

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:B06
PLR-121483-14
Date:
September 11, 2014

Legend

- Taxpayer =
- Date1 =
- Date2 =
- Supplies =
- X =
- B =

Dear :

This letter is in response to a private letter ruling request dated May 28, 2014, filed on behalf of Taxpayer, requesting an extension of time under §301.9100-1 of the Procedure and Administration Regulations to file a copy of the Form 3115, Application for Change in Accounting Method, with the Internal Revenue Service (IRS) office in Ogden, Utah for the taxable year ending Date1.

Taxpayer is a merchant wholesale distributor of Supplies. The taxpayer represented that its principal activity code is X.

On Date2, Taxpayer engaged B to assist in the preparation of its federal tax filings for the taxable year ending Date1. As part of its engagement, B reviewed a study Taxpayer had undertaken that indicated that it was incorrectly depreciating certain assets. B advised Taxpayer that an accounting method change was necessary to

change under § 168 of the Internal Revenue Code from this impermissible depreciation method for assets placed in service and owned by Taxpayer as of the first day of the year ending Date1. As a result, with the federal tax return filing for taxable year ending Date1, Taxpayer timely filed an original Form 3115 requesting an accounting method change for depreciation under §168 and reflected this accounting method change on this tax return. B did not advise Taxpayer at the time of this filing that a copy of the Form 3115 was required to be filed with the IRS service center in Ogden, Utah.

After filing the federal tax return for the taxable year ending Date1, B discovered that Taxpayer had not filed the required copy of the Form 3115 with the IRS office in Ogden, Utah, and advised Taxpayer. As a result, Taxpayer took immediate steps to file this private letter ruling request for an extension of time to file the required copy of the Form 3115 with the IRS office in Ogden, Utah.

Rev. Proc. 2011-14, 2011-4 I.R.B. 330, 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 obtains the consent of the Commissioner to change its method of accounting under § 446(e) and the Income Tax Regulations thereunder.

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 and file a Form 3115 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. For a Form 3115 filed under section 6.01 of the Appendix to Rev. Proc. 2011-14 (impermissible to permissible method of accounting for depreciation or amortization), a copy must be filed with the IRS office in Ogden, Utah in lieu of filing with the IRS national office. See section 6.02(3)(a)(ii)(B) and section 6.01(8) of the Appendix, Rev. Proc. 2011-14.

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.

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.

Requests for relief under § 301.9100-3 will be granted when a taxpayer provides evidence to establish to the satisfaction of the Commissioner (1) that the taxpayer acted reasonably and in good faith, and (2) that granting relief will not prejudice the interests of the government. See § 301.9100-3(a).

Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requested relief before the failure to make the regulatory election is discovered by the IRS; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the IRS; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides 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 was or 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 and chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) 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 (taking into account the time value of money). The section also provides that, if the tax consequences of more than one taxpayer are affected by the election, the government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Further, § 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 § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

The requested election is a regulatory election as defined under § 301.9100-1(b) because the due date of the election is prescribed in a revenue procedure, Rev. Proc. 2011-14. Taxpayer's request is analyzed under the requirements of § 301.9100-3 because the automatic provisions of § 301.9100-2 are not applicable.

On the basis of the facts, representations, and affidavits submitted, we conclude that the requirements of § 301.9100-3 are satisfied. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to file a signed copy of the Form 3115 at issue with the IRS office in Ogden, Utah. Please attach a copy of this letter ruling to the copy of the Form 3115 that is filed with the IRS office in Ogden, Utah.

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 in this private letter ruling request 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 the Form 3115 is a permissible method of accounting.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office had not verified any of the material submitted in support of the request for the ruling, it is subject to verification on examination.

This ruling is directed only to Taxpayer who requested it. Section 6110(k)(3) 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.

Sincerely,

Cheryl L. Oseekey
Senior Counsel, Branch 6
(Income Tax & Accounting)