

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:ITA:B03
PLR-106818-13

Date:
July 24, 2013

Taxpayer =

A =

Date 1 =

Date U =

X =

Dear :

This responds to the letter dated February 11, 2013 submitted on your behalf by your authorized representative. That letter requests an extension of time for Taxpayer to file a copy of Form 3115, Application for Change in Accounting Method, to automatically change its method of accounting to deduct repair and maintenance costs not required to be capitalized under section 263(a) of the Internal Revenue Code pursuant to the provisions of Rev. Proc. 2011-14, 2011-4 C.B. 330 with the IRS National Office for the taxable year beginning January 1, 2011 (year of change.) This request is made in accordance with sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Taxpayer files a consolidated tax return and uses the accrual method of accounting and has a calendar year end.

FACTS

Taxpayer is in the business of X. For the tax year ended Date 1, Taxpayer requested Accounting Firm A to prepare and file Form 3115. Taxpayer's Forms 3115 were filed with its timely filed U.S. federal income tax returns for Date 1. Taxpayer also timely filed copies of its Forms 3115 with the IRS in Ogden, Utah as required by section

3.06(3) in the Appendix to Rev. Proc. 2011-14. In addition, Taxpayer requested and received District Director consent prior to the filing of its 2011 U.S. federal income tax return, as required by section 6.03(4) in the Appendix to Rev. Proc. 2011-14, and provided a copy to the IRS Exam team.

Taxpayer was required to file a copy of the properly completed Form 3115 with IRS National Office no earlier than the first day of the year of change and no later than the date on which Taxpayer filed its U.S. federal income tax return for the year ending on Date 1, the “due date”. Taxpayer requested Accounting Firm A to do so. On or about Date U, Accounting Firm A discovered that it inadvertently failed to file Form 3115 with the IRS National Office by the “due date”. Accounting Firm A advised Taxpayer and Taxpayer requested A to request an extension of time to file the Form 3115.

LAW AND ANALYSIS

Section 1.446-1(d)(2)(i) of the Income Tax regulations provides that a taxpayer that changes a method of accounting must secure the consent of the Commissioner. Section 6.01 of Rev. Proc. 2011-14 provides that the consent of the Commissioner is granted to any taxpayer to change its method of accounting for a method described in the revenue procedure as long as a taxpayer complies with all the applicable provisions of the revenue procedure and implements the change in the method of accounting for the requested year of change.

Section 6.02(3)(a) of Rev. Proc. 2011-14 provides that a taxpayer changing a method of accounting pursuant to the revenue procedure must complete and file the application in duplicate. Section 6.02(3)(a)(i) provides that the original application must be attached to the taxpayer’s timely filed (including any extension) original U.S. federal income tax return implementing the change in method of accounting for the year of change. Section 6.02(3)(a)(ii)(A) provides that a copy of the application must be filed with the IRS National Office no earlier than the first day of the year of change and no later than the date the taxpayer files the original with the federal income tax return for the year of change.

Section 6.02(3)(d)(i) of Rev. Proc. 2011-14 provides an automatic extension of six months from the due date of the return for the year of change (excluding any extension) to file an application, provided certain conditions are met. If these conditions are not met, an extension will only be granted if the requirements of section 301.9100-3 of the regulations are satisfied.

Section 301.9100-1(a) gives the Service discretionary authority to grant a reasonable extension of time to make a regulatory election, provided that the time for making such election is not expressly prescribed by statute. Section 301.9100-1(b) defines the term “regulatory election” as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or

announcement. Sections 301.9100-1 through 301.9100-3 provides the standards the Service will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of section 301.9100-2.

Section 301.9100-3 provides that requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence (including affidavits described in the regulations) to establish to the satisfaction of the Commissioner 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) states 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) inadvertently 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, 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 tax professional failed to make, or advise the taxpayer to make, the election.

The affidavits presented show that Taxpayer acted reasonably and in good faith, having reasonably relied on a qualified tax professional who failed to make the election.

Under section 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 has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account section 1.6664-2(c)(3) of the Income Tax Regulations) 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.

Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time relief is requested and

was not informed in all material respects of the required election, and its related tax consequences and chose not to make the election. Furthermore Taxpayer is not using hindsight in requesting relief. Taxpayer has represented that specific facts have not changed since the original deadline that make the election advantageous to Taxpayer.

Section 301.9100-3(c)(1)(i) provides, in part, 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 (taking into account the time value of money). Section 301.9100-3(c)(1)(ii) provides, in part, that 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 these criteria, the interests of the government are not prejudiced in this case. Taxpayer has represented that granting relief would not result in Taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than if the election had been timely made (taking into account the time value of money). Furthermore, 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 on assessment.

Section 301.9100-3(c)(2) imposes special rules for accounting method regulatory elections. The 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 section 481(a) (or would require an adjustment under section 481(a) if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the taxable year the election should have been made). Similarly Section 6.02(3)(d)(ii) of Rev. Proc. 2011-14 provides that a taxpayer that fails to file the application for the year of change as provided in sections 6.02(a), (b), or (d)(1) of the revenue procedure will not be granted an extension of time under section 301.9100-3 except in unusual and compelling circumstances.

Based on the facts and representations submitted, including an affidavit, unusual and compelling circumstances have been demonstrated.

Accordingly, the consent of the Commissioner is hereby granted to Taxpayer for an extension of time to file the copy of Form 3115 with the IRS National Office requesting permission to change its methods of accounting to deduct repair and maintenance costs not required to be capitalized under section 263(a) under Rev. Proc. 2011-14, 2011-4 C.B. 330 for the tax year ending on Date 1. This extension shall be for a period of 60 days from the date of this ruling. A copy of this letter must be attached to any income tax return to which it is relevant.

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 2011-14; (2) Taxpayer otherwise meets the requirements of Rev. Proc. 2011-14; or (3) Taxpayer's proposed method of accounting described in Form 3115 is a permissible method of accounting.

This ruling is 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 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, 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. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Internal Revenue Code.

Sincerely,

Christopher F. Kane
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Income Tax & Accounting)