

## Internal Revenue Service

Number: **202350002**

Release Date: 12/15/2023

Index Number: 9100.00-00, 442.00-00

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:B05

PLR-105862-23

Date:

September 15, 2023

In re:

EIN:

### Legend:

Taxpayer	=
Date 1	=
New Date	=
Date 2	=
State	=
Date 3	=
Year 1	=
Year 2	=
Tax Firm	=
Date 4	=
Executive Director	=

Dear :

This ruling responds to Taxpayer's request dated Date 1. Specifically, Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, to file a Form 1128, *Application to Adopt, Change or Retain a Tax Year*, to change its taxable year from a calendar year to a taxable year ending New Date, effective Date 2.

This letter is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859.

## FACTS

Taxpayer is a partnership formed under the laws of State. Taxpayer is treated as a partnership for Federal income tax purposes and files a Form 1065, *US Return of Partnership Income*. Taxpayer currently uses an accrual method of accounting for Federal Income tax purposes and has a calendar year as its tax year. Taxpayer intends to change to a taxable year ending New Date. The short year period caused by the change would begin on Date 3 and end on Date 2.

Tax Firm has prepared Taxpayer's returns for all years prior to the short year period. For years prior to the short year period, Tax Firm thought that Taxpayer's required taxable year was a calendar year, due to the Tax Firm's mistaken belief that Taxpayer's majority interest partner used a calendar year for Federal income tax purposes.

In the fall of Year 1, Tax Firm discovered that Taxpayer's majority interest partner used a taxable year ending on New Date. Tax Firm advised Taxpayer to obtain consent from the IRS to change its taxable year to a taxable year ending on New Date, effective as of Date 2. Taxpayer represents that if timely filed, the request to change its taxable year end to New Date would have qualified under the automatic procedures found in Rev. Proc. 2006-46, 2006-2 C.B. 859.

In the summer of Year 2, Taxpayer engaged Tax Firm to assist in changing its taxable year, effective as of Date 2, including a request for an extension of time to prepare and file the return and Form 1128. Pursuant to Rev. Proc. 2006-46, Taxpayer was required to file Form 1128 no later than the due date (including any extensions) for the short year period return. The due date for the return for the short year period Date 3 to Date 2 is Date 4.

A team lead by Executive Director at Tax Firm failed to file the request for an extension of time by the due date. Due to this oversight, the Taxpayer's return and Form 1128 were not timely filed. Subsequently, Taxpayer requested that Tax Firm prepare the submission to seek relief to timely file the Form 1128.

## 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 required taxable year.

Section 442 and § 1.442-1(a) provides that if a taxpayer wants to change its annual accounting period and use a new taxable year, it generally must obtain the approval of the Commissioner. Section § 1.442-1(b)(1) provides that in order to secure approval of the Commissioner to change an annual accounting period, a taxpayer must file an application, generally on Form 1128, *"Application to Adopt, Change, or Retain a Tax*

*Year,*” with the Commissioner within such time and in such manner as provided in administrative procedures published by the Commissioner.

Rev. Proc. 2006-46 provides the exclusive procedures for a partnership within its scope to secure the Commissioner’s automatic approval to change its annual accounting period under § 442. A partnership complying with all the applicable provisions of Rev. Proc. 2006-46 will be deemed to have established a business purpose and obtained the approval of the Commissioner to change its annual accounting period.

Section 7.02(2) of Rev. Proc. 2006-46 provides that a Form 1128 filed pursuant to the revenue procedure will be considered timely filed only if it is filed no later than the due date (including any extensions) for filing the Federal income tax return for the first effective year.

Section 5.10 of Rev. Proc. 2006-46 provides that the “first effective year” is the first taxable year for which a change in annual accounting period is effective. The first effective year is generally the short period required to effect the change. Section 5.11 of Rev. Proc. 2006-46 provides that a “short period” is the period beginning with the day following the close of the old taxable year and ending with the day preceding the first day of the new taxable year.

Under § 301.9100-1(b), a “regulatory election” is defined as an election whose due date is prescribed by regulations published in the Federal Registrar, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Because Rev. Proc 2006-46 sets forth the manner and timing for an entity to file a Form 1128 to change its taxable year, these elections are regulatory elections.

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 the automatic extensions covered in 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.

Under § 301.9100-3(b), a taxpayer is determined 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 relief 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, § 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 ordinarily not grant 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.

Under § 301.9100-3(c)(1)(i) 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 made on a timely basis.

Section 301.9100-3(c)(1)(ii) provides that relief ordinarily will not be granted if the taxable year in which the regulatory election should have been made, or any taxable year that would have been affected by the election had it been timely made, is closed by the statute of limitation 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 acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the government. Taxpayer relied on a qualified tax professional and that professional failed to make or advise Taxpayer to make the election. Further, Taxpayer's request for relief was filed less than 90 days after the due date of the Taxpayer's first effective year 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. Taxpayer's Form 1128, requesting permission to change to a taxable year ending New Date, effective Date 2, must be filed under the Provisions of Rev. Proc. 2002-46 within 60 days of this letter. This letter ruling grants an extension of time to file a Form 1128. This letter ruling does not grant an extension of time to file

Taxpayer's short year period return. A copy of this letter must be attached to the Taxpayer's Form 1128. 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.

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. Specifically, this letter expresses no opinion as to whether Taxpayer qualifies to make an automatic change under Rev. Proc. 2006-46.

This letter 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 faxed to your authorized representatives.

Sincerely,

Amy J. Pfalzgraf  
Branch Chief, Branch 5  
(Income Tax and Accounting)

cc: