

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201432007**
Release Date: 8/8/2014
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-144148-13

Date:
April 23, 2014

TY:

Legend

- Taxpayer =
- Firm =
- Agent=
- Return =
- Date1 =
- Date2 =
- Year =

Dear _____ :

This is in response to the letter dated September 30, 2013, submitted on your behalf by your authorized representative. Taxpayer requests an extension of time to submit a duplicate copy of Form 3115, Application for Change in Accounting Method, to the Internal Revenue Service (IRS) national office, in order to make an election for tax Year to defer federal income taxation of advance payments under section 5.02 of Rev. Proc. 2004-34, 2004-22 I.R.B 991, and section 6.02(3) of Rev. Proc. 2011-14, 2011-4 I.R.B. 330. The request is made in accordance of section 301.9100-3 of the Procedure and Administration Regulations.

FACTS

For Year Taxpayer planned to change its method of accounting for advanced payments for federal income tax purposes, from the full inclusion method to the deferral method pursuant to section 5.02 of Rev. Proc. 2004-34. Taxpayer informed Firm of this change when Taxpayer hired Firm to prepare its Year Return. Taxpayer has utilized the services of Firm for several years, throughout which time Firm has demonstrated a high

standard of competence and professionalism. One of Firm's employees, Agent, with experience preparing and filing corporate tax returns for Taxpayer, prepared the return. Taxpayer cooperated fully with Firm in the submission, preparation, and execution of all forms provided to Taxpayer in connection with its Year Return. Under the direction of Firm, Taxpayer timely e-filed Return by the due date (including extensions) on Date1, including Form 3115, Application for Change in Accounting Method. On Date2, Firm and Agent realized that they had inadvertently failed to instruct Taxpayer to file a duplicate Form 3115 with the IRS national office no later than Date1. Taxpayer did not become aware of the omission to submit the national office copy until the day after Return was filed when Firm and Agent notified Taxpayer of the requirement and omission. Taxpayer immediately decided to seek permission from the IRS to make a late election by submitting a duplicate copy of Form 3115 later than the date Taxpayer filed the original Form 3115 with Return.

RULING REQUESTED

Taxpayer requests an extension of time to submit a duplicate copy of Form 3115, Application for Change in Accounting Method, to the IRS national office, in order to make an election for tax Year, to defer federal income taxation of advance payments under section 5.02 of Rev. Proc. 2004-34. Specifically, Taxpayer requests an extension of 45 days from the issuance of a letter ruling to submit a duplicate copy of Form 3115, as required by section 6.02(3)(a) of Rev. Proc. 2011-14.

LAW AND ANALYSIS

Rev. Proc. 2004-34 generally permits a taxpayer to defer the inclusion in gross income of advance payments to the next succeeding taxable year. A payment is an advance payment within the meaning of Rev. Proc. 2004-34 if (1) including the payment in gross income for the taxable year of receipt is a permissible method of accounting for federal income tax purposes; (2) the payment is recognized by the taxpayer (in whole or in part) in revenues in its applicable financial statement for a subsequent taxable year; and (3) the payment is for certain specified activities including the performance of services or the use of intellectual property. See section 4.01 of Rev. Proc. 2004-34.

Rev. Proc. 2011-14 provides the procedures by which a taxpayer may obtain automatic consent to change certain methods of accounting. A taxpayer satisfying all applicable requirements of this revenue procedure is deemed to have obtained the consent of the Commissioner to change its method of accounting under § 446(e) of the Internal Revenue Code and associated Income Tax Regulations.

Section 6.02(3)(a) of Rev. Proc. 2011-14 provides that a taxpayer changing a method of accounting pursuant to Rev. Proc. 2011-14 must complete two separate steps. Step one requires the taxpayer to attach the original Form 3115 to the taxpayer's timely filed original federal income tax return for the year of change. Step two requires the taxpayer

to file a signed copy of the Form 3115 with the national office no earlier than the first day of the year of change, and no later than the date the original Form 3115 is filed with the taxpayer's 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) defines a "regulatory election" 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 § 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.

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.

Section 301.9100-3(c)(2) provides special rules for accounting method regulatory elections. Section 301.9100-3(c)(2) provides that the interests of the government are deemed prejudiced, except in unusual or compelling circumstances, if the accounting method regulatory election for which relief is requested is subject to the advance consent procedures for method changes, requires a § 481(a) adjustment, would permit a change from an impermissible method of accounting that is an issue under consideration by examination or in any other setting, or provides a more favorable method of accounting if the election is made by a certain date or taxable year.

CONCLUSION

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 Taxpayer to file the necessary

copy of the Form 3115 with the IRS national office. The extension shall be for a period of 30 days from the date of this ruling. Please attach a copy of this ruling to the Forms 3115 when they are filed.

Except as ruled upon above, no opinion is expressed or implied concerning the federal income tax consequences arising from Taxpayer's activities. Specifically, we express no opinion concerning whether Taxpayer is qualified to file its application for a change in accounting method under Rev. Proc. 2004-34, or that it otherwise meets the requirements of that revenue procedure.

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.

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

Sincerely,

Kari L. Fisher

KARI L. FISHER
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: