Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B01
PLR-118296-24

Date:
March 11, 2025

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

LEGEND

Taxpayer	=
Date 1	=
Year 1	=
Date 2	=
Date 3	=
$a	=
$b	=
A	=
B	=
C	=
D	=

Dear :

This letter responds to your letter, dated October 3, 2024, and supplemental correspondence, dated December 20, 2024, January 27, 2025, and March 7, 2025, submitted on behalf of Taxpayer requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make the election described in section 4.01 of Rev. Proc. 2011-29, 2011-18 I.R.B. 746, for fees contingent on the successful closing of a transaction for which Taxpayer has provided documentation acceptable to the IRS's Compliance Assurance Process ("CAP") team.

FACTS

Taxpayer is the common parent of a group of wholly owned corporations that files Form 1120, U.S. Corporate Income Tax Return. Taxpayer uses an overall accrual method of accounting. On Date 1, Taxpayer and A entered into an agreement and plan of merger (the "Transaction"). The Transaction was consummated on Date 2. Taxpayer e-filed its Year 1 Form 1120 on Date 3, consistent with having made the safe-harbor election under Rev. Proc. 2011-29 by deducting 70 percent of certain fees from the Transaction

and capitalizing 30 percent of these fees from the Transaction. Taxpayer, however, had not made the election for these fees under Rev. Proc. 2011-29 because Taxpayer had inadvertently failed to attach to its Year 1 Form 1120 the completed election statement required by section 4.01(3) of Rev. Proc. 2011-29 (the "Election Statement"). The IRS's CAP team on the Transaction, determined that Taxpayer had provided sufficient documentation that the following fees paid to three entities in connection with the Transaction satisfied the requirements of Rev. Proc. 2011-29: (1) $a to B; (2) $a to C; and (3) $b to D. This CAP team discovered that the Election Statement had not been attached to Year 1 Form 1120.

Taxpayer filed this request for an extension of time under §§ 301.9100-1 and 301.9100-3 to attach a completed Election Statement to its Year 1 Form 1120 in accordance with section 4.01(3) of Rev. Proc. 2011-29, thus making the election for the fees approved by its CAP team.

LAW AND ANALYSIS

Section 263(a)(1) of the Internal Revenue 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; a facts and circumstances analysis under § 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 that the safe harbor in Rev. Proc. 2011-29 apply instead. To do so section 4.01 of Rev. Proc. 2011-29 provides the taxpayer must (1) treat 70 percent of the amount of the success-based fee as an amount that does not facilitate the transaction; (2) capitalize the remaining 30 percent as an amount that does facilitate the transaction; and (3) attach the Election 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. Whether a fee for which an election is made under Proc.

2011-29 is eligible for said election is subject to verification by the Commissioner upon examination of Taxpayer's federal income tax return on which the election is claimed.

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 301.9100-3(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.

Section 301.9100-3(b)(1) provides, in general, that 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 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 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 section 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.

Section 2.04 of Rev. Proc. 2011-29 provides that a taxpayer's method for determining the portion of a success-based fee that facilitates a transaction and the portion that

does not facilitate a transaction is a method of accounting under section 446. Elections relating to methods of accounting are subject to special rules. Section 301.9100-3(c)(2). However, Taxpayer is not seeking to change its method of accounting for the success-based fees, only to file the statement required by section 4.01(3) of Rev. Proc. 2011-29.

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 Year 1 Form 1120 attached to which will be the Election Statement required by section 4.01 of Rev. Proc. 2011-29, completed in conformity with the determination of its CAP team.

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 ruling request, 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 election for which this ruling request relates, or whether Taxpayer's transaction was within the scope of Rev. Proc. 2011-29.

This ruling is directed only to Taxpayer. Section 6110(k)(3) 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, if Taxpayer files its returns electronically, Taxpayer may satisfy this requirement by attaching a statement to its electronically filed 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 Taxpayer's authorized representatives. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under section 6110.

Sincerely,

THERESA M. MELCHIORRE

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

Enclosure (1):
Copy for § 6110 purposes

CC: