

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202447014**
Release Date: 11/22/2024
Index Number: 9100.09-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-105096-24

Date:
August 26, 2024

Legend

- Taxpayer =
- Year 1 =
- State Z =
- Majority Partner =

- Partner 2 =
- Managing Partner =

- Purpose =
- x% =
- Accounting Firm =
- Vice President =
- Managing Partner's Partner =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =

Dear :

This ruling 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 from a taxable year ending on Date 2 to a taxable year ending on Date 3, effective for Year 1.

FACTS

Taxpayer is a partnership formed on Date 4, for Purpose, with Majority Partner, Partner 2, and Managing Partner. Its principal business office is located in State Z. On Date 5, Majority Partner acquired a x% interest in Taxpayer. Majority Partner has a tax year ending Date 3. Therefore, due to Majority Partner's acquisition of Taxpayer, Taxpayer now has a required year ending Date 3, effective for Year 1. The Form 1128 requesting a change in accounting period to a tax year ending Date 3, effective for Year 1, was due on or before Date 6.

Beginning with Year 1, Taxpayer decided to switch service providers for its return filing obligations and engaged Accounting Firm. The Vice President of Managing Partner's Partner is responsible for the management functions of entities owned by Managing Partner. Due to the transition between service providers, Vice President inadvertently missed the Date 6 filing deadline for the Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns*, to timely extend the Taxpayer's Form 1065 for Year 1. Thus, Taxpayer's Form 1065 and Form 1128 for Year 1 were not timely filed.

On Date 7, Vice President alerted Accounting Firm and worked to take corrective action. On Date 1, within 90 days of Date 6, Taxpayer filed this request and included the Form 1128, requesting automatic approval to change from a taxable year ending on Date 2 to a taxable year ending on Date 3, effective for Year 1.

The foregoing are material facts on which this ruling is based.

LAW AND ANALYSIS

Section 706(b)(1)(B)(i) provides that a partnership shall not have a taxable year other than the majority interest taxable year. Section 706(b)(4)(A)(i) provides that the term "majority interest taxable year" means the taxable year which constitutes the taxable year of 1 or more partners having an aggregate interest in partnership profits and capital of more than 50 percent.

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 1.442-1(b) of the Income Tax Regulations along with the instructions to Form 1128 and Rev. Proc. 2006-46, 2006-45 I.R.B. 859, provide generally that to secure the Commissioner's consent to a change in accounting period, the taxpayer must file an application on Form 1128 with the Commissioner on or before the due date for filing of

the short period return. Section 4.01(1) of Rev. Proc. 2006-46 provides that a partnership's change to a required year is eligible for automatic procedures under the revenue procedure.

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 that the grant of relief will not prejudice the interests of the Government.

Under § 301.9100-3(b)(1)(i), 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.

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 section 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.

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.

Section 301.9100-3(c)(1)(i) provides 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 (taking into account the time value of money).

Section 301.9100-3(c)(1)(ii) provides 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 year 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) before the taxpayer's receipt of a ruling granting relief under § 301.9100-3.

Section 301.9100-3(c)(3) provides that the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if an election is an accounting period regulatory election (other than the election to use other than the required taxable year under section 444) and the request for relief is filed more than 90 days after the due date for filing the Form 1128, Application to Adopt, Change, or Retain a Tax Year (or other required statement).

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. Furthermore, Taxpayer submitted the request for relief within 90 days after the due date for filing the Form 1128. Taxpayer has satisfied the requirements of the regulations for the granting of relief. Accordingly, Taxpayer is granted 60 days from the date of this letter to file its Form 1128 to be considered timely filed.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, if Taxpayer files its returns electronically, it may satisfy this requirement by attaching a statement to the 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.

This 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 sent to your authorized representative.

Sincerely,

Christina M. Glendening
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

Cc:-