Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B01
PLR-102063-25

Date:
August 04, 2025

In Re: Request for an Extension of Time To Make an Election

LEGEND

Taxpayer	=
Date1	=
Date2	=
Date3	=
A	=
B	=
C	=
D	=
E	=
F	=
G	=
H	=
I	=
J	=
K	=
L	=
Date4	=
Date5	=
Date6	=
Date7	=

Dear :

This letter responds to a private letter ruling request, dated Date5, and supplemental correspondence, dated Date6 and Date7, filed by Prescott's Inc. ("Taxpayer"), requesting a private letter ruling for an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make the safe harbor election(s) for certain fees described in Section 4 of Rev. Proc. 2011-29, 2011-18 I.R.B. 746. The fees relate to two separate transactions: a Date1 transaction for the

acquisition of A ("Date1 transaction"), and a Date2 transaction for the acquisition of B ("Date2 transaction").

Pursuant to a phone conversation and a follow up letter dated Date6 from Taxpayer's representative, Taxpayer is withdrawing the Date1 transaction from this letter ruling request. Therefore, for the Date2 transaction, Taxpayer requests a private letter ruling for an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make the safe harbor election for certain fees described in Section 4 of Rev. Proc. 2011-29 for the taxable year ended Date3 ("Date2 tax year").

FACTS

Taxpayer is a corporation that is wholly owned by C, a partnership. C is engaged in the business of manufacturing, refurbishing, and providing ad-hoc and contractual maintenance services for D, E, and F. C is located and has operations in G, H, I, and J.

On Date4, Taxpayer acquired all the outstanding member interests in B. The seller was K. Taxpayer represents that this transaction was an asset acquisition and was therefore a covered transaction as defined in § 1.263(a)-5(e) of the Income Tax Regulations.

In connection with the transaction, Taxpayer engaged certain organizations to provide financial advisory services. Each of these organizations provided financial advisory services for which fees were payable only upon the successful closing of the transaction.

For the preparation of Taxpayer's Form 1120 for the Date2 tax year, Taxpayer engaged L. Taxpayer relied upon L to prepare any necessary elections, including the election under Rev. Proc. 2011-29, in connection with the filing of Taxpayer's Form 1120 for the Date2 tax year. However, while preparing Taxpayer's Form 1120 for the Date2 tax year, L inadvertently omitted making the election under Rev. Proc. 2011-29 on Taxpayer's Form 1120 for the Date2 tax year. This omission was discovered by a third party after the filing of Taxpayer's original Form 1120 for the Date2 tax year.

Also, per Taxpayer's supplemental correspondence dated Date7, Taxpayer did not deduct and capitalize the correct amount of transaction costs subject to the "70/30" allocation under Rev. Proc. 2011-29 on Taxpayer's original filed Form 1120 for the Date2 tax year. Taxpayer represents that it will deduct and capitalize the correct amount of success-based fees on an amended tax return for the Date2 tax year, if this ruling request is granted.

LAW AND ANALYSIS

Section 263(a)(1) of the Internal Revenue Code and § 1.263(a)-2(a) provide that no deduction shall be allowed for any amount paid out for property having a useful life

substantially beyond the taxable year. In the case of an acquisition or reorganization of a business entity, costs that are incurred in the process of acquisition and that produce significant long-term benefits must be capitalized. *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 89-90, 112 S. Ct. 1039, 117 L. Ed. 2d 226 (1992); *Woodward v. Commissioner*, 397 U.S. 572, 575-576, 90 S. Ct. 1302, 25 L. Ed. 2d 577 (1970).

Under § 1.263(a)-5, a taxpayer must capitalize an amount paid to facilitate the business acquisition or reorganization transactions described in § 1.263(a)-5(a). In general, an amount is paid to facilitate a transaction described in § 1.263(a)-5(a) if the amount is paid in the process of investigating or otherwise pursuing the transaction. Whether an amount is paid in the process of investigating or otherwise pursuing the transaction is determined based on all of the facts and circumstances. See § 1.263(a)-5(b)(1).

Section 1.263(a)-5(f) provides that an amount paid that is contingent on the successful closing of a transaction described in § 1.263(a)-(5)(a) (i.e., a success-based fee) is presumed to facilitate the transaction. A taxpayer may rebut this presumption by maintaining sufficient documentation to establish that a portion of the fee is allocable to activities that do not facilitate the transaction.

Section 4.01 of Rev. Proc. 2011-29 provides a safe harbor election for taxpayers that pay or incur success-based fees for services performed in the process of investigating or otherwise pursuing a covered transaction described in § 1.263(a)-5(e)(3). In lieu of maintaining the documentation required by § 1.263(a)-5(f), a taxpayer may elect to allocate a success-based fee between activities that facilitate the transaction and activities that do not facilitate the transaction and by treating 70 percent of the amount of the success-based fee as an amount that does not facilitate the transaction and by capitalizing the remaining 30 percent as an amount that does facilitate the transaction. In addition, the taxpayer must attach a statement to its original federal income tax return for the taxable year the success-based fee is paid or incurred, stating that the taxpayer is electing the safe harbor, identifying the transaction, and stating the success-based fee amounts that are deducted and capitalized.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 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.

Sections 301.9100-1 through 301.9100-3 provide the standards 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 301.9100-3(a) 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. See also § 301.9100-3(b) and (c).

Section 301.9100-3(b)(1) provides that, in general, 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 IRS; (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, the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the IRS; 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 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) provides that 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) before the taxpayer's receipt of a ruling granting relief under this section.

Taxpayer's election is a regulatory election as defined in § 301.9100-1(b) because the due date of the election is prescribed in section 4.01(3) of Rev. Proc. 2011-29. The Commissioner has the authority under §§ 301.9100-1 and 301.9100-3 to grant an extension of time to file a late regulatory election.

CONCLUSION

Based solely on the facts and representations submitted, we conclude that Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Accordingly, the requirements of §§ 301.9100-1 and 301.9100-3 have been met.

Taxpayer is granted an extension of 60 days from the date of this ruling to file its mandatory statements as required by Section 4.01 of Revenue Procedure 2011-29, stating that it is electing the safe harbor for success-based fees, identifying the transaction, and stating the success-based fee amounts that are deducted and capitalized.

The rulings contained in this letter are based upon 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.

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, including whether Taxpayer properly included the correct costs as success-based fees subject to the retroactive election, whether Taxpayer is deducting and capitalizing the proper amount of costs as success-based fees subject to the "70/30" allocation under Rev. Proc. 2011-29, or whether Taxpayer's transactions were within the scope of Rev. Proc. 2011-29.

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.

A copy of this ruling should be attached to Taxpayer's federal tax returns for the tax years affected. 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.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives. We are also sending a copy of this letter to the appropriate operating division director. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

Sincerely,

/S/

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Sean M. Dwyer
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure (1):
Copy for § 6110 purposes

CC: