Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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PLR-108547-23

Date: 09/29/2023

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

Taxpayer	=
Parent	=
A	=
B	=
C	=
D	=
E	=
F	=
G Business	=
Date1	=
Date2	=
Date3	=
Date4	=
Date5	=
Date6	=
Date7	=
Date8	=

Dear

This letter responds to Taxpayer's submission dated April 14, 2023, and supplemental correspondence dated September 11, 2023 and September 27. 2023, requesting a private letter ruling granting relief to make late regulatory elections pursuant to Treas. Reg. §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to make the following three elections on its Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, for the taxable year ended Date1 (or alternatively referred to as the Date4 Form 1120-F, U.S. Income Tax Return of a Foreign Corporation): an election under § 1.382-9(i) of the Income Tax Regulations to opt out of the application of the provisions of § 382(l)(5) of the Internal Revenue Code; an election under § 1.263(a)-1(f) to apply the de minimis

safe harbor for capital expenditures; and an election under § 1.263(a)-3(n) to capitalize any amounts paid to repair and maintain tangible property that is capitalized for book purposes (the "Elections").

FACTS

Taxpayer is a E exempted company treated as an association (and a controlled foreign corporation) for U.S. federal income tax purposes which is affiliated with the U.S. corporation, Parent.

Parent is the common parent of affiliated group of corporations filing a consolidated U.S. federal income tax return ("Parent Consolidated Group"). Parent Consolidated Group, along with its foreign affiliates (collectively, "Parent Group"), was a G Business.

Parent directly owned and owns A% of B, a state of C corporation and a member of Parent Consolidated Group. B directly owned and owns A% of the outstanding equity interests in D, a state of C corporation and a member of Parent Consolidated Group, but converted into a limited liability corporation treated as an entity disregarded as separate from B as part of an internal restructuring that preceded the events described herein. D directly owned and owns A% of the outstanding common equity interests in Taxpayer, a E exempted company treated as a corporation (and a controlled foreign corporation) for U.S. federal income tax purposes. Parent acquired preferred stock in Taxpayer as part of an internal restructuring that preceded the events described herein.

On Date2, Parent and certain of its direct and indirect subsidiaries, including Taxpayer, underwent an ownership change as defined in § 382(g) and Treas. Reg. § 1.1502-92(b)(1)(i), and that immediately before the ownership change on Date2, these entities were under the jurisdiction of a bankruptcy court in a title 11 case.

Taxpayer files its returns on a calendar year basis and uses an accrual method as its overall method of accounting.

Taxpayer has an applicable financial statement and, in addition to the other requirements of Treas. Reg. § 1.263(a)-1(f)(1), the amount paid for the property does not exceed $5,000 per invoice (or per item as substantiated by the invoice).

Also, Taxpayer incurs repair and maintenance costs in carrying on its trade or business, treats these amounts as capital expenditures on its book and records, and that, after making the Treas. Reg. § 1.263(a)-1(f) election, Taxpayer will treat all repair and maintenance costs treated as capital expenditures on its books and records as amounts paid to improve tangible property.

Taxpayer's Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, for the taxable year ending on Date1 was originally due on Date3 (without extensions). Taxpayer engaged a tax advisor, F, to prepare and e-file its federal and state income

tax returns for the Date4 taxable year, including all related statements and elections. Taxpayer also engaged F to prepare and e-file Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, by Date3, in order to extend the due date of Taxpayer's Date 4 Form 1120-F, U.S. Income Tax Return of a Foreign Corporation.

On Date5, F provided Taxpayer with Form 7004 for Taxpayer's approval. Via telephone communication, Taxpayer provided F approval to e-file its Form 7004. On Date6, Taxpayer received an email with a copy of the Form 7004 via email from F indicating that the Form 7004 was e-filed on its behalf. Thus, Taxpayer and F were under the belief that Form 7004 had been timely filed for Taxpayer extending the due date of Taxpayer's Form 1120-F, U.S. Income Tax Return of a Foreign Corporation for the taxable year ended Date1 from Date3 to Date7.

On Date7, F e-filed Taxpayer's Date4 Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, which was the extended due date for filing Taxpayer's Date4 Form 1120-F, U.S. Income Tax Return of a Foreign Corporation. The tax return included all required elections (including the elections subject to this request) and associated statements.

In Date8, Taxpayer received a notice from the IRS assessing penalties related to the late filing of the Date4 Form 1120-F, U.S. Income Tax Return of a Foreign Corporation. Taxpayer provided this notice to F for review, since both Taxpayer and F believed that the Date4 Form 1120-F, U.S. Income Tax Return of a Foreign Corporation was timely filed, on extension.

After reviewing its records, F determined that the proper internal approvals had inadvertently not been communicated to instruct its tax processing team to electronically file Taxpayer's Form 7004 before Date3 (i.e., no email or electronic indication was sent instructing the tax processing team to e-file Form 7004).

After F identified that Form 7004 was not timely filed, F informed Taxpayer that the elections subject to this request would be considered late because such elections are required to be filed on a timely filed return (i.e., by the original due date or by the extended due date with a timely filed extension). Also, F advised Taxpayer that it can seek relief under §§ 301.9100-1 and 301.9100-3 for the IRS to grant an extension of time to make such elections.

Taxpayer was not under examination for the taxable year ending on Date 1 at the time this request was submitted.

LAW AND ANALYSIS

Section 1.263(a)-1(f) generally provides that if a taxpayer elects to apply the de minimis safe harbor, then the taxpayer may not capitalize under §§ 1.263(a)-2(d)(1) or 1.263(a)-3(d) any amount paid in the taxable year for the acquisition or production of a unit of tangible property nor treat as materials or supply under § 1.162-3(a) any amount paid in the taxable year for tangible property if the amount meets certain requirements specified in the regulations.

Section 1.263(a)-3(n) generally provides that a taxpayer may elect to treat amounts paid during the taxable year for repair and maintenance (as defined under § 1.162-4) to tangible property as amounts paid to improve that property and as an asset subject to the allowance for depreciation if the taxpayer incurs these amounts in carrying on the taxpayer's trade or business and if the taxpayer treats these amounts as capital expenditures on its books and records regularly used in computing income.

Section 382(l)(5) provides that if certain requirements are met, § 382(a) shall not apply to an ownership change. If § 382(l)(5) applies, certain limitations are placed on a corporation.

Section 382(l)(5)(G) provides that a new loss corporation may elect, subject to such terms and conditions as the Secretary may prescribe, not to have the provisions of section 382(l)(5) apply. Any such election must be made by the due date (including any extensions of time) of the loss corporation’s tax return for the taxable year which includes the change date. See Treas. Reg. § 1.382-9(i).

The Elections for the taxable year ending on Date 1 were due on the last day prescribed by law for the filing of Taxpayer's return. The Commissioner has discretionary authority under § 301.9100-3 to grant extensions of time for Taxpayer and other Electing Entities to file the Elections.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Service 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 changes 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 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: (i) requests relief before the failure to make the regulatory election is discovered by the Service; (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 Service;

or (v) reasonably relied on a qualified tax professional, and the professional failed to make, or advise the taxpayer to make, the election.

Under § 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer: (i) seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested; (ii) was fully informed of the required election and related tax consequences, but chose not to file 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) provides that the Service will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. 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.

CONCLUSION

Based on the facts and 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, Taxpayer has satisfied the requirements for the granting of relief, and Taxpayer is granted an extension of time to make the Elections subject of this ruling request. Given the Elections for Taxpayer were made on Taxpayer's late filed Federal income tax return for the taxable year ending on Date 1, the Elections are deemed to be timely made for Taxpayer.

This ruling is based upon facts and representations submitted by Taxpayer. This office has not verified any of the material submitted in support of the request for a ruling, and the information is subject to verification and audit on examination.

No opinion is either express or implied on whether Taxpayer meets the substantive requirements of § 382(l)(5), Treas. Reg. § 1.382-9(i), Treas. Reg. § 1.263(a)-1(f) or Treas. Reg. § 1.263(a)-3(n). Further, this office expresses no opinion regarding the tax treatment of Taxpayer under the provisions of any other sections of the Code or regulations.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives. We are also sending a copy of this letter to the appropriate operating division director. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

Sincerely,

SHARON Y. HORN

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Sharon Y. Horn
Senior Counsel, Branch 1
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure (1):
Copy for § 6110 purposes

CC: