

Subsidiaries' method of accounting for advance payments under section 15.07 of Rev. Proc. 2008-52, 2008-36 I.R.B. 587, as described under section 5.02 of Rev. Proc. 2004-34, 2004-22 I.R.B. 991, 2004-1, with the IRS National Office on Date 2. Because Taxpayer was under examination by the Internal Revenue Service, the filing was made in accordance with the Director Consent provisions pursuant to section 6.03(4) of Rev. Proc. 2008-52. On Date 3, three days prior to Date 2, the examining agent had provided a signed statement to Taxpayer indicating that the requested accounting method change was not an issue "under consideration" and that she did not object to Taxpayer's filing of the Form 3115. Taxpayer timely filed its federal income tax return for the taxable year ending Date 1, on Date 4, through an electronic filing. Taxpayer's return reflected a change in Subsidiaries' method of accounting for advance payments pursuant to section 15.07 of Rev. Proc. 2008-52, as reflected on the Date 2 duplicate filing and as reflected in the statement provided by the examining agent. However, Taxpayer inadvertently attached an incorrect Form 3115 to the electronically filed federal income tax return.

A member of Taxpayer's federal consolidation group was responsible for scanning the original Form 3115 into the electronically filed federal income tax return and scanned in the wrong Form 3115. However, the duplicate copy of the correct Form 3115 was properly submitted to the IRS National Office on Date 2. Approximately six weeks later taxpayer discovered the error while assembling a file for documentation purposes. Soon thereafter Taxpayer requested this relief.

RULING REQUESTED

Accordingly, Taxpayer requests that the Service grant an extension of time to file the signed original Form 3115 in accordance with Rev. Proc. 2008-52, and that the Form 3115 be considered timely-filed under the authority contained in §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

LAW AND ANALYSIS

Rev. Proc. 2008-52, 2008-2 C.B. 587 (as amplified, clarified and modified by Rev. Proc. 2009-39 and Announcement 2009-67) provides the procedures by which a taxpayer may obtain automatic consent to change certain methods of accounting described in the Appendix thereto.

Section 6.02(3) of Rev. Proc. 2008-52 requires a taxpayer making a change under the automatic consent procedures to complete and file an application 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 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 is filed with the federal income tax return for the year of change.

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.

CONCLUSIONS

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 (with signature) in accordance with Rev. Proc. 2008-52.

Except as specifically ruled upon 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 (i) whether Taxpayer is qualified to file the Form 3115 for the change in method of accounting for advance payments under Rev. Proc. 2008-52; or (ii) whether the change in method of accounting that is the subject of such Form 3115 qualifies under section 15.07 of Rev. Proc. 2008-52.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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,

Christopher F. Kane
Branch Chief, Branch 3
(Income Tax & Accounting)