

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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September 29, 2009

TY:

Legend:

Taxpayer =  
Date 1 =  
Date 2 =

Dear :

This ruling replies to the letter and enclosures requesting an extension of time under §§ 301.9100-1(c) and 301.9100-3 of the Procedure and Administration Regulations to file the required duplicate copy (with signature) of Form 3115, Application for Change in Accounting Method, pursuant to section 6.02(3)(a) of Rev. Proc. 2002-9, 2002-1 C.B. 327, for the tax year ended Date 1 (year of change).

**FACTS**

On Date 2, Taxpayer timely e-filed (with extensions) its federal income tax return for the year of change, along with the original Form 3115 filed under Rev. Proc. 2002-9 to change its method of accounting for prepaid expenses. However, Taxpayer inadvertently failed to file with the Internal Revenue Service (IRS) national office a signed duplicate copy of the Form 3115 on or before the date the original Form 3115 was filed with its tax return, as required by section 6.02(3)(a) of Rev. Proc. 2002-9. This oversight was due in part to several personnel changes within the finance department, including a new tax manager, which led to Taxpayer's confusion regarding filing requirements and responsibilities.

**APPLICABLE LAW**

Rev. Proc. 2002-9 provides the procedures by which a taxpayer may obtain automatic consent to change certain methods of accounting. A taxpayer complying with all the application provisions of this revenue procedure has obtained the consent of the Commissioner to change the taxpayer's method of accounting under § 446(e) of the Internal Revenue Code and the regulations thereunder.

Section 6.02(3)(a) of Rev. Proc. 2002-9 provides that a taxpayer changing a method of accounting pursuant to Rev. Proc. 2002-9 must complete and file a Form 3115 in duplicate. The original must be attached to the taxpayer's timely filed (including extensions) original federal income tax return for the year of change, and a signed copy of the Form 3115 must be filed with the IRS national office no earlier than the first day of the year of change and no later than when the original is filed with the federal income tax return for the year of change.

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) provides that an election includes a request to adopt, change, or retain an accounting method, and defines a regulatory election as an election whose due date is prescribed by regulations published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

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(a).

Section 301.9100-3(b)(1) provides that a taxpayer will be 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 due diligence (taking into account the taxpayer's experience and the complexity of the return or issue), 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, including a tax professional employed by the taxpayer, 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 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 has been or could be imposed under § 6662 when the taxpayer requests relief and the new position requires 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. 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 only when the interests of the Government will not be prejudiced by granting the relief. Under paragraph (c)(1)(i), 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. Under paragraph (c)(1)(ii), the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made is closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

## CONCLUSION

Taxpayer's election is a regulatory election, as defined under § 301.9100-1(b), because the due date of the election is prescribed in Rev. Proc. 2002-9. In this situation, the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. The information provided and representations made by Taxpayer establish that Taxpayer acted reasonably and in good faith with this request.

Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 when relief was requested. Taxpayer inadvertently failed to file the signed duplicate Form 3115 with the IRS national office, and it did not use hindsight in requesting relief. Taxpayer represented that it timely filed the original signed Form 3115 by attaching it to its timely e-filed federal income tax

return for the year of change and reflected the requested accounting method change described on the Form 3115 on its federal income tax return for the year of change.

Finally, granting an extension will not prejudice the interests of the Government. Taxpayer represented that granting an extension of time to file the signed duplicate copy of Form 3115 with the IRS national office will not result in a lower tax liability for all taxable years affected by the election than Taxpayer would have had if the duplicate copy of Form 3115 had been timely filed. Moreover, the taxable years in which the regulatory election should have been made and any taxable years that would have been affected by the election had it been timely made are not closed by the period of assessment.

Based solely on the facts and representations submitted, including affidavits, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, an extension of time is hereby granted for the taxpayer to file the necessary signed copy of the Form 3115 with the IRS national office. This extension shall be for a period of 30 days from the date of this ruling. Please attach a copy of this ruling to the Form 3115 when it is filed.

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, a copy of this letter is being sent to your authorized representative.

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 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.

Sincerely,

Thomas D. Moffitt

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THOMAS D. MOFFITT  
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Office of Associate Chief Counsel  
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