

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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PLR-151107-09

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Date:
January 26, 2010

TY:

LEGEND

Taxpayer:

date 1:

date 2:

date 3:

Dear

This is in response to a letter dated September 30, 2009, submitted on behalf of Taxpayer, requesting an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an original Form 3115, Application for Change in Accounting Method, as required by section 6.02(3) of Rev. Proc. 2008-52, 2008-2 C.B. 587, for the taxable year ending date 1.

FACTS

On date 2, Taxpayer timely filed a signed duplicate of a Form 3115 with the national office pursuant to section 6.02(3) of Rev. Proc. 2008-52, applying for consent to change to the method of accounting described in section 10.05 of the Appendix of Rev. Proc. 2008-52, for prepaid expenses for the taxable year ending date 1. Taxpayer was under examination, and obtained the director's consent to the filing of the Form 3115 in accordance with section 6.03(4) of Rev. Proc. 2008-52. A copy of the Form 3115 was

also provided to the examining agent when Taxpayer filed the duplicate copy. On date 3, Taxpayer timely filed its federal income tax return for the taxable year ending date 1, via electronic filing. The return implemented the change in Taxpayer's method of accounting for prepaid expenses as reflected on the duplicate Form 3115 filed with the national office on date 2. Taxpayer relied on a tax professional employed by it to complete its filing under Rev. Proc. 2008-52, however, Taxpayer later discovered that the original Form 3115 was not attached to the electronically filed federal income tax return for the taxable year ending date 1.

LAW & ANALYSIS

Rev. Proc. 2008-52 provides the procedures by which a taxpayer may obtain automatic consent to change certain methods of accounting. A taxpayer complying with all the provisions of that revenue procedure obtains 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. 2008-52 provides that a taxpayer changing a method of accounting pursuant to that revenue procedure must complete and file a Form 3115 in duplicate. The original must be attached to the taxpayer's timely filed (including extension) original federal income tax return for the year of change, and a copy (with signature) 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 return is filed with the federal income tax return for the year of change.

Section 6.03(4)(b) of Rev. Proc. 2008-52 provides in part, that a taxpayer under examination must provide a copy of the Form 3115 to the director at the same time it files a copy of the application with the national office of the Internal Revenue Service.

Under § 301.9100-1, 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 a regulatory election.

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 301.9100-2 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.

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.

In this instance, although Taxpayer was under examination at the time it decided to pursue a change in method of accounting, Taxpayer obtained the consent of the director to file the Form 3115. Taxpayer timely filed the duplicate Form 3115 with the national office, and provided a copy to the examining agent. Taxpayer implemented the new method of accounting on its tax return for the year of change. However, in an oversight, the tax professional employed by Taxpayer that was charged with completing Taxpayer's application failed to attach the original Form 3115 to Taxpayer's return as required by section 6.02(3) of Rev. Proc. 2008-52.

CONCLUSION

Based solely on the facts and the representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to file the original of the Form 3115 in accordance with section 6.02(3) of Rev. Proc. 2008-52.

Except as specifically ruled above, no opinion is expressed or implied concerning the federal income tax consequences of the facts described above. Specifically, no opinion is expressed or implied concerning the propriety of the method of accounting that was actually implemented by Taxpayer, the calculation of any adjustment required by § 481(a), or whether Taxpayer was otherwise qualified to file the Form 3115 for the change in method of accounting under Rev. Proc. 2008-52.

The ruling contained in this letter is 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.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representatives.

Sincerely,

SEAN M. DWYER
Assistant to the Branch Chief, Branch 1
(Income Tax & Accounting)