

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **202320002**  
Release Date: 5/19/2023  
Index Number: 9100.09-00

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B05  
PLR-116185-22  
Date:  
February 21, 2023

Taxpayer =  
Firm =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
Year 1 =

Dear :

This letter responds to Taxpayer’s request dated Date 1, seeking a private letter ruling granting relief to make a late election pursuant to §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to file Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, to change to a taxable year ending on Date 3, effective for Year 1.

**FACTS**

Taxpayer is a corporation taxed under Subchapter C. Taxpayer is a business that provides engineering and architectural design services. Taxpayer has a current year end of Date 2, but would like to change to a taxable year ending on Date 3.

Taxpayer represents that it intended to change to a taxable year ending Date 3 by filing a timely Form 1128. Taxpayer represents that if timely filed, the request to change the taxable year end from Date 2 to Date 3 would have qualified under the automatic procedures found in Rev. Proc. 2006-45, 2006-2 C.B. 851. Taxpayer engaged Firm to obtain an extension of time for filing Taxpayer’s Year 1 tax return, and prepare and file the Year 1 tax return by the extended due date. Taxpayer provided Firm all necessary information to request an extension. However, due to an administrative issue, Firm did not obtain an extension to file the tax return.

The discovery of the failure to file the extension was discovered after the original deadline for the Year 1 tax return, resulting in Form 1128 being considered late. Taxpayer filed Form 1128 with the Service Center on Date 4. Taxpayer also filed a copy of Form 1128 with the Year 1 Form 1120, *U.S. Corporation Income Tax Return*, filed on Date 5.

## LAW AND ANALYSIS

Section 441(a) of the Internal Revenue Code provides that taxable income is computed on the basis of the taxpayer's taxable year. Section 441(b) and § 1.441-1(b)(1) of the Income Tax Regulations provide that the term "taxable year" generally means the taxpayer's annual accounting period, if it is a calendar or fiscal year, or, if applicable, the taxpayer's required taxable year.

Section 441(e) provides that in the case of any taxpayer who has made the election provided by subsection (f), the term fiscal year means the annual period (varying from 52 to 53 weeks) so elected.

Section 441(f)(1) provides, in general, that a taxpayer may elect to compute its taxable income on the basis of a fiscal year which varies from 52 to 53 weeks, ends always on the same day of the week, and ends always on (A) whatever date this same day of the week last occurs in a calendar month, or (B) whatever date this same day of the week falls which is nearest to the last day of the calendar month.

Section 442 provides that if a taxpayer changes its annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Secretary.

Section 4.01 of Rev. Proc. 2006-45 provides that a change to a 52-53 week taxable year may be an automatic accounting period change, provided the requirements of Rev. Proc. 2006-45 are met. Section 7.02(2) of Rev. Proc. 2006-45 provides that taxpayer must file a form 1128 no earlier than the day following the first effective year (generally, the short period required to make the change), and no later than the due date (including extensions) for filing the tax return for the first effective year

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner 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 extensions 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 the grant of relief will not prejudice the interests of the Government.

Rev. Proc. 2006-45 provides the time and manner for a taxpayer within its scope to change its accounting period. Therefore, such a change is a regulatory election as defined § 301.9100-1(b).

Under section 301.9100-3(b), a taxpayer is 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 Service, or reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election. However, a taxpayer is not considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

In addition, section 301.9100-3(b)(3) provides that a taxpayer is deemed not 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 § 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 fully informed in all material respects of the required election and related tax consequences but chose not to make 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.

Regulation section 301.9100-3(c)(1)(i) states that the interests of the Government are prejudiced if granting relief will 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 made on a timely basis.

Regulation section 301.9100-3(c)(1)(ii) provides that relief ordinarily will not be granted if the tax year in which the regulatory election should have been made, or any tax year that would have been affected by the election had it been timely made, is closed by the statute of limitations on assessment before the taxpayer's receipt of the ruling granting 9100 relief.

Section 301.9100-3(c)(3) provides that a change with respect to an accounting period regulatory election prejudices the interests of the government if the request for relief is made more than 90 days after the due date for filing the Form 1128.

Based on the facts and information submitted and the 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. Taxpayer reasonably relied

on a qualified tax professional and that professional failed to make the election. Further, Taxpayer's request for relief was filed less than 90 days after the due date of Taxpayer's Year 1 tax return.

Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, Taxpayer has satisfied the requirements for the granting of relief. Consequently, Taxpayer's Form 1128, requesting a change to a taxable year ending Date 3 filed on Date 5, is considered timely filed.

This ruling is based upon facts and representations submitted by 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.

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. We express no opinion regarding the tax treatment of the instant transaction under the provisions of any other sections of the Code or 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 letter expresses no opinion as to whether Taxpayer qualifies to make an automatic change under Rev. Proc. 2006-45.

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, a copy of this letter is being faxed to your authorized representative.

A copy of this letter must be attached to any 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.

Sincerely,

Amy J. Pfalzgraf  
Branch Chief (Acting), Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: