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:B04
PLR-116242-23

Date:
February 14, 2024

LEGEND

Taxpayers =

Taxpayer Spouse =

Company 1 =

Company 2 =

Firm =

Accountant =

Year 0 =

Year 1 =

Year 2 =

Year 3 =

Date 1 =

Date 2 =

Date 3 =

x =

y =

$a =

$b =

$c =

Dear :

This is in response to a letter sent on Taxpayers' behalf by your representative requesting an extension of time to make an election under § 1045 of the Internal Revenue Code (Code) concerning gain on the sale of certain qualified small business stock for tax year Year 2. The request is based on §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2024-1, 2024-1 I.R.B. 1. A paper copy will not be mailed to Taxpayers.

FACTS

Taxpayer Spouse co-founded Company 1 in Year 1. Taxpayers represent that, during the relevant period, Company 1 stock was qualified small business stock (QSBS) within the meaning of §1.1045-1(g)(1). In Year 2, Taxpayer Spouse sold x amount of Company 1 shares for $a on Date 1. Within weeks of the first sale, Taxpayer Spouse sold y amount of Company 1 shares for $b on Date 2.

Also on Date 2, Taxpayer Spouse entered into a stock purchase agreement to use proceeds from Company 1 shares sold on Date 1 and Date 2 to fund Company 2.

On Date 3, which was within 60 days of both Company 1 stock sale transactions, Taxpayer Spouse used $c of the proceeds to fund Company 2. Taxpayers represent that Company 2 stock constituted replacement QSBS with the meaning of §1.1045-1(g)(2).

Taxpayers have engaged Firm in preparing their federal tax returns since Year 0. In Year 3, while preparing Taxpayers' Year 2 federal income tax return, Accountant in Firm inquired about the details of the proceeds from the sale of Company 1. Taxpayer Spouse confirmed that $c of the proceeds was used to fund Company 2 within 60 days of the sale. Accountant was aware that Taxpayer Spouse intended to make a § 1045 election for the gain on the sale of stock in Company 1.

Firm filed Taxpayers' federal income tax return for Year 2 after the extended due date of Date 1. During the time leading up to the filing of the Year 2 return, Firm advised

Taxpayers that the only risk of filing the Year 2 return late was any applicable late-filing penalty and interest. Firm failed to advise Taxpayers that a § 1045 election must be made on a timely-filed return.

During the process of reviewing and finalizing Taxpayers' Year 2 return and after the relevant deadline, Firm realized that the § 1045 election was required to be made on a timely filed return. Accordingly, Firm filed Taxpayers' Year 2 return with a note stating that Taxpayers were seeking permission to make a late § 1045 election.

APPLICABLE LAW AND ANALYSIS

Section 1045(a) of the Code provides, in part, that in the case of any sale of qualified small business stock held by a taxpayer other than a corporation for more than 6 months and with respect to which such taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds –

> (1) the cost of any qualified small business stock purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by
>
> (2) any portion of such cost previously taken into account under this section.

Section 1045(b)(1) provides that the term "qualified small business stock" has the meaning given such term by § 1202(c). Section 1202(c)(1)(B) provides as one of the defining characteristics of qualified small business stock that it be acquired by the taxpayer at its original issue (directly or through an underwriter) in exchange for money or other property, or in exchange for services provided to such corporation .

Rev. Proc. 98-48, 1998-2 C.B. 367, provides that a § 1045 election must be made on or before the due date (including extensions) for filing the income tax return for the taxable year in which the qualified small business stock is sold. Rev. Proc. 98-48, § 3.01.

The Service uses standards set forth in §§ 301.9100-1 through 301.9100-3 to determine whether to grant an extension of time to make a regulatory election. Under § 301.9100-3(a), the Service will grant requests for extensions of time for regulatory elections (other than automatic extensions of time covered in § 301.9100-2) 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. However, the granting of an extension of time to make elections is not a determination that the taxpayer is otherwise eligible to make one.

For this purpose, § 301.9100-1(b) defines the term regulatory election to include an election whose deadline is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, or notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides, in part, that requests for relief will be granted when the taxpayer provides evidence (including affidavits described in paragraph (e) of this section) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Except as provided in § 301.9100-3(b)(3)(i) through (iii), § 301.9100-3(b)(1) 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 due 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 tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides that a taxpayer is considered 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 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)(1)(i) states that 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.

Section 301.9100-3(c)(1)(ii) provides, in part, that 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 affected by the election had it been timely made, are closed by the period of limitations on assessment.

In addition, § 301.9100-3(e)(3) provides that the taxpayer must provide a detailed affidavit from the individuals having knowledge or information about the events leading to the failure to make a valid regulatory election. The affidavit must describe the engagement and responsibilities of the individual as well as the advice that the individual provided to the taxpayer.

Taxpayers have requested relief in the form of a grant of an extension of time to make a regulatory election pursuant to the provisions of § 301.9100-3. Taxpayers represent that none of the circumstances listed in § 301.9100-3(b)(3) apply.

CONCLUSION

Based on the facts and information submitted and the representations made, we conclude that Taxpayers acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. Therefore, we grant Taxpayers an extension of 60 days from the date of this letter ruling to file an amended return to make a § 1045 election under Rev. Proc. 98-48 for the tax year of Year 2.

The ruling is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by appropriate parties. This office has not verified any of the material submitted in support of the request for a ruling.

However, as part of the examination process, the IRS may verify the information, representations, and other data submitted.

Except as expressly provided herein, no opinion is expressed or implied concerning the application of any provision of the Code or the tax consequences of any item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning: (1) whether the stock sold or purchased by Taxpayer constituted QSBS within the meaning of § 1.1045-1(g)(1) (or was otherwise eligible to be treated as such); (2) whether the shares in Company 2 constituted replacement QSBS within the meaning of § 1.1045-1(g)(2); or (3) whether Taxpayers are subject to any applicable penalties or interest for the late-filing of their original return for Year 2.

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

Pursuant to the Form 2848, *Power of Attorney and Declaration of Representation,* on file, we are sending a copy of this letter to Taxpayers' authorized representative.

A copy of this letter must be attached to any income 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,

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

cc: