prepared the Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, before Date 3, as it had done in previous years and intended to timely file such. However, when the filing date for Form 1120 was postponed to July 15, 2020, Taxpayer postponed the preparation of its extension payment calculation and the filing of Form 7004 until Date 2. The absence of a need to make a payment coupled with the turnover of staff at that time resulted in Taxpayer overlooking the need to file the Form 7004, which it typically filed with the payment. As a result, Taxpayer failed to file the Form 7004 on or before July 15, 2020.

Taxpayer proceeded as if its consolidated Federal income tax return was due on Date 5 (the extended deadline) and was unaware that Form 7004 was not filed. Taxpayer filed its consolidated Federal income tax return on or about Date 4. Taxpayer made the Elections on this late filed return for Electing Entities.

On or about Date 6, Taxpayer discovered that the Form 7004 was not filed and determined that its return for the taxable year ending on Date 1 was not timely filed. Notwithstanding Taxpayer contacting its tax advisor, X, the advisor did not advise Taxpayer until Date 7 that the Elections were not timely. Shortly after Date 7, Taxpayer submitted this request seeking relief under §§ 301.9100-1 and 301.9100-3. Taxpayer's request for this relief is for Elections by Electing Entities rendered invalid by its late return for the taxable year ending on Date 1. Taxpayer filed its return for the year immediately following the taxable year ending on Date 1 consistent with the Electing

Entities having timely made the Elections. Taxpayer was not under examination for the taxable year ending on Date 1 at the time this request was submitted.

LAW AND ANALYSIS

Section 1.263(a)-1(f) generally provides that if a taxpayer elects to apply the de minimis safe harbor, then the taxpayer may not capitalize under §§ 1.263(a)-2(d)(1) or 1.263(a)-3(d) any amount paid in the taxable year for the acquisition or production of a unit of tangible property nor treat as materials or supply under § 1.162-3(a) any amount paid in the taxable year for tangible property if the amount meets certain requirements specified in the regulations.

Section 1.263(a)-3(n) generally provides that a taxpayer may elect to treat amounts paid during the taxable year for repair and maintenance (as defined under § 1.162-4) to tangible property as amounts paid to improve that property and as an asset subject to the allowance for depreciation if the taxpayer incurs these amounts in carrying on the taxpayer's trade or business and if the taxpayer treats these amounts as capital expenditures on its books and records regularly used in computing income.

The Elections for the taxable year ending on Date 1 were due on the last day prescribed by law for the filing of Taxpayer's return. The Commissioner has discretionary authority under § 301.9100-3 to grant extensions of time for Taxpayer and other Electing Entities to file the Elections.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Service will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish 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) 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 professional failed to make, or advise the taxpayer to make, the election.

Under § 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 could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is

requested; (ii) was fully informed 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.

Section 301.9100-3(c) provides that the Service will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. 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.

CONCLUSION

Based on the facts and representations made, we conclude that Taxpayer has acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the Government. Accordingly, Taxpayer has satisfied the requirements for the granting of relief, and Taxpayer is granted an extension of time to make the Elections. Given the Elections for Electing Entities were made on Taxpayer's late filed consolidated Federal income tax return for the taxable year ending on Date 1, the Elections are deemed to be timely made for Taxpayer and other Electing Entities.

This ruling is based upon facts and representations submitted by Taxpayer. This office has not verified any of the material submitted in support of the request for a ruling, and the information is subject to verification and audit on examination.

No opinion is either express or implied on whether Taxpayer or Electing Entities meet the substantive requirements of § 1.263(a)-1(f) or § 1.263(a)-3(n). Further, this office expresses no opinion regarding the tax treatment of Taxpayer and other Electing Entities under the provisions of any other sections of the Code or regulations.

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 representative. 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 § 6110.

Sincerely,

Patrick E. White
Senior Counsel, Branch 1
Office of Associate Chief Counsel
(Income Tax & Accounting)

CC: