

**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:

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Refer Reply To:

CC:ITA:B04

PLR-119103-05

Date:

October 19, 2005

TY:

Dear :

This is in reply to Taxpayer's request that it be permitted to make a late election under the authority contained in § 301.9100-3 of the Procedure and Administration Regulations. Taxpayer, for the 2000 tax year, failed to make an election under § 1045 of the Internal Revenue Code following the sale of certain small business stock. Taxpayer now seeks a ruling granting it permission to make the election.

Section 1045(a) of the Internal Revenue 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.

Rev. Proc. 98-48, 1998-2 C.B. 367, provides at section 3.01 that a § 1045 election must be made on or before the later of December 31, 1998, or the due date (including extensions) for filing the income tax return for the taxable year in which the QSB stock is sold. Rev. Proc. 98-48 generally provides at section 3.02 that the election is made by:

(a) reporting the entire gain from the sale of QSB stock on Schedule D, Capital Gains and Losses, of the return in accordance with instructions for Schedule D;

(b) writing "section 1045 rollover" directly below the line on which the gain is reported; and

(c) entering the amount of the gain deferred under § 1045 on the same line as (b) above, as a loss, in accordance with the instructions for Schedule D.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 (automatic extensions), such as the instant case, must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

Under § 301.9100-3(b)(3), a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer either uses hindsight in requesting relief or was informed in all material respects of the required election and related tax consequences but chose not to file the election.

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."

In the present case, the affidavits submitted by the taxpayer's return preparer do not adequately describe either the engagement and responsibilities of the preparer or the advice that the preparer provided to the taxpayer. Accordingly, we are unable to conclude that, as required by § 301.9100-3(b)(3), the taxpayer did not use hindsight in requesting relief and the taxpayer did not intentionally forego making the § 1045 election. Thus, based on the facts and information submitted and the representations made, the Service holds that Taxpayer has not satisfied the requirements of the regulations for the granting of relief under § 301.9100-3, and is thus not granted permission to make a late election under § 1045.

The rulings contained in this letter are based upon information and representations submitted by the 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. 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.

Sincerely,

Michael J. Montemurro  
Branch Chief  
Office of Associate Chief Counsel  
(Income Tax and Accounting)

cc: