

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:B4

PLR-122238-22

Date:

January 12, 2023

Legend:

Taxpayer =
Corporation =
Year 1 =
Year 2 =
Year 3 =
X percent =

Dear _____ :

This letter ruling refers to your request that the Internal Revenue Service grant an extension of time, under the authority in § 301.9100-3 of the Regulations on Procedure and Administration, to file Form 1128, *Application to Adopt, Change, or Retain a Tax Year*. Taxpayer, a partnership, requests an extension of time to file Form 1128 to make an election under Internal Revenue Code (Code) § 442, Treas. Reg. § 1.442-1(b), and Rev. Proc. 2006-46 to change its accounting period, for federal income tax purposes, from a taxable year ending December 31 to a taxable year ending March 31, effective March 31, Year 2.

Taxpayer is owned by Corporation and a number of individuals. In July Year 1, Corporation purchased an additional X percent interest in Taxpayer. As a result of the additional acquisition, Corporation became the majority partner. Corporation has a fiscal year ending March 31. Prior to Corporation becoming the majority partner, Taxpayer had a tax year ending December 31.

Taxpayer hired external tax professionals to prepare its tax returns for Year 1 and Year 2. The tax professionals did not become aware of a statutory requirement to change

the Taxpayer's taxable year to that of the majority interest taxable year until the Summer of Year 3. Although the tax professionals filed the short period return for the tax year ending March 31, Year 2, and the fiscal year return for the tax year ending March 31, Year 3, consistent with the accounting period of its new majority shareholder, the returns were filed late. Additionally, the tax professionals overlooked the requirement to file Form 1128 and the required filing date of Form 1128 to effect the change in accounting period. Thus, the Taxpayer has requested an extension of time to file its Form 1128 under § 301.9100-3.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 (automatic extensions), such as the instant case, must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

Based on the facts and information submitted and the representations made, we conclude that Taxpayer has acted reasonably and in good faith under § 301.9100-3(b), and that the interests of the Government will not be prejudiced by the granting of relief under § 301.9100-3(c). Accordingly, Taxpayer has satisfied the requirements of the regulations for the granting of relief, and the Service will consider Taxpayer's late filed Form 1128 requesting permission to change to a tax year ending March 31, effective March 31, Year 2, timely filed. However, the granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the election. See § 301.9100-1(a).

Revenue Procedure 2006-46, 2006-45 I.R.B. 859, provides the exclusive procedures for certain taxpayers, including partnerships, to obtain an automatic approval to adopt, change, or retain its annual accounting period under § 442 of the Internal Revenue Code and § 1.442-1(b) of the Income Tax Regulations.

Section 7.02(2) of Revenue Procedure 2006-46 provides that the Form 1128 must be filed no earlier than the day following the end of the first effective year and no later than the due date (including extensions) for filing the federal income tax return for the first effective year.

Because the Taxpayer did not file Form 1128 by the due date (including extensions) of the short period return for the first effective year, the Taxpayer does not qualify to make the change automatically under Rev. Proc. 2006-46. The Taxpayer must file its Form 1128 under Rev. Proc. 2002-39, 2002-22 I.R.B. 1046, and pay the additional user fee required by Appendix A of Rev. Proc. 2023-1, 2023-1 I.R.B. 1, 85. The taxpayer must file its Form 1128 within 30 days of the date of this letter to be considered timely under Rev. Proc 2002-39, section 6.02.

This ruling addresses the granting of § 301.9100-3 relief only. We express no opinion regarding the tax treatment of the instant transaction under the provisions of any other section of the Code or the regulations that may be applicable, or regarding the tax treatment of any conditions existing at the time of, or effects resulting from, the instant transaction. Specifically, this ruling expresses no opinion as to whether the Code and applicable regulations, or Rev. Proc. 2002-39, permit the Taxpayer to change to the tax year requested in the Form 1128.

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

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under § 6110.

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,

Angella L. Warren
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: