Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
October 18, 2023

LEGEND

Taxpayer	=
Subsidiary 1	=
Subsidiary 2	=
Business Entity	=
Accounting Firm	=
State	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
Year 1 Taxable Year	=

Dear :

This letter responds to a letter ruling request dated Date 1, submitted by Accounting Firm on behalf of Taxpayer, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (P&A Regulations) to make six elections, which are listed below, for Year 1 Taxable Year ended Date 2.

FACTS

Taxpayer was formed under State law and commenced operations on Date 3. Taxpayer was a publicly traded company and the common parent of an affiliated group of corporations filing a consolidated U.S. federal income tax return (Consolidated Group). The Consolidated Group, along with its foreign affiliates, was a Business Entity.

Taxpayer directly owned and owns 100 percent of Subsidiary 1, a State corporation and a member of the Consolidated Group. Subsidiary 1 directly owned and owns 100 percent of the outstanding equity interests in Subsidiary 2, which was a State corporation and a member of the Consolidated Group. Subsidiary 2 converted into a limited liability corporation as an entity disregarded from Subsidiary 1 as part of an internal restructuring.

Taxpayer desired to make certain regulatory elections on its Form 1120, U.S. Corporation Income Tax Return, for Year 1 Taxable Year. These elections include the following:

- An election under § 1.382-9(i) of the Income Tax Regulations (Regulations) to opt out of the application of the provisions of the § 382(l)(5) of the Internal Revenue Code (Code);
- An election under § 1.1502-36(d)(6)(i)(A) of the Regulations to reduce stock basis in Subsidiary 2;
- An election under § 1.263(a)-1(f) of the Regulations to apply the de minimis safe harbor for capital expenditures for the taxable year ended Date 2;
- An election under § 1.263(a)-3(n) of the Regulations to capitalize any amounts paid to repair and maintain tangible property that is capitalized for book purposes;
- An election under § 168(g)(7) of the Code to use the alternative depreciation system (ADS) to depreciate property placed in service during the Year 1 Taxable Year ended Date 2; and
- An election under § 168(k)(7) of the Code to not deduct the additional first year depreciation for all classes of qualified property placed in service during the Year

1 Taxable Year, including 3-year property, 5-year property, 7-year property, 10-year property, 15-year property, and 20-year property.

Taxpayer represents that it always intended to make these elections on its Year 1 Taxable Year Form 1120, and the tax return was prepared as if the elections had been made.

On Date 4, Taxpayer engaged Accounting Firm to prepare and electronically file its federal and state income tax returns for Year 1 Taxable Year, including all related statements and elections. Taxpayer also engaged Accounting Firm to file Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, to extend the due date of Taxpayer's Year 1 Taxable Year Form 1120 from Date 5 to Date 6.

Accounting Firm timely prepared the Form 7004, and it was approved by the engagement teams' Managing Director for release to Taxpayer for review and approval on Date 7. Taxpayer provided approval to the engagement team via telephone to e-file Form 7004. On Date 8, Taxpayer was provided a copy of the Form 7004 via email from a member of the engagement team. The email indicated that the Form 7004 had already been e-filed on Taxpayer's behalf. Accordingly, it was the understanding of both Taxpayer and Accounting Firm's engagement team that Form 7004 had been timely filed extending the due date to Date 6.

On Date 6, Accounting Firm e-filed Taxpayer's Year 1 Taxable Year Form 1120. All required elections and associated statements were included with Taxpayer's return.

On Date 9, Taxpayer received two notices from the IRS assessing penalties related to the late filing of the Year 1 Taxable Year Form 1120. Taxpayer provided these notices to Accounting Firm's engagement team for review. After viewing its records, Accounting Firm's engagement team determined that the proper internal approvals had inadvertently not been communicated to instruct the tax processing team to electronically file Taxpayer's Form 7004 before Date 5.

Once Accounting Firm identified that Form 7004 had not been timely filed, Accounting Firm informed Taxpayer that the above-listed elections would be considered late because such elections needed to be made on a timely filed return (i.e., by the original due date or by the extended due date with a timely filed extension).

LAW

Section 382(a) of the Code provides that the amount of taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the § 382 of the Code limit for each year.

Section 382(l)(5) of the Code provides that subsection (a) shall not apply to an ownership change if the old loss corporation is under the jurisdiction of a court in a title 11 [United States Bankruptcy Code] or similar case, and the shareholders and qualified creditors of the old loss corporation own a requisite amount of stock of the new loss corporation by reason of being shareholders or creditors of the old loss corporation. A taxpayer may make the election to opt out of § 382(l)(5) of the Code by making the election by the due date of the corporation's tax return of the taxable year that includes the ownership change date.

Section 1.382-9(i) of the Regulations provides that a new loss corporation may elect out of § 382(l)(5) of the Code.

Section 1.1502-36(d)(i)(A) of the Regulations provides rules to reduce attributes of subsidiaries and lower-tier subsidiaries to the extent they duplicate a net loss on shares of subsidiary stock transferred by members in one transaction. Section 1.1502(d)(6)(i) of the Regulations provides that notwithstanding the general operation of § 1.1502-36(d) of the Regulations, the parent of a consolidated group may elect to reduce the potential for loss duplication, and thereby reduce or avoid attribute reduction. An election to reduce loss duplication under § 1.1502-36(d)(6)(i)(A) of the Regulations must be made in a statement included with the taxpayer's timely filed return for the taxable year of the transfer.

Section 1.263(a)-1(f) of the Regulations provides that if a taxpayer elects to apply the de minimis safe harbor, then the taxpayer may not capitalize any amount paid in the taxable year for the acquisition or production of a unit of tangible property nor treat as materials or supply any amount paid in the taxable year for tangible property if the amount meets certain requirements specified in the regulations. An annual election to apply the de minimis safe harbor for capital expenditures for the taxable year is due on the last day prescribed by law for the filing of a taxpayer's return (including extensions).

Section 1.263(a)-3(n) of the Regulations provides that a taxpayer may elect to treat amounts paid during the taxable year for repair and maintenance to tangible 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 a capital expenditure on its books and records regularly used in computing income. A taxpayer makes this election by attaching a statement to the taxpayer's timely filed tax return for the taxable year in which the taxpayer pays amounts described under this section.

Section 168(g)(7) of the Code generally allows a taxpayer to elect for any class of property for any taxable year to use the ADS for determining deprecation for all property in that class placed in service during that taxable year. For nonresidential real property, the election is made separately with respect to each property. The election must be

made by attaching a statement to the tax return for the taxable year for which the election is to be effective by the due date of such return (including extensions). Section 301.9100-7T(a)(1) and (2) of the P&A Regulations provide the due date for this election.

Section 168(k)(1) and (k)(6) of the Code allows, in the taxable year that qualified property is placed in service, a 100-percent additional first year deprecation deduction for qualified property acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2023 (or before January 1, 2024 for qualified property described in § 168(k)(2)(B) or (C)). Section 168(k)(7) of the Code allows a taxpayer to elect not to deduct the additional first year depreciation for any class of property placed in service by the taxpayer during the taxable year.

Section 1.168(k)- 2(f)(1)(i) of the Regulations provides that the § 168(k)(7) election applies to all qualified property that is in the same class of property and placed in service in the same taxable year. Section 1.168(k)-2(f)(1)(ii) defines “class of property” for purposes of the § 168(k)(7) election as meaning each class of property described in § 1.168(k)- 2(f)(1)(ii)(A)-(G).

Section 1.168(k)-2(f)(1)(iii)(A) of the Regulations provides that the § 168(k)(7) election not to deduct additional first year depreciation must be made by the due date (including extensions) of the federal tax return for the taxable year in which the property is placed in service by the taxpayer. Section 1.168(k)-2(f)(1)(iii)(B) provides that the § 168(k)(7) election not to deduct additional first year depreciation must be made in the manner prescribed on Form 4562, “Depreciation and Amortization,” and its instructions. The instructions to Form 4562 for the Year 1 Taxable Year, provided that the election not to deduct the additional first year depreciation is made by attaching a statement to the taxpayer's timely filed tax return indicating that the taxpayer is electing not to deduct the additional first year depreciation and the class of property for which the taxpayer is making the election.

Sections 301.9100-1 through 301.9100-3 of the P&A Regulations provide the standards that the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-1(c) of the P&A Regulations provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-1(c), 301.9100-2 and 301.9100-3 to make certain regulatory elections. 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 301.9100-3(a) of the P&A Regulations provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the P&A Regulations provides that 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 or 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.

Section 301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not:

(i) Competent to render advice on the regulatory election; or
(ii) Aware of all relevant facts.

Section 301.9100-3(b)(3) provides that a taxpayer will be 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, 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) of the P&A Regulations provides that the Commissioner 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 the 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. 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 under § 6501(a) of the Code before the taxpayer's receipt of a ruling granting relief under this section.

ANALYSIS

To receive an extension of time to file a regulatory election, a taxpayer must provide evidence sufficient to establish that it acted reasonably and in good faith in accordance with the factors set forth in § 301.9100-3(b)(1)(i)-(v).

Taxpayer acted reasonably and in good faith with respect to its inadvertent failure to make the elections. The IRS did not discover Taxpayer's failure to timely make the elections for Taxpayer's Year 1 Taxable Year Form 1120, but rather Taxpayer identified the issue. Taxpayer included affidavits which represent that it instructed Accounting Firm to make the elections in the Year 1 Taxable Year Form 1120. Taxpayer's Year 1 Taxable Year Form 1120 was prepared and filed consistently with the elections having been timely made. Taxpayer relied on qualified tax professionals (i.e., Accounting Firm) to prepare and e-file Taxpayer's Form 7004 extension request and Taxpayer's Year 1 Taxable Year Form 1120, including all required forms and statements. Accounting Firm is a reputable firm fully qualified to provide advice and was aware of all the facts.

Further, none of the § 301-9100-3(b)(3) factors indicative of Taxpayer not acting in good faith are present. Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed. This is not a situation where Taxpayer was fully informed of the required elections and related tax consequences and chose not to file the elections, nor is it a situation where Taxpayer is using hindsight in its request for relief.

The interests of the government are not prejudiced as granting relief will not result in Taxpayer's tax liability being lower than it would have been if the elections had been made on a timely basis. As noted above, Taxpayer's filed its Year 1 Taxable Year Form 1120 as if the above elections were timely made. Therefore, the ultimate tax liability, in the aggregate, will be the same as if the extension were timely filed (and the elections timely made). The statute of limitations on assessment under § 6501(a) of the Code has not expired for Taxpayer's Year 1 Taxable Year ended Date 2.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that Taxpayer acted reasonably and in good faith and that granting the request for an extension to file the elections under § 1.382-9(i) of the Regulations, § 1.1502-36(d)(6)(i)(A), § 1.263(a)-1(f) of the Regulations, § 1.263(a)-3(n) of the Regulations, § 168(g)(7) of the Code, and § 168(k)(7) of the Code will not prejudice the interests of the government.

The ruling contained in this letter is based on information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in

support of the request for rulings, it is subject to verification on examination. If any of the information or representations provided are subsequently determined to be inaccurate and/or incomplete this ruling and its conclusions are void.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences arising from the facts described above under any other provision of the Code or regulations.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its return that provides the date and control number of the letter ruling.

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 provisions of the power of attorney currently on file with this office, copies of this letter are being sent to your authorized representative. We are also sending a copy of this letter to the appropriate operating division director.

Sincerely,

JAMIE KIM
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Income Tax & Accounting)

Enclosure: Copy for § 6110 purposes

cc: