

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201318002**
Release Date: 5/3/2013
Index Number: 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B02
PLR-131980-12
Date:
January 22, 2013

Attn:

TY:

Legend

Taxpayer =

- A =
- B =
- Date 1 =
- Date 2 =
- Date 3 =
- c =
- d =

Dear :

This is in response to the letter dated July 20, 2012, submitted on your behalf by your authorized representative. In the letter, you request relief for the failure to timely file Form 3115 with the tax return for Date 1. The request is made in accordance with sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

FACTS

Taxpayer is primarily a A. Taxpayer files a consolidated tax return on a calendar year basis. It is presently on an overall accrual method of accounting.

Due to an unusual series of events, Taxpayer failed to attach a copy of a Form 3115 which it had filed to change its method of accounting for B to its tax return for Date 1 which was filed on Date 2.

LAW AND 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 applicable provisions of this revenue procedure has obtained the consent of the Commissioner to change to 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 Rev. Proc. 2008-52 must complete and file a Form 3115 in duplicate. The original must be attached to the taxpayer's timely filed (including any 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.

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in exercising his discretion, may grant a reasonable extension of time under the rules set forth in § 301.9100-3 to make a regulatory election. The term "regulatory election" is defined in § 301.9100-1(b) 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 301.9100-2 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 section 301.9100-2.

Section 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Under section 301.9100-3(b)(1)(i) and (v), except as provided in paragraphs (b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service, or if the taxpayer reasonably relied on a qualified tax professional who failed to make, or failed to advise the taxpayer to make, the election.

Paragraphs (b)(3)(i) through (iii) of § 301.9100-3 provide that a taxpayer is deemed not 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 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. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief. In such a case, the Service will grant relief only

when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

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.

Section 301.9100-3(c)(2) imposes special rules for accounting method regulatory elections. This section provides, in relevant part, that the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances, if the accounting method regulatory election for which relief is requested requires an adjustment under § 481(a) (or would require an adjustment under § 481(a) if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the taxable the election should have been made).

CONCLUSION

The Taxpayer's election is a regulatory election, as defined under section 301.9100-1(b), because the due date of the election is prescribed in a revenue procedure. In the present situation, the requirements of sections 301.9100-1 and 301.9100-3 of the regulations have been satisfied. The information and representations made by Taxpayer establish that it acted reasonably and in good faith with this request. The affidavits presented show that it requested relief before the failure to make the election was discovered by the Service and it reasonably relied on a tax professional for the filing of its federal income tax return, however, the tax professional failed to make, or advise Taxpayer to make the election. The affidavits presented show that Taxpayer, upon discovery of the error, promptly requested relief.

Taxpayer is not seeking to alter a return position for which an accuracy-related penalty had been or could be imposed under section 6662 at the time relief was requested. Taxpayer reasonably relied on a tax professional for the filing of the return and the tax professional failed to make or advise Taxpayer to make the election. Taxpayer is not using hindsight in requesting relief. Finally, granting an extension will not prejudice the interests of the Government. The taxable year 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 limitation on assessment.

Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this letter to file the original of Form 3115 changing Taxpayer's method of accounting for B under Rev. Proc. 2008-52, with an amended consolidated federal income tax return for the taxable year ending Date 3. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, a taxpayer filing returns electronically may

satisfy this requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

Except as expressly set forth above, we express no opinion concerning the tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed or implied concerning whether: (1) Taxpayer is eligible to file the Form 3115 at issue under Rev. Proc. 2008-52; (2) Taxpayer otherwise meets the requirements of Rev. Proc. 2008-52; or (3) Taxpayer's proposed method of accounting described in Form 3115 is a permissible method of accounting. Further, this letter ruling does not grant an extension of time for filing the consolidated federal income tax return for the taxable year ending Date 3.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by appropriate parties. 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.

This ruling is directed only to the Taxpayers 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, we are sending copies of this letter to Taxpayer's authorized representative. We are also sending a copy of this letter to the appropriate operating division director.

Sincerely,

Thomas D. Moffitt
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Income Tax & Accounting)

cc: