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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:B01
PLR-108976-25

Date:
December 15, 2025

LEGEND:

Taxpayer	=	
Advisor	=	
Subsidiary 1	=	
Subsidiary 2	=	
Entity A	=	
Entity B	=	
$a	=	
$b	=	
$c	=	
$d	=	
$e	=	
Date 1	=	
Date 2	=	
Date 3	=	
Date 4	=	
Date 5	=	
Date 6	=	
Year 1	=	
Individual	=	
Individual’s Spouse	=	
Accounting Firm 1	=	
Accounting Firm 2	=	
State X	=	
a%	=	

Dear :

This letter responds to a request for a private letter ruling dated Date 1, submitted by Taxpayer. In the letter ruling request and subsequent submissions, Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make the safe harbor election provided by Rev. Proc. 2011-29, 2011-1 C.B. 746 for Transaction (as defined below) for Year 1.

FACTS AND REPRESENTATIONS

Taxpayer makes the following representations:

Taxpayer is a State X corporation that has elected to be treated as an S corporation for U.S. federal income tax purposes. Taxpayer is wholly-owned by Individual. Taxpayer uses the accrual method of accounting, and its taxable year is the calendar year. Taxpayer is a holding company that carries on business operations through various subsidiaries. Taxpayer wholly owns Subsidiary 1 and Subsidiary 2. Subsidiary 1 and Subsidiary 2 are single-member limited liability companies that are disregarded as entities separate from Taxpayer for U.S. federal income tax purposes.

Overview of Acquisitions and Success-Based Fees

In conjunction with exploring its purchase of business assets or equity interests of Entity A, Subsidiary 1 executed an engagement letter with Advisor on Date 2 to provide financial advisory and investment banking services. Pursuant to this letter, Subsidiary 1 was required to pay Advisor a fee contingent upon the successful closing of certain transactions ("Contingent Fee"). The letter further specified that in certain cases, a separate fee ("Financing Fee") may be paid to Advisor for an amount of $a that would be creditable against the Contingent Fee.

During Year 1, Advisor provided Subsidiary 1 with services to investigate or otherwise pursue certain transactions with Entity A. On Date 3, pursuant to an agreement between Subsidiary 1, Subsidiary 2, and Entity A, Subsidiary 2 acquired a% of the stock of Entity A and certain subsidiaries, including Entity B, for cash and a note ("Transaction"). In connection with Transaction, Subsidiary 1 and Subsidiary 2 incurred debt financing including a term loan, notes, and a revolving credit facility.

As a result of the successful closing of Transaction, Subsidiary 2 paid Contingent Fee in the amount of $b to Advisor. Taxpayer capitalized all of Contingent Fee on its Year 1 federal income tax return and did not attach the required election statement pursuant to Rev. Proc. 2011-29 to such tax return.

Taxpayer represents that Transaction was a taxable acquisition of an ownership interest in a business entity described in Treas. Reg. §1.263(a)-5(e)(3)(ii).

Taxpayer represents that the same 5 or fewer persons within the meaning of §1563(a)(2) did not own 10% or more of the stock (by vote or value) of Taxpayer and Entity A, taking into account the constructive ownership rules of § 1563(e), immediately before Taxpayer's acquisition of Entity A.

Taxpayer represents that Subsidiary 1 and Subsidiary 2 are the true and only borrowers of the debt financing incurred in connection with Transaction.

Taxpayer represents that Subsidiary 1 and Subsidiary 2 had the financial capacity to repay the debt financing incurred in connection with the acquisition of Entity A. In addition, Taxpayer represents that Subsidiary 1 and Subsidiary 2 provided the lenders with the necessary supporting financial information to demonstrate their ability to service and repay the debt consistent with Subsidiary 1's and Subsidiary 2's intent to do so.

Circumstances Surrounding Missed Elections

Taxpayer does not have an internal tax department and engaged Accounting Firm 1 to prepare its income tax return. Taxpayer relied on Accounting Firm 1 to provide tax advice on various rules, including rules applicable to treatment of transaction costs and available and appropriate tax elections.

Accounting Firm 1 did not advise Taxpayer to deduct or make a safe-harbor election under Rev. Proc. 2011-29 and therefore, Taxpayer capitalized all of Contingent Fee on its Year 1 return and did not include the election statement required by Rev. Proc. 2011-29.

After Taxpayer filed its Year 1 return, an employee of Taxpayer (Employee), began a review of the returns prepared by Accounting Firm 1 and noted the significant amount of transaction costs capitalized. Employee engaged Accounting Firm 2 to address questions about the proper treatment of these transaction costs. Because a Financing Fee in the amount of $a was credited against the Contingent Fee amount of $b, Accounting Firm 2 determined that the amount of the Contingent Fee that was a success-based fee eligible for the Rev. Proc. 2011-29 safe harbor was $c ($b - $a) and that, if the safe harbor was elected for Year 1, 70 percent ($d) would be treated as deductible and 30 percent ($e) would be capitalized. Accordingly, Taxpayer is seeking an extension of time to make a late election under Rev. Proc. 2011-29 with respect to amount $c incurred in connection with the services provided by Advisor pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

The period of limitation on assessment under §6501(a) for Year 1 has not expired. In Date 4, Taxpayer executed a Form 872, *Consent to Extend the Time to Assess Tax*, with the Internal Revenue Service to extend the period of limitation on assessment for Year 1 until Date 5. Also in Date 4, Individual and Individual's Spouse executed a Form 872, *Consent to Extend the Time to Assess Tax*, with the Internal Revenue Service to extend the period of limitation on assessment for Year 1 until Date 6.

Taxpayer represents that it requested relief before the failure to make the regulatory elections were discovered by the Service and that it reasonably relied on qualified tax professionals, and the tax professionals failed to make, or advise Taxpayer to make, the election. Taxpayer has also represented that none of the circumstances listed in § 301.9100-3(b)(3) apply.

Taxpayer has represented that granting relief for the election would not result in a lower tax liability in the aggregate for all taxable years affected by each election than Taxpayer would have had if the election had been timely made. Furthermore, Taxpayer has represented that the taxable years in which the regulatory elections should have been made and any taxable years that would have been affected had it been timely made, are not closed by the period of assessment.

LAW

Section 263(a)(1) of the Code and § 1.263(a)-2(a) of the Income Tax Regulations 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.

A taxpayer's method for determining the portion of a success-based fee that facilitates a transaction and the portion that does not facilitate the transaction is a method of accounting under §446.

Because the treatment of success-based fees was a continuing subject of controversy between taxpayers and the Service, the Service published Rev. Proc. 2011-29. Revenue Procedure 2011-29 provides a safe harbor election for allocating success-based fees paid in business acquisitions or reorganizations described in §1.263(a)-5(e)(3). In lieu of maintaining the documentation required by §1.263(a)-5(f), this safe harbor permits electing taxpayers to treat 70 percent of the success-based fee as an

amount that does not facilitate the transaction, meaning that amount can be deducted. The remaining 30 percent of the fee must be capitalized as an amount that facilitates the transaction.

Section 4.01 of Rev. Proc. 2011-29 provides that the Service will not challenge a taxpayer's allocation of success-based fees between activities that facilitate a transaction described in §1.263(a)-5(e)(3) (costs that must be capitalized) and activities that do not facilitate the transaction (costs that may be deducted) if the taxpayer: (1) treats 70 percent of the amount of the success-based fee as an amount that does not facilitate the transaction and thus may be deducted; (2) capitalizes the remaining amount of the success-based fee as an amount which does facilitate the transaction; and (3) attaches 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 pursuant to the safe harbor election.

The revenue procedure applies to covered transactions described in §1.263(a)-5(e)(3), which include (i) a taxable acquisition by the taxpayer of assets that constitute a trade or business; (ii) a taxable acquisition of an ownership interest in a business entity (whether the taxpayer is the acquirer in the acquisition or the target of the acquisition) if, immediately after the acquisition, the acquirer and the target are related within the meaning of § 267(b) or § 707(b); or (iii) a reorganization described in §368(a)(1)(A), (B), or (C) or a reorganization described in § 368(a)(1)(D) in which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under § 354 or § 356 (whether the taxpayer is the acquirer or the target in the reorganization).

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 301.9100-1(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.

Section 301.9100-3(a) provides that extensions of time to make a regulatory election under Code sections other than those for which § 301.9100-2 expressly permits automatic extensions. Requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence (including affidavits described in the regulations) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government.

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: (1) requests relief before the failure to make the regulatory election is discovered by the IRS; (2) failed to make the election because of intervening events beyond the taxpayer's control; (3) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (4) reasonably relied on the written advice of the IRS; or (5) 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: (1) 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; (2) was informed in all material respects of the required election and related tax consequences but chose not to file the election; or (3) uses hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) 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. 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 years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment.

ANALYSIS

Taxpayer’s election is a regulatory election as defined in § 301.9100-1(b) because the due date of the election is prescribed in § 1.263(a)-5(f) of the Income Tax Regulations. 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.

Taxpayer represents that for federal income tax purposes, Transaction was a taxable acquisition of an ownership interest in a business entity within the meaning of Treas. Reg. §1.263(a)-5(e)(3)(ii). Thus, Transaction is a covered transaction described in Treas. Reg. §1.263(a)-5(e)(3). The information provided and representations made by Taxpayer establish that Taxpayer acted reasonably and in good faith. Taxpayer has represented that it requested relief before the failure to make the regulatory elections were discovered by the Service and that it reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise Taxpayer to make, the election. Taxpayer has also represented that none of the circumstances listed in §301.9100-3(b)(3) apply.

Further, based on the information provided and representations made by Taxpayer, granting an extension will not prejudice the interests of the government under §301.9100-3(c)(1). Taxpayer has represented will not have a lower tax liability in the aggregate for the taxable year affected by the election than Taxpayer would have had if

the election had been timely made. In addition, the taxable years in which the regulatory election should have been made and any taxable years that would have been affected by the election had it been timely made will not be closed by the period of limitations on assessment under §6501(a) before Taxpayer's receipt of the ruling granting an extension of time to make a late 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 an amended return for Year 1, electing safe harbor treatment under section 4.01(3) of Rev. Proc. 2011-29 for $c on its Year 1 tax return. The Year 1 amended return must include the election statement stating that Taxpayer is electing the safe harbor for $c, identifying Transaction, and stating the success-based fee amounts that are deducted and capitalized pursuant to the election.

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 the 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, or whether the Transaction was 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 return for the tax year affected. Alternatively, taxpayers filing their return electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Natasha M. Mulleneaux
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Income Tax and Accounting)

Enclosure: Copy for § 6110 purposes

cc: