Internal Revenue Service

Number: **202344008**

Release Date: 11/3/2023

Index Number: 1033.07-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:

          , ID No.

Telephone Number:

Refer Reply To:
CC:ITA:5
PLR-103298-23
Date:
August 10, 2023

TY:

Legend

Taxpayer =

State =
Business =
Year =
Purchaser =

% =
Agreement =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Year 1 =
Advisor =
Accountant =

Dear   :

This letter responds to a letter dated Date 1, submitted by Taxpayer's authorized representative, requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Income Tax Regulations, to make an election under Treas. Reg. § 1.1033(g)-1(b) to treat outdoor advertising displays as real property, effective for Year.

FACTS

Taxpayer, a partnership, was formed under State law on Date 2 and engaged in Business. In Year, partners sold % of Taxpayer to Purchaser. During the negotiations, Taxpayer was informed by Advisor, that Taxpayer should make an election under Internal Revenue Code (I.R.C.) § 1033(g)(3) and Treas. Reg. 1.1033(g)-1(b) for Year. On Date 3, Taxpayer ratified an Agreement in which it agreed to make and have in effect an election under I.R.C. § 1033(g)(3) and Treas. Reg. 1.1033(g)-1(b) for all taxable periods ending after Date 3.

Accountant prepared and filed Taxpayer's federal income tax return for Year. However, Accountant inadvertently did not include the election under I.R.C. § 1033(g)(3) and Treas. Reg. 1.1033(g)-1(b) as Taxpayer intended. Advisor received a copy of the Taxpayer's federal tax return for Year on Date 4 and informed Taxpayer of the fact that the Year return did not contain the election intended by the Taxpayer.

RULING REQUESTED

Taxpayer requests an extension of time under Treas. Reg. §§ 301.9100-1 and -3 to make an election under Treas. Reg. 1.1033(g)-1(b) for Year.

LAW AND ANALYSIS

Section 1033(g)(3)(A) of the Code provides that a taxpayer may elect, at such time and in such manner as the Secretary may prescribe, to treat property which constitutes an outdoor advertising display as real property for purposes of chapter 1 of the Code.

Section 1033(g)(3)(C) of the Code defines an outdoor advertising display as a rigidly assembled sign, display, or device permanently affixed to the ground or permanently attached to a building or other inherently permanent structure constituting, or used for the display of, a commercial or other advertisement to the public. Highway billboards affixed to the ground with wood or metal poles, pipes, or beams, with or without concrete footings are outdoor advertising displays. Treas. Reg. § 1.1033(g)- 1(b)(3).

Section 1.1033(g)-1(b)(1) of the regulations provides, in pertinent part, that the election is available for taxable years beginning after December 31, 1970. No election may be made with respect to any property for which (i) the investment credit under section 38 has been claimed, or (ii) an election to expense certain depreciable business assets under section 179(a) is in effect.

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 section 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 section 301.9100-3(b), a taxpayer is deemed to have acted reasonably and in good faith under a number of specified circumstances, including if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or if the taxpayer 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, section 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based on the facts and information Taxpayer submitted and later supplemented and the representations made, we conclude that Taxpayer has acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the government. Accordingly, based solely on all the facts and information submitted, and the representations made in the ruling request and subsequently, we grant the taxpayer an extension of 45 days from the date of this letter ruling to file an amended return, or an Administrative Adjustment Request (whichever is appropriate), to make the election under Treas. Reg. 1.1033(g)-1(b) for Year.

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. Specifically, we express no opinion, either express or implied, concerning whether Taxpayer meets the requirements under section 1033(g)(3) and the regulations thereunder to make the election.

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 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representatives.

Sincerely,

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

cc: