

## Internal Revenue Service

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B05  
PLR-127081-18  
Date: February 19, 2019

### Legend

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Form	=
Year	=
Owner	=
Accountant	=
First Effective Year	=

Dear :

This letter responds to your letter requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a regulatory election. Specifically, you have asked for an extension of time to request under Revenue Procedure 2006-46 an automatic approval to adopt, change, or retain annual accounting period under § 442 of the Internal Revenue Code and § 1.442-1(b) of the Income Tax Regulations.

### FACTS

Taxpayer was established on Date 1 as a development entity and is owned 100% by Owner. Taxpayer files its annual federal income tax return on a fiscal year that ends on Date 2. In early March of Year, Accountant became aware of the business situation that required Taxpayer to change its accounting period. By the time Accountant completed her review of the documents, the due date for submitting a request through the exclusive automatic procedure under Revenue Procedure 2006-46 had expired.

Taxpayer submitted the request for the change within 90 days from the due date for filing Form and has not filed its tax return for the First Effective Year.

Taxpayer represents that it relied on Accountant for advice on appropriate actions and to for timely filing of the necessary documents with the Internal Revenue Service.

Taxpayer also represents that granting relief under § 301.9100-3 will not result in a lower tax liability in the aggregate for all years to which the requested change would apply than Taxpayer would have had if the change had been timely made.

#### LAW AND ANALYSIS

Revenue Procedure 2006-46, 2006-45 I.R.B. 859, provides the exclusive procedures for a certain taxpayer to obtain an automatic approval to adopt, change, or retain its annual accounting period under § 442 of the Internal Revenue Code and § 1.442-1(b) of the Income Tax Regulations.

Section 7.02(2) of Revenue Procedure 2006-46 provides that the Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, must be filed no earlier than the day following the end of the first effective year and no later than the due date (including extensions) for filing the federal income tax return for the first effective year.

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

Under § 301.9100-3(b) 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, reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election. However, a taxpayer is not considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

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 § 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 this section.

Based on the information submitted by Taxpayer, we conclude that (1) Taxpayer has acted reasonably and in good faith under § 301.9100-3(b), and (2) the interests of the Government will not be prejudiced by the granting of relief under § 301.9100-3(c).

We are returning Taxpayer's Form with this letter. Taxpayer must change its accounting period in accordance with the appropriate provisions of Rev. Proc. 2006-46. The Form must be filed with the Director, Internal Revenue Service Center, Attention: ENTITY CONTROL, where Taxpayer files its federal income tax return. In order to assist in the processing, reference to this revenue procedure must be made a part of the Form by either typing or legibly printing the following statement at the top of page 1: FILED UNDER REV. PROC. 2006-46. Further, Taxpayer must attach a copy of the Form to the federal income tax return filed for First Effective Year. Taxpayer must also submit any additional information required to be submitted by section 7.02(6) of Rev. Proc. 2006-46. A copy of this letter should be attached to certify that Taxpayer had received an extension of time to file Form.

## CONCLUSION

Accordingly, based solely on the facts and information submitted and the representations made in the ruling request, we grant Taxpayer an extension of 45 days from the date of this letter ruling to file Form and the return for First Effective Year to make the change under Revenue Procedure 2006-46.

This ruling is directed only to 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 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.

The ruling contained in this letter is 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 ruling, it is subject to verification on examination. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

William A. Jackson  
Branch Chief, Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosure (1)